

Central Consumer Protection Authority

Case No: J-25/72/2021-CCPA (Part 1)

In the matter of: Suo-moto case against Amazon Seller Services Private Limited with regard to sale of pressure cookers which do not conform to compulsory BIS standards.

CORAM:

Ms. Nidhi Khare, Chief Commissioner

Mr. Anupam Mishra, Commissioner

APPEARANCES

For Amazon Seller Services Private Limited (Amazon)

1. Mr. Nitin Sharma, Advocate

Date: 03.08.2022

ORDER

1. The hearing was conducted through video conferencing.
2. This is a suo-moto case taken up by the Central Authority against Amazon Seller Services Pvt. Ltd. with regard to sale of domestic pressure cookers which purportedly do not conform to compulsory BIS standards on its e-commerce platform 'Amazon' available at www.amazon.in.
3. Notice to the company in this regard was issued on 18.11.2021. The products listed out in the notice were :-

- (i) 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>

- (ii) Quba 5 Liter Induction Base Aluminium Pressure Cooker, Inner Lid

Product page link: <https://www.amazon.in/Quba-Aluminium-Pressure-Induction-Bottom/dp/B07FD9KMDX>

- (iii) Pristine Induction Base Stainless Steel Pressure Cooker, 1.5 liters, 1 Piece, Silver

Product Page link: <https://www.amazon.in/Pristine-Induction-Stainless-Pressure-Cooker/dp/B00VRRXQN8>

- (iv) Bestech Aluminum Mirror Finish Regular Inner Lid Induction Bottom Silver Inner Lid 5 Ltrs Pressure Cooker

Product Page link: <https://www.amazon.in/Bestech-Aluminum-Regular-Induction-Pressure/dp/B079VF2MWS>.

4. In response to the notice, reply dated 03.12.2021 was received from the opposite party. In its reply, the opposite party submitted that it is an online marketplace wherein third-party buyers and sellers interact and transact. It is an intermediary under the Information Technology Act. Section 79(1) of the IT Act exempts intermediaries such as Amazon from liability that may arise out of third-party information uploaded or made available by third parties on its online marketplace as long as it complies with Section 79(2) and 79(3) and rules framed thereunder. The Amazon Services Business Solutions Agreement entered between sellers and Amazon obliges sellers to ensure that information provided by them is complete and accurate. An intermediary is only obligated to act against illegal or infringing content once it receives 'actual knowledge' of the same. The company has submitted Name and Address of the respective sellers of each listing.
5. Opportunity of hearing as mandated under the Consumer Protection Act, 2019 was given to the company on 09.03.2022. However, no one appeared from the opposite party for the hearing.
6. Thereafter, in the interest of justice, another opportunity of hearing was provided to the opposite party on 05.04.2022. However, on the said date, the hearing was postponed due to exigency of work.
7. The hearing was then held on 13.05.2022 and the following directions were passed by order dated 23.05.2022 :-
- I. Opposite party shall furnish the following information:-
 - a) How many pressure cookers were sold by each seller through its platform?

- b) What was the fee earned by the opposite party on sale of the pressure cookers through its platform?
- c) Details of customers to whom the pressure cookers were sold after coming into force of QCO
- d) Whether the opposite party exercises any due diligence to ensure compliance of the mandatory requirements by other laws in force, including the BIS Act, before such products are offered for sale on its platform? If yes, the complete details thereof?

II. The above-noted information shall be furnished by 31.05.2022, which shall be the next date of hearing.

8. The information required to be furnished as per order dated 23.05.2022 was not provided by 31.05.2022

In the hearing held on 31.05.2022, counsel for the opposite party sought time to furnish the information stating that the company is collating the same. Considering the submission made, CCPA passed the order with the directions -

“Taking in view the aforementioned submission, opposite party is directed to furnish the information as required by order dated 23.05.2022 by 13.06.2022, which shall also be the next date of hearing.”

9. Thereafter, vide e-mail dated 13.06.2022, information as directed to be furnished vide order dated 23.05.2022 was submitted along with additional written submissions.

As per the data provided by opposite party, total number of pressure cookers sold through Amazon is 2,265. The total fee earned by the opposite party on sale of pressure cookers through its platform is ₹6,14,825.41.

The details of pressure cookers sold are as follows :-

| merchant_id | Seller name | asin | Item Name | Total No. of Orders | Unique Customers | Total Shipments |
|-------------|-------------|------------|---|---------------------|------------------|-----------------|
| 830277313 | Cloudtail | B071G5KNXK | AmazonBasics Stainless Steel Outer Lid Pressure Cooker, 4 L (does not give pressure alert by whistle) | 892 | 841 | 899 |

| | | | | | | |
|--------------------|--------------------|------------|---|--------------|--------------|--------------|
| 7249967025 | PRISTINE COOKWARE | B00VRRXQN8 | Pristine Induction Base Stainless Steel Pressure Cooker, 1.5 litres, 1 Piece, Silver | 500 | 486 | 507 |
| 7775863135 | Hardtrac | B00VRRXQN8 | Pristine Induction Base Stainless Steel Pressure Cooker, 1.5 litres, 1 Piece, Silver | 800 | 765 | 807 |
| 8518301235 | Quba Appliances | B07FD9KMDX | Quba 5 Liter Induction Base Aluminium Pressure Cooker, Inner Lid | 19 | 17 | 19 |
| 18530654412 | Cloudtail Business | B071G5KNXK | AmazonBasics Stainless Steel Outer Lid Pressure Cooker, 4 L (does not give pressure alert by whistle) | 18 | 12 | 24 |
| 90155685112 | Multi Zone India | B00VRRXQN8 | Pristine Induction Base Stainless Steel Pressure Cooker, 1.5 litres, 1 Piece, Silver | 9 | 9 | 9 |
| Grand Total | | | | 2,238 | 2,117 | 2,265 |

In the additional written submissions, it was reiterated by the company that it is an intermediary under the IT Act and is exempt from any liability under S.79(1) of the Act that may arise from any data, information or communication link made available by third parties on its online marketplace. It complies with provisions of 79(2) and (3) and is thus entitled to safe harbor provision of S. 79 of the IT Act. It was also stated that for a violation of the BIS Act, the procedure as laid down by the Act should be followed.

