

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM,  
SOUTH GOA AT MARGAO**

**Coram: Mr. Pradip .V. Sawaiker, President**

**Ms. Cynthia A. Colaco, Member**

**Ms. Anjali A. Salkar, Member**

**Complaint No. 79/2016**

**Mr. Chanakya Sharma,**

**Rom No. 226, Dr. Ram Manohar Lohiya,**

**National Law Univeristy,**

**Sector D-1, LDA,**

**Lucknow, Uttar Pradesh 226 012**

..... Complainant

V/s.

1. 49ER'S (Multi Cuisine Restaurant Bar),

Hotel Sea Coin, Colva Beacg,

Colva Salcete Goa 403 708.

2. Axis Bank Limited,

Corporate Office Bombay Fyeing Mills Compound,

Pandurang Budhkar Marg.,

Worli, Mumbai 400 025

3. Axis Bank Ltd.,

Shop 1, 2, 3 'Garden View',  
Padre Miranda road,  
Margao Salcete 403 601.

..... Opposite Parties

Complainant present in person at the time of arguments

Adv. S. Redkar present for Opposite Party No.1 at the time of arguments

Complaint filed on: 08/12/2016

Complaint disposed on: 21/09/2017

## **J U D G M E N T**

**(Per Mr. Pradip V. Sawaiker, President)**

- This Judgment and order shall dispose of the complaint under section 12 of the Consumer Protection Act, 1986 (for short "The CP Act")
- The Complainant is a law student from Lucknow, Uttarpradesh. He came down to Goa on 03.11.2016. He visited the establishment of Opposite Party No.1 for lunch at 1.00 p.m. After the invoice was served, he offered to pay the amount of invoice through his S.B.I. Maestro ATM cum Debit card. The total amount of the bill was ₹ 710/- for food and ₹120/- for beverages. The Opposite Party No.1 also charged service charge at 10%. The amount payable was ₹ 914/- . When the Complainant was asked to push the pin, he enquired about the total. He was told that the total amount was ₹ 933/-. On inquiry, the Manager informed him that 2% is payable on total as a charge for using the debit card machine.
- When confronted, with the fact that it is for Opposite Party to pay these charges to the bank and not for the consumer, Manager told him that the

Complainant is lucky that no VAT as applicable is charged to him. When the Complainant insisted upon, the Manager affirmed that the bank has approved this shifting of burden on the consumer. The Opposite Party No1 insisted that payment has to be made of the full amount.

- Upon further inquiry, the Complainant came to know that on 02.11.2016 his friend has visited the establishment of Opposite Party No.1 for dinner at about 11.00 p.m. The payment was made through the card of the said friend of the Complainant. A similar billand receipt with 2% additional charge was issued to his friend.

- The Opposite Party No.1 is engaged in practice of unfair trade by levying 2% on the due amount on pretext of it being mandated by the bank. The Reserve Bank of India (RBI) has by its circulars informed all the banks not to allow merchant to shift the burden of said charges of 2% on account of use of electronic machine on the consumers. It is made clear that this charge levied by the bank has to be paid by the merchants exclusively.

- One of the friends of the Complainant has also brought to his notice that the Opposite Party No.1 has stuck a notice on the wall of the restaurant conveying that the prices levied by Opposite Party No.1 are governed by All Indian Tourism of Hotels and Restaurants Act. This representation is deceitful and mischievous. The notice seeks to achieve by unfair means the valuable and hard earned money of thousands of consumers. No Act as mentioned by Opposite Party No.1 exists.

- The notice further says that the menu prices are inclusive of service tax and service charges. However, the Opposite Party No.1 has levied service charges in the invoice. This is an unfair trade practice.

- The Opposite Party No.1 had also manipulated the electronic equipments. The total of the invoice of the consumables purchased by the Complainant was ₹830/-. Upon adding service charge of 10% ,the total amount payable comes to ₹

913/-. The amount displayed in the invoice is ₹ 914/-. The Opposite Party No.1 has, therefore, used an equipment that allows manipulation in the calculation.

- The Opposite Parties 2 and 3 have acted in concert with Opposite Party No.1. Despite clear guidelines by RBI, they did not warn the Opposite Party No.1 not to recover the 2% charges from the customers. On account of the above, the Complainant has suffered consequential losses. The Opposite Party No.1 also did not reply to the notice issued by him. This has caused additional mental agony and sense of disbelief in the Complainant in efficacy of legal framework.

