

Central Consumer Protection Authority

Case No: J-25/72/2021-CCPA (Part 2)

In the matter of: Suo-moto case against Flipkart Internet 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 Flipkart Internet Private Limited

1. Mr. Dheeraj Nair, Advocate
2. Ms. Vishrutyi Sahni, Advocate

Date: 11.08.2022

ORDER

1. This is a suo-moto case taken up by the Central Authority against Flipkart Internet Private Limited with regard to sale of domestic pressure cookers which purportedly do not conform to compulsory BIS standards on its e-commerce platform 'Flipkart' available at www.flipkart.com.
2. Notice to the company in this regard was issued on 18.11.2021 and seven days' time was provided to the company to furnish its response to the notice. The products listed out in the notice were :-

- (i) Quba Aluminium Regular 5 L Induction Bottom Pressure Cooker (Aluminium)

Product page link: <https://www.flipkart.com/quba-aluminium-regular-5-l-induction-bottom-pressure-cooker/p/itmbae64e114d977>

- (ii) PRISTINE Stainless Steel 5 L Induction Bottom Pressure Cooker (Stainless Steel)

Product page link: <https://www.flipkart.com/pristine-stainless-steel-5-l-induction-bottom-pressure-cooker/p/itmdbf30f0ffefc>

- (iii) DIAMOND by FastColors Outer Lid 10 Ltrs Aluminium 10 L Pressure Cooker (Aluminium)

Product Page link: <https://www.flipkart.com/diamond-fastcolors-outer-lid-10-ltrs-aluminium-l-pressure-cooker/p/itmdb7f5c548a01>

- (iv) Bestech Induction base Hard Anodized cherry shape 5 L Induction Bottom Pressure Cooker (Hard Anodized)

Product Page link: <https://www.flipkart.com/bestech-induction-base-hard-anodized-cherry-shape-5-l-bottom-pressure-cooker/p/itm14d2b89df3edc>

3. In response to the notice, reply dated 25.11.2021 was received from the opposite party requesting for two weeks' time to submit its response. However, reply was submitted after the period of two weeks, on 13.12.2021.
4. In its reply, opposite party submitted that it is an intermediary under Section 2(1)(w) of the Information Technology (IT) Act, 2000. In view of Section 79 of the IT Act, it is exempted from liability for any third-party information, data or communication available or hosted by it. As an intermediary, it operates as a marketplace-based model of e-commerce which merely provides an information technology platform to facilitate buyers and sellers on electronic network and all products on the platform are sold by third-party "sellers". There can be no allegation of unfair trade practices against 'Flipkart' for the goods or articles listed on its platform.

The reply further states that the listings highlighted in the notice have been taken down and the company has issued communication to the concerned sellers. The company has submitted contact details of the respective sellers of each listing.

5. The reply submitted by the opposite party was carefully examined by the Central Authority. Thereafter, opportunity of hearing as mandated under

the Consumer Protection Act, 2019 was given to the company on 13.05.2022.

After hearing the counsel for the opposite party, Order dated 23.05.2022 was passed by the Central Authority with the following directions:-

"I. Opposite party shall furnish the following information:-

a) How many pressure cookers were sold by each seller through its platform?

b) Details of customers to whom the pressure cookers were sold after coming into force of QCO

c) Whether the opposite party earns any fee or commission on sale of any product on its platform? If yes, the details thereof and the earnings made by sale of the pressure cookers?

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."

6. Vide email dated 30.05.2022, counsel for the opposite party requested for rescheduling the hearing to 03.07.2022 or after 5:30 p.m. on 31.05.2022 owing to other work commitments. Accepting the request, hearing was scheduled by the Central Authority on 31.05.2022 at 6 p.m.
7. In the hearing held on 31.05.2022, counsel for the opposite party submitted, inter alia, that the fee earned by the opposite party is like a rental and can be understood as going to a shop in a mall. If there is defect in the shirt purchased, a consumer does not sue the mall, he/she only sues the manufacturer or the shop which sold the shirt. However, the mall is giving space to the shop, and therefore charges a rent for the shop to be there in the mall. An e-commerce platform also has employees and technology and requires to earn some kind of revenue from somewhere.

After hearing the counsel for the opposite party, following directions were passed by the Central Authority vide order dated 16.06.2022:

“7. Given the different types of fee charged by the opposite party, it is relevant to understand the role played by it in the purchase made on its platform. Therefore, opposite party shall submit a written reply on the following points by 26.06.2022 :-

(i) The manner in which money paid by a consumer goes to a seller? Whether the money reaches the seller instantaneously upon payment by consumer or does the opposite party has a role in the payment process?

(ii) Whether the opposite party deducts the aforementioned fees from the payment made by consumer for a purchase and then make the payment to the seller?

(iii) What is the time taken for the payment made by a consumer for an order to reach the seller?

8. The next date of hearing is 04.07.2022.”

8. Vide e-mail dated 02.06.2022, opposite party submitted the information required to be furnished as per order dated 23.05.2022. With regard to the number of pressure cookers sold on Flipkart, following information was provided :-

Sr. No.	Seller Name	Seller Address	Brands Sold	No. of Orders	No. of Units
1	<u>Seller ID:</u> 2u5m31t 9pif95emq <u>Seller Name:</u> Pristine	Gala No. 81, Phase II, Parmar Industrial Estate (Parmar Techno Centre), Pelhar After Vasai Phata, Vasai East, VASAI, 401208	Pristine	461	465
2	<u>Seller ID:</u> n583134puobyjb1k <u>Seller Name:</u> Tekshiv Systems Pvt. Ltd.	A-16/1&2, DLF Industrial Area, Phase-1, Faridabad, Haryana, 121003	Quba	67	67
3	<u>Seller Name:</u> gty2h5ibtw3apcrt <u>Seller Name:</u> India Wholesale	No-21 & 2F, Ground Floor, Kondalier Street, Konditoph, Chennai, Tamil Nadu – 600079	Diamond	66	66
TOTAL				594	598

The details of consumers to whom the pressure cookers were sold was also submitted by the opposite party.

