In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 9202 of 2021

Date of Decision: 04.05.2021

M/s Orris Infrastructure Private Limited

... Petitioner(s)

Versus

National Consumer Disputes Redressal Commission and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Mukul Rohatgi and Mr. Puneet Bali, Senior Advocates with Mr. Surjeet Bhadu and Mr. Vaibhav Gaggar, Advocates for the petitioner.

Anil Kshetarpal, J.

1. In the considered view of this Bench, the question which arises for consideration is:

> **"Whether the orders passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as "the NCDRC") after 15.07.2020 but before 11.01.2021 (the date on which the NCDRC was established under the Consumer Protection Act, 2019) in the complaints pending but filed before the date of repeal of the Consumer Protection Act, 1986 (hereinafter referred to be as "the 1986 Act"), will be *Coram Non Judice*.**

2. Through this petition, the petitioner, which is a company engaged in the real estate business, has prayed for the following substantive relief:

"A. Issue a writ of certiorari or any other appropriate writ quashing/setting aside Impugned Order dated 28.09.2020 (Annexure P-1) passed by the Ld. NCDRC in CC No. 2088/2016 and Impugned Order dated 23.12.2020 (Annexure P-2) passed by Ld. NCDRC in Review Application No. 166/2020 in CC No. 2088/2016 for having been passed without any jurisdiction and therefore, null and void".

3. As per the facts stated in the writ petition, the private respondents filed a consumer complaint under Section 12(1)(c) read with 21(a)(i) of the 1986 Act against the petitioner. It was alleged that the private respondents had booked their respective apartments in the project "Aster Court Premier". All the private respondents entered into an Identical Apartment Buyer Agreement with the Developer/petitioner. It was asserted that the physical possession of the apartments so booked have not been handed over by the Developer/petitioner within the committed period. The NCDRC allowed the complaint vide an order dated 28.09.2020, thereby directing the petitioner to refund the entire principal amount received from the private respondents along with compensation in the form of simple interest at the rate of 8% per annum calculated from the respective dates of deposit till the actual date of payment together with a cost of ₹ 25,000/- to each of the complainants. However, the petitioner failed to comply with the afore-said order and consequently, multiple orders have been passed in the various execution applications filed by the concerned complainants.

4. It is noted here that the Central Government has notified the Consumer Protection Act, 2019 (hereinafter referred to as "the new Act"),

after having been enacted by the Parliament. The new Act was published in the gazette of India on 09.10.2019. On 15.07.2020, the relevant provisions of the new Act were notified to come into force from 20.07.2020. Thereafter, on 23.07.2020, several other provisions were given effect from 24.07.2020.

5. Mr. Mukul Rohatgi and Mr. Puneet Bali, learned senior counsels contend that Section 53 of the new Act provides for the establishment of the NCDRC. While referring to the notification dated 11.01.2021, they contend that the Central Government established the NCDRC on 11.01.2021. They, while drawing the attention of the Court to Section 107 of the new Act, contend that the 1986 Act stands repealed w.e.f. 20.07.2020 and therefore, the NCDRC constituted under the old Act had no jurisdiction to pass the impugned order (Annexure P-1) on 28.09.2020. They, hence, contend that the order is *Coram Non Judice*.

6. This Bench has considered the submissions and proceeds to carefully examine the same. To begin with and before entering into deliberations, it is significant to notice the relevant statutory provisions involved. Hence, Section 53 and 107 of the new Act are extracted as under:-

> *"53. (1) The Central Government shall, by notification, establish a National Consumer Disputes Redressal Commission, to be known as the National Commission.*
>
> *(2) The National Commission shall ordinarily function at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette:*
>
> *Provided that the Central Government may, by*

notification, establish regional Benches of the National Commission, at such places, as it deems fit.

54 to 106 XXXX XXXX XXXX

107. (1) The Consumer Protection Act, 1986 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal".

7. On a plain reading of Section 53, it is apparent that the new Act envisages the establishment of the NCDRC, to be known as the National Consumer Disputes Redressal Commission. Still further, Sub-Section 1 of Section 107 of the new Act provides that the 1986 Act shall stand repealed on the enforcement of Section 107. Section 107 came to be enforced w.e.f. 20.07.2020 vide a notification dated 15.07.2020, which is extracted as under:-

*"**S.O. 2351(E)**.—In exercise of the powers conferred by sub-section (3) of section 1 of the Consumer Protection Act, 2019 (35 of 2019), the Central Government hereby appoints the 20th day of July, 2020 as the date on which the following provisions*

of the said Act shall come into force, namely:-

Chapter	*Sections*
I	*Section 2* *[Except clauses (4), (13), (14), (16), (40)]*
II	*Sections 3 to 9 (both inclusive);*
VI	*Sections 28 to 73 (both inclusive);* *[Except sub-clause (iv) of clause (a) of sub-section (1) of section 58.]*
V	*Sections 74 to 81 (both inclusive);*
VI	*Sections 82 to 87 (both inclusive);*
VII	*Sections 90 and 91;* *[Except sections 88,89,92 & 93]*
VIII	*-Sections 95, 98, 100,* *-Section101* *[Except clauses (f) to (m) and clauses (zg), (zh) and (zi) of sub –section 2]. -Sections 102, 103, 105, 106, 107*