- The Complainant has, therefore, approached this Forum for a direction to Opposite Party No.1 to pay to the Complainant damages of ₹40,000/-, cost of the Complainant for prosecuting the complaint, direction to Opposite Party No 1 to deposit ₹ 40,000/- to the Goa Consumer Trust Fund and direction to Opposite Parties 2 and 3 to take action against the Opposite Party No.1.

- In the written version it is case of Opposite Parties 2 and 3 that they have already refunded and credited to the account of the Complainant by debiting the account of Opposite Party No.1, that they have also terminated the facility of POS machine granted to Opposite Party No.1, that nothing survives against these Opposite Parties and therefore, they should be exonerated.

- In the written version in the case of Opposite Party No.1 is as under :

- At the time of issuing invoice to the Complainant, the computer generating the bills was malfunctioning. The Complainant then demanded accurate invoice showing service tax, VAT and service charges. He also asked for discount on the invoice. Accordingly, a fresh invoice showing all the details was issued to him. This invoice was handwritten. The entire confusion has arisen due to the malfunctioning of the computer. The total amount due by the Complainant was ₹1045.38 which includes service charges of 10% and VAT of 14.50%.

- The Complainant had complained of delay in providing food. There was some deficiency-in-service on account of which Opposite Party No.1 gave discount to the tune of 10.50% to the Complainant. The alleged 2% additional charge was not included in the bill. The Opposite Party No.1 was aware of the circulars of R.B.I. The notice allegedly stuck, never existed in the restaurant. It is only an imagination of the Complainant. The menu of Opposite Party No.1 clearly mentioned about the taxes applicable. The invoice produced by the Complainant is wrong. The error had occurred on account of mal-functioning of the computer. The Opposite Party No.1 has then denied the allegation made by the Complainant.
- The Complainant has produced bill dated 03.11.2016, customer copy acknowledging the payment, another bill dated 03.11.2016, customer copy of payment made to the bank, emails, correspondence between the parties, alleged notice displayed, legal notice dated 28.11.2016, and the circulars dated 01.09.2016, 17.09.2013, 28.06.2012 issued by RBI.
- Opposite Parties 2 and 3 have produced letter dated 05.01.2017.
- The Opposite Parties have produced the menu card and the copy of hand written invoice dated 03.11.2016 in support of their respective cases.
- Arguments have been heard. The Complainant Shri Chanakya Sharma argued in person and Id. Adv. S. Redkar argued on behalf of Opposite Party No.1.
- Following Issues arise for our consideration and findings on them are as under:

**ISSUES**

**FINDINGS**

I. Whether there was any deficiency in service  
and/or unfair trade practice followed by

**AFFIRMATIVE**

Opposite Party No.1 in serving the  
Complainant?

If yes,

II. To what compensation the  
Complainant is entitled to?

Costs Rs.5,000/-

Compensation Rs.10,000/-

Punitive damages Rs.10,000/-

### **REASONING:**

#### **ISSUE-I:**

- The Complainant had admittedly visited the restaurant of Opposite Party No.1 on 03.11.2016. He ordered some consumables for which the Opposite Party No.1 issued an invoice for ₹ 914/-. The Complainant had paid the said amount through his master card. Although the invoice issued was for ₹914/-, the amount charged through the debit card was ₹ 933/-.

- It is the case of the Complainant that when he inquired with the Manager why he was charged extra ₹19/-, the manager informed him that the Complainant had to pay 2% extra for using the debit card machine.

- It is further the case of the Complainant that when he informed the Manager of Opposite Party No.1 that this charge was payable by the Opposite Party No.1, to his banker and it could not have been levied on the customer of Opposite Party No.1, the Manager instead of apologizing, informed the Complainant that he was lucky that VAT applicable was not charged to him.

- It is further the case of the Complainant that subsequently, on inquiry, he learnt from his colleague who had visited the restaurant of Opposite Party No. 1 that she too was charged similar extra amount of ₹ 16/- on 02.11.2016. The Complainant has produced said invoice for ₹ 704/- and the receipt of payment for ₹ 720/-.

- The Complainant has also produced various e-mail correspondence between him and the Opposite Party No.1 as well as between him and his colleague Ms. Chandni Singh.

