

Central Consumer Protection Authority

Case No: J-25/72/2021-CCPA (Part 6)

In the matter of: Suo-moto case against Cloudbtail India Pvt. Ltd. with regard to sale of pressure cookers which do not conform to mandatory standards

CORAM:

Ms. Nidhi Khare, Chief Commissioner

Mr. Anupam Mishra, Commissioner

APPEARANCES

For Cloudbtail India Pvt. Ltd.

1. Mr. Harsh Hiroo Gursahan

Date: 04.11.2022

ORDER

1. This is a suo-moto case taken up by the Central Authority against Cloudbtail India Pvt. Ltd. with regard to sale of domestic pressure cookers in violation to standards directed for compulsory use as per law on e-commerce platform(s).
2. In this regard, notice dated 29.11.2021 was issued to the company. The product listed out in the notice was as under :-

AmazonBasics Stainless Steel Outer Lid Pressure Cooker, 4 L (does not give pressure alert by whistle)

Product page link: <https://www.amazon.in/AmazonBasics-Stainless-Steel-Pressure-Cooker/dp/B071G5KNXK>

3. As per the notice, the company was given seven days' time to furnish its response. However, the response was furnished by the reply dated 11.01.2022. In its reply, the company submitted that owing to the Covid-19 wave, majority of its team members have been working remotely from home and/or under quarantine due to which there was slight delay in filing

its response due to delayed coordination with stakeholders. It is submitted that the Domestic Pressure Cooker (Quality Control) Order, 2020 came into force on 01.02.2021 and pursuant to the said order the company has suspended imports of this product in India prior to the effective date of the order. It is stated that the company last imported the product in January 2021, when the said order was not in effect.

4. It is further submitted in the reply that the product conforms to EU Directive-2014/68/EU granted by TUV SUD which is valid upto 13.12.2030. It is stated that the company takes the issue of quality control seriously. The product was imported by the company from a supplier whose manufacturing unit is based in China. The government of India issued travel advisory on 19.03.2020 imposing travel restrictions to and from various countries including China. The company has stated to have learnt that the restriction was strictly observed by BIS office due to which there was no definite time by which manufacturer could get the certification. In light of this, company suspended import of the product until manufacturer secures certification from BIS.
5. Opportunity of hearing as mandated under the Consumer Protection Act, 2019 was given to the company on 09.03.2022 and the following directions were passed after hearing :-

“Opposite party shall furnish the number of pressure cookers sold and details of customers to whom such pressure cookers were sold by 11.03.2022. The next hearing shall be held on 16.03.2022.”
6. Pursuant to the order passed by CCPA, reply was received from the opposite party on 11.03.2022 wherein the company submitted that a total of 1,033 units of the above-noted pressure cooker were sold post 01.02.2021 i.e., the date of coming into force of the Domestic Pressure Cooker (Quality Control) Order, 2020.
7. In the reply dated 11.03.2022, the company further submitted that it has got the product tested by NABL accredited laboratory from list of BIS authorized laboratories and the test report indicates that the product is compliant with the applicable standards. It was reiterated that the product holds valid certification of conformance to EU Directive bearing number 2014/68/EU granted by the TUV SUD which is valid up to 13.12.2030. It was stated that that as per the practice followed by BIS, products that are manufactured or imported prior to the effective date of

any quality control order issued by Central Government, are permitted to be sold without the affixation of the ISI mark. In support of this, the company has mentioned FAQs on Batteries / Cells as per IS 16046:2015 by BIS which allow stock to be sold in India if it has been imported before last date of implementation. It was submitted that due to paucity of time, the company was not able to collate additional information as sought by the Chief Commissioner.

8. The next hearing in the case was held on 17.03.2022 and the company was given time till 22.03.2022 with reference to submission on details of consumers on sale of the pressure cookers. Vide email dated 17.03.2022, the company also submitted submissions made to BIS dated 31.12.2021. On 22.03.2022, reply was received from the company stating that due to the paucity of time, and the long weekend on account of Holi, it is unable to submit the requisite information. The company requested for additional time until 31st March, 2022 to submit the requisite information.
9. Vide email dated 31.03.2022, the company submitted details of customers i.e., their Order ID, name, city, state and postal code as required to be furnished as per order dated 09.03.2022.
10. Thereafter, hearing was scheduled with the company on 06.04.2022. However, due to exigencies of work, the hearing was postponed to 13.05.2022.
11. On 13.05.2022, the hearing was held and after hearing the opposite party, the order dated 17.05.2022 was passed with the following directions –

“Director General (Investigation) shall investigate and submit a report within 15 days on the following issues :-

a) Whether the product could be sold after notification of QCO on the ground that it was imported prior to the notification? Does BIS Act allow any such exemption for imported goods?

b) Whether the product is safe for use by consumers?”

12. The report was submitted by Director General (Investigation) on 04.07.2022. The report answered the questions raised above as follows

—

a) Whether the product could be sold after notification of QCO on the ground that it was imported prior to the notification? Does BIS Act allow any such exemption for imported goods?