8. The NCDRC came to be established vide a notification dated 11.01.2021, which is extracted as under:

> *"**S.O. 106(E).**—In exercise of the powers conferred by sub-section (1) of Section 53 of the Consumer Protection Act, 2019 (35 of 2019), the Central Government hereby establishes a National Consumer Disputes Redressal Commission to be known as the National Commission.*
>
> *2. The President and every other member of the National Commission appointed immediately before the commencement of the Consumer Protection Act, 2019 shall continue to hold office as the President and Member of the National Commission as provided in section 56 of the said Act.*
>
> *[F. No. J-9/5/2020-CPU]*
> *ANUPAM MISHRA, Jt. Secy."*

9. From a careful reading of Sub-Section 2 of Section 107 of the new Act, it is observed that the aforesaid provision begins with a *non-obstante* clause. In other words, this provision has been given an overriding

effect and as such, overrides Sub-Section 1 of Section 107 of the new Act with respect to the cases covered under the former. However, Sub-Section 2 does not incorporate within its scope the entire range of cases. What has been provided in Sub-Section 2 is that notwithstanding such repeal, anything done or any action purported to have been taken under the repealed Act which is not inconsistent with the provisions of the new Act, shall be deemed to have been saved and done under the provisions of the new Act.

10. However, for adjudicating in the facts of the present case, there is a significant safeguard given in Sub-Section 3 of Section 107 of the new Act which provides for the general application of Section 6 of the General Clauses Act, 1897 (hereinafter referred to as "the 1897 Act"). Therefore, it becomes important to examine Section 6 of the 1897 Act, which is extracted as under:-

> ***"6. Effect of repeal.****—Where this Act, or any 4 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--*
>
> *(a) revive anything not in force or existing at the time at which the repeal takes effect; or*
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> *(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
>
> *(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*

> *(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
>
> *(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;*
>
> *and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed".*

11. On a careful reading of Section 6 of the 1897 Act, it becomes apparent that the answer to the question which arises for determination lies in the aforesaid provision. Clause (e) of Section 6 provides that the repeal of any enactment, unless a different intention appears, shall not affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment under the repealed Act. Further, it is provided that any legal proceedings instituted, continued or enforced shall continue as if the repealing Act had not been passed.

12. The effect of Sub-Section 3 of Section 107 of the new Act and Section 6 of the 1897 Act has been profoundly explained by the Hon'ble Supreme Court in para 76 and 77 of the judgment, passed in ***Neena Aneja and Another v. Jai Parkash Associates Ltd. 2021 SCC Online SC 225***, which are extracted as under:-

> *"76. Section 107(1) of the Act of 2019 repeals the Act of 1986.*

In State of Rajasthan v. Mangilal Pindwal, this Court accepted the principle that the effect of a repeal, in the absence of a savings clause or a general savings statute, is that "a statute is obliterated" subject to the exception that it exists in respect of transactions past and closed. Section 107 (2) has saved "the previous operation" of any repealed enactment or "anything duly done or suffered thereunder to the extent that it is not inconsistent with the provisions of the new legislation". Finally, Section 107(3) indicates that the mention of particular matters in sub-Section (2) will not prejudice or affect the general application of Section 6 of the General Clauses Act.

77. Section 6 of the General Clauses Act provides governing principles with regard to the impact of the repeal of a central statute or regulation. These governing principles are to apply, "unless a different intention appears". Clause (c) of Section 6 inter alia stipulates that a repeal would not affect "any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed". The right to pursue a validly instituted consumer complaint under the Act of 1986 is a right which has accrued under the law which was repealed. Clause (e) of Section 6 stipulates that the repeal will not affect, inter alia, any "legal proceeding or remedy" in respect of any such right...as aforesaid". Any such legal proceedings may be continued as if the repealing legislation had not been passed. Clause (c) of Section 6 has the effect of preserving the right

> *which has accrued. Clause (e) ensures that a legal proceeding which has been initiated to protect or enforce "such right" will not be affected and that it can be continued as if the repealing legislation has not been enacted. The expression such a right in clause (e) evidently means the right which has been adverted to in clause (c). The plain consequence of clause (c) and clause (e), when read together is twofold : first, the right which has accrued on the date of the institution of the consumer complaint under the Act of 1986 (the repealing law) is preserved; and second, the enforcement of the right through the instrument of a legal proceeding or remedy will not be affected by the repeal".*

13. No doubt, in the aforesaid case, the Hon'ble Supreme Court examined the question in the context of a complaint instituted on 18.06.2020, which was dismissed vide an order dated 30.07.2020 on the ground that the pecuniary jurisdiction of the NCDRC as the per new Act is minimum ₹ 10,00,00,000/-. After interpreting the relevant provisions, the Court held that the proceedings instituted under the old Act shall continue to be governed by the provisions of the old Act itself and the NCDRC erred in dismissing the complaint.

14. Keeping in view the interpretation laid down in relation to the effect of repeal on the pending complaints in para 76 and 77 of the judgment in ***Neena Aneja*** *(supra)*, no further elaboration is required. It is, therefore, held that in the pending complaints, the orders passed by the NCDRC after 15.07.2020 but before 11.01.2021 shall not be Coram Non Judice as they stand saved in view of Sub-Section 3 of Section 107 of the new Act read

with Section 6 of The General Clauses Act, 1897. Hence, the writ petition is dismissed, in *limine.*

(Anil Kshetarpal)
Judge

May 04, 2021
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No