- In defence, it is the case of the Opposite Party No.1 that there was some malfunctioning of the instrument. When the Complainant pointed out this error in the bill, Opposite Party No.1 had issued a corrected invoice bearing No. 25327. It is, further, defence of the Opposite Party No.1 that in fact, he had given discount of 10.5% to the Complainant, as there was an error in issuing the invoice and the Complainant was not charged any extra amount. Shri Lawrence Fernandes, the witness of Opposite Party No.1, who also is the owner of Opposite Party No.1 has in his Affidavit stated that at the relevant time the computer which was generating invoices was malfunctioning and hence it only shows service charges on the electronically issued bill. According to him, when the Complainant demanded the accurate invoice showing all the taxes, a fresh invoice with discount was issued to him. He has further testified that on the previous day too, similar situation had occurred and he gave discount of 10.50% to the customer and there was no additional charge of 2% included in the invoice. Said customer had agreed with him and never demanded for an authenticated invoice. The defence of the Opposite Party is also supported by Shri Niraj Vais, who has been working as waiter with Opposite Party No.1. He has confirmed the facts of defence with respect to the invoice issued on 03.11.2016 to the Complainant.

The Complainant has produced bills/invoices issued to him as well as Ms. Chandni Singh. The invoice issued to the Complainant is dated 03.11.2016. It was generated on 03.11.2016 at 1:28:05 pm. The total of the invoice is of ₹ 120 for beverages and ₹ 710/- for food. On said amount service charges are levied at 10% i.e. total amount of ₹ 83/-. The grand total of the invoice is ₹ 914/-. It is not disputed that the Complainant has made the payment through his debit card. The receipt of said payment is for ₹ 933/-. 2% of ₹ 914/-, the amount of invoice is ₹ 18.28. If this amount is added to the amount of invoice, the total amount payable would be ₹ 932.28. The amount charged to the Complainant is ₹ 933/-. The amount of the invoice with 2% charge is obviously rounded off to ₹ 933/-. The fact that the amount of ₹ 933/- was in fact debited to the account of the

Complainant is admitted by Shri Lawrence Fernandes, the owner of Opposite Party No.1.

- The Complainant has also produced an invoice issued to Ms. Chandni Singh. The amount of said invoice includes food items worth ₹ 640/- Service charge of 10% has been levied on said amount of ₹ 640/-. The total amount of the invoice is ₹ 704/-. A receipt generated from the machine of Axis Bank used by Opposite Party No.1 is produced towards payment of said invoice. The total amount charged to the account of said Ms. Chandni Singh is ₹ 720/-. That this amount was charged to her account is confirmed by her affidavit as well as statement of her Bank Account No. 20190368792 with State Bank of India. This debit is shown in her account on 02.11.2016 as a payment made to Suruchi 49Ers Bar N re, Margao.

- On the total invoice amount of ₹ 704/-, therefore, Opposite Party No.1 had charged ₹ 720/- to said Ms. Chandni. Assuming that he had charged 2% towards use of the machine from the Axis Bank on said amount of ₹ 704/-, the actual charges would have been Rs.718.08 (Rs.704+ ₹ 14.08). The Opposite Party No.1 however, had charged an amount of ₹ 720/- i.e. almost ₹ 2/- in excess of 2%.

- Both these instances, thus, show that the Opposite Party No.1 has charged about 2% excess on actual invoice amount. There is, therefore, substance in the contention of the Complainant that Opposite Party No.1 had charged 2% in excess to him.

- Shri S. Redkar, Id. Adv. for Opposite Party No.1, however, pointed out an invoice on which Opposite Party No.1 has relied and submitted that the contention of the Complainant that 2% was charged to him is not correct. The invoice on which the Opposite Party No.1 has relied, reads as under:



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1 B Omlette	80	-
1 Paneer C D	150	-
1 Manchuran(V)	120	-
2 Idli Sambhar	140	-
1 Veg H Noodle	120	-
1 Veg C S/W	100	-
3 S. drinks	-	90
1 M water	-	30
( 10.5% disc.)		
10%/14.5%	710	120
	215	38
	1045	38
		933/-

Sd/”

• So far as the total cost of the beverages and food articles is not in dispute. This total amount is ₹ 830/- bill then shows that the Complainant was charged 10% and 14.5% in excess. The total of this excess amount levied is ₹ 215.38. The grand total of the invoice then comes to ₹ 13.38. According to Opposite Party No.1, he then gave discount of 10.5% to the Complainant as there was delay in serving the Complainant to which the Complainant had made grievance. He then charged the Complainant for ₹ 933/- i.e. the amount that was recovered from the Complainant through his debit card.