10. With regard to fees earned, though the opposite party mentioned the amount as ₹6,14,825.41, it mentioned 8 different type of fees namely (i) Technology Fee, (ii) Fixed Closing Fee, (iii) Sales Commission, (iv) Weight based fee, (v) FBA Multitier per unit fee, (vi) Gift Wrap Chargeback, (vii) Shipping Chargeback, (viii) Removal Fee

Nothing was mentioned on what the categories of fee signify and on what basis they have been calculated and applied.

In the hearing held on 13.06.2022, counsel for the opposite party submitted that a note explaining the description of fees and how the same

are charged by the opposite party shall be submitted to the Central Authority.

After hearing the opposite party, CCPA passed the following order :-

- I. Opposite party shall submit furnish a note explaining the description of the aforementioned fees and the basis on which they have calculated and applied by 20.06.2022.
- II. The next date of hearing is 04.07.2022.

11. Vide e-mail dated 01.07.2022, the opposite party furnished the information as sought by order dated 13.06.2022.

The description of fees was submitted as under:-

| S No. | Type | Description |
|-------|--|---|
| 1. | Technology Fees [Per unit sold] | The said fee is charged for providing warehouse Software technology to the sellers and fees in relation to the same are charged per unit basis. |
| 2. | Fixed Closing Fees [Per unit sold] | The said fee is charged per unit basis to cover the operation cost. |
| 3. | Sales Commission (% Average Selling Price) | The said fee is charged on the % of average selling price basis as charges to sell product on ASSPL's online marketplace. |
| 4. | Weight based fees [Per shipment] | The said fee is charged on per shipment basis for the logistic service provided to sellers to dispatch the goods to customer's location. |
| 5. | FBA Per unit fees [Per unit] | The said fee is charged for picking and packing the goods from the warehouse. |
| 6. | Gift-wrap chargeback [Per Order] | The said fee is charged to customer for additional gift-wrap service provided to customer. |
| 7. | Shipping chargeback [per Order] | The said fee is charged to customer for dispatching the goods below INR 499. Above INR 499 delivery to customer is free. |
| 8. | Removal Fees | The said fee is charged to the seller for removal of goods from the warehouse back to seller location. |

12. The hearing scheduled on 04.07.2022 was rescheduled to 08.07.2022.

In the hearing held on 08.07.2022, Mr. Nitin Sharma, learned counsel for the opposite party submitted that :-

- (i) The information and written submissions sought by the Central Authority have already been submitted.
- (ii) We have issued communication to sellers informing them about CCPA's order and follow-up communication has also been issued.
- (iii) For the categories of fee submitted, the only 'sales commission' is the platform fees, that is related to the product. If seller is asking for logistics service, I'll have to charge seller accordingly and it will come under weight based fee. If seller is asking me to provide a gift wrap, I provide him a gift wrap.

13. 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.

14. Undoubtedly, quality and standard of a good or service not only reduces safety hazard but is also one of the most important factors considered by consumers during a purchase.

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) "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;

Further, Rule 4 of the Consumer Protection (e-commerce) rules, 2020 stipulates the duties of e-commerce entities. Sub-rule (3) of Rule 4 states that:-

No e-commerce entity shall adopt any unfair trade practice, whether in the course of business on its platform or otherwise.

15. The opposite party itself has admitted, in the hearing held on 08.07.2022, that the 'sales commission' fees forms the part of earning of the company from product sales. When the opposite party earns commercially from each sale of the product listed on its e-commerce platform, it cannot disassociate itself in case of issues arising from sale of products through its platform.
16. Further, the communication to sellers issued by the opposite party for the domestic pressure cookers was done only after notice was issued by the Central Authority, by which time, admittedly 2,265 pressure cookers were already sold through the e-commerce platform operated by the opposite party.
17. Violation of standards mandated by the QCOs can not only endanger public safety, it can make consumers vulnerable to severe injuries. 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.
18. 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.

19. When compulsory conformity to standard and requirement of standard mark has been made mandatory by the central government, it was the duty of the opposite party to put in place necessary mechanism for ensuring only valid products are allowed to be sold on its platform. Any proposition of ignorance or unawareness of law cannot be countenanced. By allowing non-standard pressure cookers to be sold on its platform, opposite party has not only violated consumers' right to be protected against marketing of goods hazardous to life and property and the right to be informed, it has also aided in sale of non-standard pressure cookers by providing a fertile breeding ground through its e-commerce platform.

20. In view of the above, opposite party is hereby directed to:-

(a) Notify all consumers of the 2,265 pressure cookers sold on its platform, recall the pressure cookers and reimburse their prices to the consumers and submit a compliance report of the same within 45 days.

(b) Opposite party shall pay a penalty of ₹1,00,000 for allowing sale of pressure cookers in violation to the QCO on its platform and violating rights of consumers.


..... 3.8.2022
Nidhi Khare
Chief Commissioner


..... 3/8/22
Anupam Mishra
Commissioner