

**Convenient Shopping Centre, Saini Enclave, DELHI -110092
DELHI EAST**

**Complaint Case No. CC/308/2020
(Date of Filing : 09 Dec 2020)**

1. ANMOL MALHOTRA
D 48 SURAJ MAL VIHAR , FIRST FLOOR
EAST
DELHI

.....Complainant(s)

Versus

1. MAX FASHION.COM
MAX RETAIL DIVISION , UNITY ONE CBD SHAHDRA
SHOP NO 125,126AND 133 FIRST FLOOR , PLOT
NUMBER 29 TO 31, CENTRAL BUSINESS DISTRICT
SHAHDRA
SHAHDARA
DELHI

.....Opp.Party(s)

BEFORE:

**SUKHVIR SINGH MALHOTRA PRESIDENT
RAVI KUMAR MEMBER
MS. RASHMI BANSAL MEMBER**

PRESENT:

Dated : 28 Nov 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION (EAST)

GOVT. OF NCT OF DELHI

CONVENIENT SHOPPING CENTRE, FIRST FLOOR,

SAINI ENCLAVE, DELHI – 110 092

C.C. No.308/2020

**SH. ANMOL MALHOTRA,
R/O H.NO.D-48,
SURAJMAL VIHAR,
DELHI - 110092**

....Complainant

Versus

LIFE STYLE INTERNATIONAL PVT. LTD. @ MAX
FASHION,

MAX RETAIL DIVISION,

UNITY ONE CBD SHAHDARA,

SHOP NO.125, 126 AND 133,

FIRST FLOOR, PLOT NO.29-31,

CENTRAL BUSINESS DISTRICT SHAHDARA,

NEAR KARKARDOOMA COURT,

DELHI – 110032.

.....OP

Date of Institution : 18.12.2020
Judgment Reserved on : 10.11.2023
Judgment Passed on : 28.11.2023

QUORUM:

Sh. S.S. Malhotra (President)
Ms. Rashmi Bansal (Member)
Sh. Ravi Kumar (Member)

Order By: Ms. Rashmi Bansal (Member)

JUDGMENT

By this order, the commission shall dispose off the present complaint filed by the complainant against OP with respect to deficiency in services by charging Rs.7 for paper carry bag, while purchasing at the OP's outlet.

1. It is the case of the complainant that he has purchased items from OP on 08.12.2020 worth Rs.706/- including Rs.7/- for paper carry bag. Complainant alleges that OP used him as a tool to recover that additional cost of the paper carry bag without prior intimation or notice, neither inside nor outside the store and he has to pay under compelled circumstances which amounts to deficiency of service on the part of OP as he has suffered harassment, mental agony, and inconvenience due to indifferent and arbitrary attitude/conduct of the OP and prayed for compensation for suffering, mental harassment and torture and penalty for practising unfair trade practice along with refund of the amount of the carry bag with litigation cost.