• Shri Redkar, Id. Adv. for Opposite Party No.1, then pointed out that in fact 10.5% of ₹ 1045.38 is ₹ 109.76. He urged this amount has to be subtracted from ₹ 1045.38. The actual amount of invoice is ₹ 935.62 but the Opposite Party No.1 has charged the Complainant ₹ 933/- which was less than the actual amount of the invoice. He submitted that Opposite Party No.1 had, therefore, charged less than the actual amount due and, therefore, the Complainant should not make any grievance of the invoice.

- It is the case of the Complainant that no such handwritten invoice was ever issued to him. The Opposite Party No.1 has produced this invoice in defence. It is the case of the Opposite Party No.1 that on the day a computerized invoice was issued to the Complainant as well as on the previous day his computer was malfunctioning. It is a defence that the computer has wrongly shown service charge at the rate of 10%. It is also the case of the Complainant that this service charge of 10% was also shown on the previous day when an invoice was issued to Ms. Chandni. The Opposite Party No.1, therefore, knew on the previous day when invoice was issued to Ms. Chandni that his computer was malfunctioning. If that was so, he should not have issued invoice with said service charges to the Complainant. Assuming for the sake of arguments that defence of the Opposite Party No.1 is true, then it is obvious that he has dishonestly issued the invoice to the Complainant. When he knew that the computer is malfunctioning, he should not have taken a print out from the said computer and issue to the Complainant.

- It is also defence of the Opposite Party No.1 that when the Complainant confronted him with said grand total of the invoice and the amount charged, he had issued a fresh handwritten invoice to the Complainant. The Opposite Party No.1 knew that his computer was malfunctioning, wrongly added service charges to the actual amount of invoice, in that case he ought to have also issued such handwritten invoice to Ms. Chandni or to other customers. To prove his defence, the Opposite Party No.1 ought to have produced such invoices or the invoice book on which this corrected invoices were issued. He has not produced such book but only has produced one such copy. It is obvious that this handwritten invoice has been manufactured only to counter the case of the Complainant.

- It is next grievance of the Complainant that when he confronted the Manager of Opposite Party No. 1, the Manager told him (Complainant) that he is lucky that he is not being charged the VAT as applicable. In the written version the Opposite Party No.1 has only denied the said fact. The computerized copy of the invoice issued to the Complainant as well as Ms. Chandni does not reflect the charging of VAT. The Opposite Party No.1 has taken a defence that his computer was malfunctioning. He has then relied on handwritten invoice showing charging

of VAT at 14.5% and then giving discount to the Complainant. The Opposite Party No.1, therefore, very well knew that he is liable to collect VAT. As the computer that generated the invoices however, did not contain the provision of charging VAT. The owner of the Opposite Party No.1 Shri Lawrence Fernandes has admitted in his affidavit that only when the Complainant confronted him about the correctness of the charges levied, he had shown 10% service charges and 14.5% VAT in the alleged corrected invoice. Neither Shri Lawrence nor his witness Shri Niraj have explained why such authentic invoice was not issued to Ms. Chandni and copy of which has not been produced on record.

- As discussed hereinabove, it is, therefore, obvious that Opposite Party No.1 was not charging VAT to his customers but he only charging service charges at the rate of 10%.

- By issuing alleged corrected and authenticated invoice showing levying of VAT to the goods supplied to the Complainant, the Opposite Party No.1 has admitted that he is covered by the Goa Value Added Tax Act 2005. Section 3, sub-section 1 of said Act reads as under:

*“3. Incidence of Tax:- (1) Every dealer, whose turnover of all sales made during-*

- *the year ending on the 31<sup>st</sup> day of March of the year preceding the year in which this Act is enforced; or*
- *the year commencing on the 1<sup>st</sup> day of April of the year during which this act is enforced;*

*has exceeded or exceeds the relevant limit specified in sub-section (4), of this section shall until such liability ceases under sub-section (3), be liable to pay tax under this Act on his turnover of sales, made, on or after the appointed day.*