Under the provisions of Section 16 of BIS Act, 2016, Central Government notifies goods or articles for compulsory BIS certification through issuance of Quality Control Order (QCO). As per Section 17 of BIS Act, 2016, no person shall manufacture, import, distribute, sell, hire, lease, store or exhibit for sale any such goods or articles, without Standard Mark under a licence from BIS, which has been notified for compulsory BIS certification irrespective of the fact that the products was imported prior to the notification.

Any exemptions like non-applicability of the Order on specific product(s), product(s) meant for export etc. come under the purview of the Line Ministry (Regulator) who has issued the QCO. In this case, Department for Promotion of Industry and Internal Trade (DPIIT) is the regulator who has issued Domestic Pressure Cooker (Quality Control) Order, 2020.

b) Whether the product is safe for use by consumers?

b) Since the product (Pressure cooker) has not been certified by BIS, BIS has no comments/inputs to offer in this regard.

13. Since the report by DG (Investigation) stated that any exemption like non-applicability of the Order on specific product(s), product(s) meant for export etc. comes under the purview of the line ministry, CCPA had written to the line ministry i.e., DPIIT on 23.09.2022 to seek information with respect to the same.

14. Vide O.M. dated 28.09.2022, DPIIT stated that it has not issued any notification/exemption in the QCO permitting Domestic Pressure Cookers to be sold in the country if they have been imported prior to the date of coming into force of the QCO.

15. Both the report by DG (Investigation) dated 04.07.2022 and the O.M. dated 28.09.2022 received from DPIIT was sent to the company on 21.10.2022 and hearing was scheduled on 26.10.2022.

16. During the hearing, Mr. Harsh Hiroo Gursahan, learned counsel for the company made the following submissions –

- (i) No units of the pressure cooker have been imported after the Quality Control Order came into force.
- (ii) The product has been tested by a NABL accredited and BIS recognized lab.
- (iii) The product conforms to European Commission (EC) Standards which are identical to BIS Standards.
- (iv) As per FAQs published by BIS on other products, if the products are manufactured or imported before the date of coming into force of the QCO, they are exempted.
- (v) Section 17 of the BIS Act needs to be read as a whole along with Section 17(1) (b) which provides for applying of Standard Mark notwithstanding that license has been granted.

17. It may be mentioned that the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry notified the Domestic Pressure Cooker (Quality Control) Order, 2020 (“QCO”) on 21.01.2020 mandating conformity to standard - IS 2347:2017 and compulsory use of standard mark for ‘Domestic Pressure Cooker’. The date of coming into force of QCO was stated as 01.08.2020.

Thereafter, vide Domestic Pressure Cooker (Quality Control) (Amendment) Order, 2020 notified on 23.06.2020, date of coming into force of the QCO was postponed to 01.02.2021. This offered all manufacturers/sellers reasonable time to sell their old stocks and prepare for conformity to the standards prescribed under QCO.

Therefore, since 01.02.2021, any domestic pressure cooker offered for sale in India is required to conform to IS 2347: 2017.

18. Goods or products, which violate the standard required to be maintained by or under any law for the time being in force, are liable to be termed “defective” under the Consumer Protection Act, 2019.

Under Section 2(10), the term ‘defect’ has been defined under the Act.

(10) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly.

Thus, Pressure cookers which do not conform to the compulsory standards are liable to held 'defective' under the Act.

'Consumer rights' as defined under Section 2(9) include:

(i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;

(ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;

19. From the reply submitted by the company as well as submissions made during the hearings held by CCPA, it is clear that the product has been sold in violation to the QCO. While the company states that it has suspended import of the product since the QCO came into force, the product was still offered for sale to consumers on online platform.
20. It is not the case of the company that it had stopped the 'sale' of the product after coming into force of the QCO. What was stopped by the company was only the 'import' of the product. The submissions made by the company that it had suspended the import of the product after the QCO came into force evidently indicate that it was well aware of the QCO. Despite this, the company chose to sell the pressure cookers in violation to the QCO.
21. From the reply received from DPIIT vide O.M. dated 28.09.2022, it is abundantly clear that no exemption has been provided in the QCO permitting domestic pressure cookers to be sold in the country if they have been imported prior to date of coming into force of the QCO.

22. Violation of standards mandated by the QCOs not only endanger public safety, but can make consumers vulnerable to severe injuries including loss of life. This is a critical cause for concern especially in case of domestic pressure cooker, which is a household good, present in most homes in the immediate vicinity of family members.

23. Moreover, it is pertinent to note that the notification of QCOs is not a sudden overnight action by the Central Government. Before finalizing the notification of a compulsory standard for any good or article, extensive stakeholder discussions are undertaken by BIS and the concerned Ministry for effective implementation of the standard in public interest. Any proposition of ignorance or unawareness of law cannot be countenanced.

24. In view of the above, the opposite party is hereby directed to –

- (i) Recall the 1,033 units of pressure cookers sold by it and reimburse the prices of the recalled pressure cookers to the consumers and submit a compliance report within 45 days.
- (ii) Pay a penalty of ₹1,00,000 for selling domestic pressure cookers to consumers in violation to mandatory standards prescribed under the QCO.


.....
Nidhi Khare
Chief Commissioner


.....
Anupam Mishra
Commissioner