2. OP has filed its reply through its authorised representative, submitting that, after the ban of use of plastic bags by the government, OP purchased paper bags, which are much costlier than the normal plastic bags, and started providing the same to the customers on the payment basis, if they volunteer to purchase on their own volition, and there is no legal obligation on the OP to provide any carry bag to carry purchased items for free to its customers. OP submits that the present complaint relates to charging of Rs.7/- for a carry bag and is not related to any defect/default in the product/articles purchased or any deficiency in service on the part of OP and complainant willfully, voluntarily, and on his own volition consented to pay Rs.7/- for the paper bag and it is expressly communicated at their stores that customers are free to bring their own carry bags for carrying merchandise, if they are not willing to purchase the carry bag. OP further submits that no cause of action has arisen against OP and there is no deficiency of service or defect in the goods on the part of OP and prays for dismissal of the complaint.
3. In support of its case, complainant has filed bill dated 08.12.2020 showing expenses of Rs.706/- including Rs.7/- towards paper carry bag, photos of outlet (outside and inside) and has also filed the order of **Hon'ble NCDRC in the matter, Big Bazaar Future Retail Ltd. versus Sahil Dawar** and reply of the OP, as exhibits.
4. In support of its case, OP has not filed any document, except authorization letter to represent the company before commission.
5. The commission has heard the arguments and perused the record.
6. It is not disputed that OP has charged Rs.7/- towards the paper carry bag. **Hon'ble NCDRC in Big Bazaar Future Retail Ltd. versus Sahil Dawar**, vide its order dated 22.12.2020 has held – *“In the instant case, arbitrarily and highhandedly deviating from its past practice, deviating from the normal, not giving adequate prominent prior notice or information to the consumer before he makes his choice of patronizing the retail outlet, and before he makes his selection for purchase, imposing additional cost of carry bags at the time of making payment, after the selection has been made, forcing carry bags without disclosing their salient specifications at price as fixed by the OP Co., putting the consumer to embarrassment and harassment, burdening the consumer with additional cost, in such way and manner, is decidedly unfair and deceptive.”* and further has directed the Company to discontinue its unfair trade practice of arbitrarily and high handedly imposing additional cost of carry bags on the consumer at the time of making the payment, without prominent prior notice and information before the customer makes his choice of patronizing its retail outlet and before the customer makes his selection of goods for purchase, as also without disclosing the salient specifications and price of the carry-bags. Hon'ble NCDRC further directed that the necessary notice/ announcements / advertisement / warning should be in the place and manner as may enable the consumers to make his informed choice of whether or not to patronise its retail outlets, and whether or not to make his selection of goods for purchase from its retail outlets. The notice or information cannot be at the occasion of making payment, after the consumer has exercised his choice to patronise its retail outlet, and after he has made his selection of goods for purchase.
7. In the present case also, admittedly, OP has been charging for the paper carry bag after the ban of use of plastic bags by the government being costlier than the normal plastic bags and started providing the same on chargeable basis. The question to consider before this commission is not of use of plastic bag or paper bag, but of whether or not, any additional cost can be imposed upon customers to provide carry bags at the time of making payment for the goods selected for purchase, without prior notice/information being given to them before he patronize the retail outlet of the OP and before he made his selection for the purchase. The complainant has established his case by filing the photographs showing that

no notice has been served upon the consumers who patronised to the outlet of the OP and before purchased the item from the OP. The burden thereafter, shifted upon OP to establish that the same has been brought to the information/notice of the consumer with respect to the charge of the carry bag. The Consumers were also not having any prior notice that they have to take their own carry bags. After making their purchases, at the time of making the payment, additional cost for carry bag was imposed upon the consumers. The customer has a right to know, before making his purchase that additional cost of the carry bag will be charged and also has the right to know the salient specifications and price of the carry bag. The carry bag of undisclosed specifications were forced on the consumers at the price fixed by the OP. Such information at the time of making payment causes harassment to the customer and burden him with additional cost and also affects his rights to make an informed decision to opt for a specific outlet or not.

8. Therefore, considering settled law, the commission is of the opinion that OP cannot charge any amount for carry bags, particularly for those items which have been purchased from the OP outlet itself and charging any amount from the consumers for that amounts to deficiency of service on the part of OP. Therefore, OP is directed to refund Rs.7/- as cost of the carry bag to the complainant and Rs.3000/- as compensation for causing mental agony and harassment which shall include litigation cost. The order be complied by the OP within 30 days from the date of receipt of the order, failing which the OP would pay interest at the rate of 9% per annum on the above stated amount of Rs.3000/- from the date of filing the complaint ie 18.12.2020 till date of actual payment by the OP to the complainant.

Copy of the order be supplied to the parties as per CPA rules.

File be consigned to record room.

Pronounce on 28.11.2023.

[SUKHVIR SINGH MALHOTRA]
PRESIDENT

[RAVI KUMAR]
MEMBER

[MS. RASHMI BANSAL]
MEMBER