*Provided that, a dealer to whom clause (i) of sub-section (1) does not apply but clause (ii) applies and whose turnover of all sales first exceeds the relevant limit specified in sub-section (4) of this section after the appointed day shall not be liable to pay tax in respect of sales which take place upto the time when his turnover of sales, as compute from the first day of the year during which*

*this Act is enforced, does not exceed the relevant limit applicable to him under sub-section (4).”*

- Under said Section, the Opposite Party No.1 was liable to pay tax under the Value Added Tax Act. The computerized invoice issued to the Complainant and his friend Ms. Chandni proves that the Opposite Party No.1 was infact not collecting this VAT from his customers, although he was liable to pay tax. The computer invoices issued to the customers and produced on record and alleged and authenticated and corrected handwritten invoices produced only prove that the Opposite Party No.1 was maintaining two accounts, one in which he was levying tax towards the goods sold and the other in which he was not levying tax, although he was liable to pay tax. This is a clear case of evading tax liability.

39. From the interpretation of sub-section 1, Section 3 reproduced hereinabove, it is clear that a person whose turnover exceeds the relevant limit is liable to pay tax under the Act on turnover of his sales.

40. Section 2(a) to (e) of the VAT Act reads as under:

**“2. Definition:-** In this Act, unless the context otherwise requires:-

- *‘agriculture’ with all its grammatical variations and cognate expressions, includes horticulture, the raising of crops, grass or garden produce, and also grazing; but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forests or rearing of seedlings or plants;*
- *“agriculturist” means a person who cultivates land personally, for the purpose of agriculture;*
- *“appointed day” means the day on which this Act shall come into force;*
- *“business” includes:-*
  - (i) *any trade, commerce or manufacture;*
  - (ii) *any adventure or concern in the nature of trade, commerce or manufacture;*
  - (iii) *any transaction in connection with, or incidental to or ancillary to trade, commerce, manufacture, adventure or concern;*

(iv) Any transaction in connection with, or incidental to or ancillary to the commencement or closure of such business;

(v) any occasional transaction in the nature of trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction;

Whether or not trade, commerce, manufacture, adventure, concern of transaction is effected with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure, concern or transaction.

(e) 'business premises' means any place where a dealer or a transporter sells, transports, books or delivers goods and includes any place where he stores, processes, produces or manufactures goods or keeps books of accounts."

According to this definition, sale is a transport of property of goods for cash.

41. Section 2(ad) of the said Act defines sale price as under:

**“2(ad)** “sale price” means the amount of valuable consideration received or receivable by a dealer for the sale of any goods less any sum allowed as cash discount, according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, excise duty, special excise duty or any other duty or taxes except the tax imposed under this Act.”

In terms of this definition, the said sale price means consideration in cash received for sale of any goods.

42. From the above two definitions, it becomes very clear that VAT is to be levied and paid only on the price of the goods sold. It is not included in other instances. The Opposite Party No.1 sold two beverages for ₹ 120/- and six food items worth ₹ 710/- to the Complainant. The total price of these goods sold was ₹ 830/-. In terms of definition of sale under the VAT Act, tax was payable only on sale price of this goods or in other words only on ₹ 830/-. The VAT was levied at the rate of 14.5%. The total VAT that could have been on the Complainant, therefore, is ₹ 120.35. The Opposite Party No.1 has also levied 10% service charges on the amount of the invoice. When the amount of invoice is ₹ 830/-, the service tax could have been ₹ 83/-. The total amount of the invoice, therefore, should have been ₹ 830 + ₹ 120.35 + ₹ 83/- i.e. ₹ 1033.35. The amount actually charged to the Complainant before giving alleged discount is ₹ 1045.38 i.e. about ₹ 12/- in excess. Even the alleged corrected authenticated invoice is, therefore, the

manipulation. In the name of VAT the Opposite Party No.1 has collected an amount of ₹12/- in excess from the Complainant.

43. It is the contention of Id. Adv. Redkar for Opposite Party No.1 that the total of service charge and VAT on the invoice amount is ₹ 215.38. He has calculated the said figure assuming that Opposite Party No.1 could have levied total of 24.5% ( 10% + 14.5%) on the invoice amount. In making the said submission of the Id. Adv. Redkar and in making said calculation, the Opposite Party No.1 did not realize that no VAT could have been levied on service charges.