In its reply, opposite party admitted that it charges fee on sale of products on its platform.

The types of fees are :-

(i) Platform Fee – This fee is charged from sellers for onboarding their products on the platform.

(ii) Completion Fee – This is a fixed fee charge payable by sellers to Flipkart

(iii) Collection Fee – This is the fee which is collected from the seller for prepaid cash on delivery items.

(iv) Shipping Fee – This is the fee collected by the sellers for shipping the product.

9. Further, vide e-mail dated 17.06.2022, opposite party submitted that it made consolidated earnings of ₹1,84,263 through sale of pressure cookers for brands Pristine, Diamond and Quba since the coming into force of the Quality Control Order, 2020.

10. The information required to be furnished vide order dated 16.06.2022 was provided by email on 27.06.2022.

In the reply, opposite party submitted that it processes information as per RBI guidelines titled 'Directions for opening and operation of accounts and settlement of payments for electronic payment transactions involving intermediaries'

It admitted that it deducts the applicable commission from the total amount payable to the seller, and then settles the payment of the products with the seller.

The time taken for payment made by a consumer for an order to reach the seller typically ranges between 15-45 day(s) based on the refund policy of the respective product(s).

11. The hearing, which was scheduled on 04.07.2022 was rescheduled for 08.07.2022 by Central Authority due to exigency of work.

12. In the hearing held on 08.07.2022, counsel for the opposite party submitted that :-

(i) We have attempted to answer all the three questions and unless any further clarification is required by the Central Authority, we do not have any further submission.

(ii) We are a collection agent in terms of being an intermediary. When the customer makes the payment, we collect it on behalf of the seller and then transfer it to the seller.

13. The Central Authority has carefully examined and considered the written submissions dated 13.12.2021, and written submissions submitted on 02.06.2022, 17.06.2022 and 27.06.2022. The oral submissions made by the counsel for the opposite party on the opportunities of hearing provided on 23.05.2022, 31.05.2022 and 08.07.2022 have also been carefully considered.

14. The 'Flipkart Terms of Use' submitted by the opposite party along with its reply dated 13.12.2021 as well as 02.06.2022 includes provisions which portray that the opposite party has played a role in the sale of pressure cookers on its platform. The provisions are :-

(a) "the seller shall ensure that invoices state 'Powered by Flipkart' and failing to do so, a seller shall be liable to chargebacks (as applicable)."

(b) "All registered sellers are categorized into the following tiers :-

- Gold
- Silver
- Bronze

This is done basis the following criteria

- Sales achieved by sellers (revenues and units)
- Percentage of local/zonal shipment out of your overall shipment
- Percentage of overall shipments supplied in the same zone to customers by the seller
- Customer feedback against the products sold by such sellers (returns and ratings) etc.

The thresholds for each of these criteria are transparently listed on <http://seller.flipkart.com>. Basis the tier, sellers get benefits including the following:

- Reduced rate card for the shipping fees
- Account management support
- Faster payments"

15. The opposite party requires sellers to state the words 'Powered by Flipkart' on invoices of the products sold on Flipkart. When such words are made compulsory by the opposite party to be used on the invoice, it clearly indicates that the opposite party is attempting to build confidence and trust in the mind of consumer through the sale of such product.
16. Further, the provisions regarding distribution of benefits by the opposite party to sellers by categorizing them as gold, silver and bronze demonstrates that it played a major role in encouraging the sellers to sell the products through its e-commerce platform. If the opposite party truly had no role in the sale of products listed on the platform, it could not have made a differentiation between sellers for providing the aforementioned benefits.
17. During the hearing, counsel for the opposite party compared the e-commerce platform to a mall. However, such argument is misplaced as in a physical shopping mall, consumers actually have the opportunity to discuss aspects of the product as well as the opportunity to physically hold and check its features. Every shop in a shopping mall has its own different interior infrastructure and manner of displaying products. However, on an e-commerce platform, there is no opportunity of face-to-face or physical interaction of the consumer with the seller. The consumer has no opportunity to discuss or ask any question regarding any aspect of the product with the seller, except to rely upon the information which is displayed on the e-commerce platform operated by the opposite party. Being a virtual platform, it is available 24*7 to the consumers, accessible with mobile, laptop etc. To the consumer, the pre-purchase decision making takes place based on what is shown to him on the screen by the e-commerce entity.
18. Further, the opposite party earns a fee every time a consumer buys a product on its platform. Such is not the case in a physical shopping mall. The mall owner does not take a fee from the store owner for every sale that takes place in the store. Therefore, any comparison by the opposite party of its e-commerce platform to a physical shopping mall is baseless and without merit.
19. Further, Flipkart admittedly earned a consolidated fee of ₹1,84,263 through sale of such pressure cookers. With every purchase made by a consumer on Flipkart, the opposite party also earned in terms of fee. Therefore, the opposite party cannot alienate itself from the role and

responsibility in case of issues arising from sale of goods through its e-commerce platform.

20. 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 598 pressure cookers were already sold on its e-commerce platform.
21. 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 either physically or online in India is required to conform to IS 2347: 2017.

22. Quality and standard of a good or service is one of the most important factors considered by consumers during a purchase. It is a key factor in determining the safety and reliability of the product for consumers.

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.

23. '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.

24. 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.

25. 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.

26. 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.

27. 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.

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

(a) Notify all consumers of the 598 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.


.....11.8/2022

Nidhi Khare
Chief Commissioner


.....11.8.22

Anupam Mishra
Commissioner