44. Only in escapable conclusion that can be reached from the above facts is that Opposite Party No.1 had illegally charged certain percent of the invoice amount to the Complainant.

45. It is the case of the Complainant that the Opposite Party No.1 had charged 2% in excess which the Opposite Party No.1 had to pay to his banker for the use of debit card machine. He has relied on circular issued by Reserve Bank of India (RBI) on charges towards using of this fees. Vide Circular dated 28.06.2012, the RBI had written to all the Scheduled Commercial banks, Urban Co-op. Banks, State Co-op. Banks and District Central Co-op. Banks that it is necessary to encourage the use of debit cards, especially at smaller merchants/service providers and location by way of lower MDR. The RBI then informed that it is decided to cap the MDR for transactions undertaken with debit cards not exceeding 0.75% of the transaction amount for value by ₹2000/- and not exceeding 1% for transaction amount for value of above ₹ 2000/-.

46. Vide Circular dated 17.09.2013, the RBI took cognizance of the fact that merchant establishments levy fee as a percentage of the transaction value as services through debit cards. The RBI has informed that levying of such fees are not justifiable and are not permissible as per the bilateral agreement between the acquiring bank and the merchant establishments and directed the bankers to terminate the relationship of the bank with such establishments, in case of such

levying of fees on the customers. The RBI then has communicated to the bank as follows:

*“Though many banks have appreciated our concerns and have discontinued with the above mentioned practices/products, some of them still seem to persist with them. These practices/products thwart the very principle of fair and transparent pricing of products which beholds customer rights and customer protection, especially, in the more vulnerable retail segment”.*

47. The RBI has thus disproved the practice of levying the charges of 2% on customers, in fact in this case too, the Complainant has made a complaint to the Axis Bank with whom, Opposite Party No.1 was dealing. Vide letter dated 05.01.2017 Axis Bank Opposite Parties 2 & 3 brought to the notice of the Opposite Party No.1 that it was agreed between the bank and the Opposite Party No.1 that he shall not require any card holder to pay any surcharge, to pay any part of the discount, whether through any increase in price or otherwise, or to pay any contemporaneous finance charge in connection with the transaction in which a Master card/Visa card is used. It was also brought to the notice of Opposite Party No.1 that RBI had prohibited merchants from levying any additional charges to the customers or making any payments for purchase of goods and services through cards. Thereafter, Opposite Parties 2 & 3 terminated their relationship with Opposite Party No.1 and withdrew the card acceptance facility provided to their establishment. They also credited the amount of ₹19/- to the account of the Complainant by debiting account of Opposite Party No.1. Opposite Parties 2 & 3 have, therefore, also admitted the position that Opposite Party No.1 had levied 2% charges on the Complainant towards use of his debit card to make the payment.

48. The evidence on record is, therefore, sufficient to prove that Opposite Party No.1 had charged extra 2% to the Complainant for the purchase of goods from them. Not only that, the Opposite Party No.1 had also charged 14.5% VAT, even on service charge when it was never recoverable from the Complainant. The evidence is also sufficient to prove that the Opposite Party No.1 was evading payment of VAT by issuing manipulated invoices.

49. The Complainant has prayed compensation of ₹ 40,000/- for said wrong billing and on account of illegal practice followed by the Opposite Party No.1.

50. According to Shri Redkar, Id. Adv. For Opposite Party No.1 the compensation claimed is exorbitant and without any basis.

51. The evidence on record shows the charges illegally levied by Opposite Party No.1 in small amounts. The only two invoices have been produced. The Complainant hails from Lucknow, Uttarpradesh. He had to file the complaint before this Forum since the Opposite Parties carry on business within the jurisdiction of this Forum and the cause of action for him has arisen within the territorial jurisdiction of this Forum. For presenting the complaint and for subsequent hearings the Complainant had to travel from Lucknow to Goa. He has not produced any bills of transportation. It, however, cannot be denied that he had travelled all the way from Lucknow to Goa to present the case and represent himself before the Forum. The record reveals that he had come on 08.12.2016 for presenting the complaint and on 09.12.2016 for advancing arguments on admission. He was then represented by his Power of Attorney for some hearings. The Complainant had again to visit to Goa for advancing final arguments on 07.09.2017. It is just and proper that he is reimbursed with the cost of his travelling from Lucknow to Goa. Although he has not produced his any evidence with respect to travelling expenses, the said amount is fixed at ₹10,000/-.

52. The Complainant also submitted that he personally is not interested in any compensation and in case compensation is awarded, it may be credited to Consumer Welfare Fund in Goa. He has claimed compensation of ₹40,000/-. He submitted that the Consumer Forum has powers to grant such compensation as punitive damages. In support of his contention he has relied on the decision in the case of Britannia Industries Ltd. V/s. State of West Bengal 2015 SCC Online NCDRC 3315.



53. It was a case in which the State Government had filed a complaint against the Petitioner for making false representation with respect to certain scheme advertised by them. The Hon'ble National Commission found that practice followed by the Petitioner was unfair and therefore punitive damages were awarded for conscious wrong doing unrelated to the actual loss suffered. In the said matter, the State had specifically pleaded with interest of numerous consumers, who were not identifiable were adversely affected to secure their interest. The State had prayed for punitive damages. In that case the Complainant was State and was looking after the interest of numerous identifiable consumers. There was sufficient material on record indicating that numerous consumers had fallen prey to unfair trade practice followed by the Petitioner.

54. In the case at our hand, the Complainant thus have pleaded that he does not .....only to the loss caused to him, but also assumed responsibility on bringing to the notice of this Forum the mal-practice going within the territory over which this Forum can exercise jurisdiction.

55. The mal-practice alleged is of cheating the customers by extorting 2% extra charges from them and also following an unfair trade practice.

56. Before us we have only two instances which support the case of the Complainant. The Complainant has approached the Forum in his individual capacity. The complaint is not filed in representative capacity. The Complainant was also not called for the records of Opposite Party No.1 with respect to the service rendered by him and invoices issued to the customers for different periods. We do appreciate the concern shown by the Complainant for the advantageous of general public and more particularly to the customers of Opposite Party No.1. For lack of sufficient evidence, however, it does not possible for us to award punitive damages in the amount of ₹ 40,000/- claimed by the Complainant.

57. For the reasons discussed hereinabove, the Complainant has succeeded in proving that the Opposite Party No.1 had illegally charged him VAT even on

service charges. The Complainant has also proved that Opposite Party No.1 had levied charges at the rate of 2% on the invoice amount for payments made through the debit cards. The Opposite Party No.1 was not allowed to levy this charges. There was a clear agreement between the bank and Opposite Party No.1 that he had to bear this charges and that he should not recover this charges from his customers. It was clearly an unfair practice followed by the Opposite Party No.1. On that count, the interest of justice demands that Opposite Party No.1 pays damages to the tune of ₹15,000/-. This amount of ₹ 15,000/- shall be credited to the account of Consumer Welfare Fund.

58. No doubt, Opposite Parties 2 and 3 have severe relationship with Opposite Party No.1. This, however, cannot mean that Opposite Party No.1 will approach another bank. It is, therefore, necessary to also give a direction to Opposite Party No.1 not to levy charges from his customers for the payments made through debit or credit cards. It will also be proper that the direction is given to him to display a notice near the billing counter to the effect that customers are not liable to pay the amount of fees that his bankers levy on him for use of debit or credit cards machine.

59. The Complainant has also prayed for direction to Opposite Parties 2 and 3 to take action against Opposite Party No.1. This prayer does not survive since Opposite Parties 2 and 3 have already severed relationship with Opposite Party No.1.

60. In the background of the discussion hereinabove, we pass the following Order:

### **O R D E R**

The complaint is allowed with cost of ₹ 5000/-. (Rupees five thousand only).

The Opposite Party No.1 is directed to pay an amount of ` ₹10,000/- (Rupees ten thousand only) to the Complainant.

The Opposite Party No.1 is further directed to pay further amount of ` ₹10,000/- (Rupees ten thousand only) which shall be credited to the account of Consumer Welfare Fund.

The Opposite Party No.1 is further directed to display a notice at the billing counter or other conspicuous part of his restaurant displaying "Our customers are not liable to pay any fees for payments made through debit or credit cards of the banks."

(Mr. Pradip V. Sawaiker)

President

(Ms. Cynthia A. Colaco)

Member

(Ms. Anjali A. Salkar)

Member

pf:

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