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**BEFORE THE KARNATAKA STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, BENGALURU (PRINCIPAL BENCH)**

DATED THIS THE 02nd DAY OF NOVEMBER 2021

PRESENT

HON'BLE Mr. JUSTICE HULUVADI G RAMESH : PRESIDENT

Mr. K.B.SANGANNANAVAR : JUDICIAL MEMBER

APPEAL NO.583/2021

Sri.Lakshminarayan.K
S/o Krishnaswamy.R,
Aged 69 years,
R/at No.36, Mallige
Apartments, 4th Main Road,
11th Cross, Malleshwaram,
Bengaluru-03.

..Appellant/s

(Rep. by Party-In-Person)

Vs

Global Cyber Security Response
Team Pvt., Ltd.,
R/at No.134, 1st Floor,
7th Main Road, Near
Maiyas Restaurant,
4th Block, Jayanagar,
Bengaluru-11.
Rep. by its Director/Manager.

..Respondent/s

ORDER**BY Mr. K.B.SANGANNANAVAR : JUDICIAL MEMBER**

1. This is an Appeal filed U/s 41 of Consumer Protection Act, 2019 by the Complainant aggrieved by the impugned order dated 30.06.2021 passed by 1st Addl., District Consumer Disputes Redressal Commission, Bengaluru Urban in C.C.No.1004/2020 (for short District Forum/Commission and the parties as arrayed in the consumer complaint).
2. The Commission heard the learned counsel for the Complainant/Appellant on admission and perused the impugned order dtd.30.06.2021. Now the point that would arisen for consideration is, whether impugned order passed by Commission below is contrary to the facts and law, required to be interfered in this appeal for the grounds set out in the appeal memo ?
3. In so far as issuance of notice of this appeal is concerned, served on OP, yet he remained absent as such he is recorded as absentee party. The record found with this appeal, in particular the impugned order also discloses OP/Respondent remained absent before the commission below and he is placed exparte.

4. The Complainant has raised consumer complaint against OP alleging deficiency in service in not protecting the devices given to him from hacking and sought for refund of Rs.35,000/- paid towards said services. He also sought for award damages to the extent of Rs.1 lakh, which off course, negated by the Commission below for the reasons recorded in the paragraph 6 of the impugned order.
5. Let us examine Ex-P1/3 receipts, through which the Complainant has paid Rs.35,000/- to avail the services of OP, Ex-P2 is the receipt for having received laptop, Ex-P3 is acknowledgement for having received the said laptop, Ex-P4 is a forwarding letter, Ex-P5 is the copy of the report from Truth lab, Ex-P6 is the copy of the certificate issued by Truth lab U/s.65-B of the Indian Evidence Act pertaining to the supply of copy of data downloaded from the Twitter account, submitted by Mr.Lakshminarayana. Thus, upon examination of these documents, Commission below of the view, *“---if at all, according to the Complainant, the said devices were given to OP for securing from cyber attacks hacking virus infection and reinstalling the operating system with secure fire war, there should have been an agreement or commitment letter given by OP agreeing to perform a particular act. Though it is stated that he*

has given comprehensive 15 points of what it has nothing has taken place to one Shuba, that same is also not produced. If the same has been produced this Commission could have come to the conclusion that, OP assured and undertook to do a particular act and the same was not done to hold a deficiency in service.” In our view, such reasons could not be said sound reasons as the Complainant has availed the service of OP by paying Rs.35,000/- for cyber security. As such, as the Complainant did not have any technical background, he rightly approached M/s.Truth labs to do suitable tests to confirm the actual status of the devices and to this end he had submitted a Samsung mobile and Dell laptop to them. The Complainant has requested them to examine his email accounts and social media accounts and confirm if they were also hacked. Accordingly M/s.Truth lab confirmed that the devices were accessed and remote monitored, in other words hacked. However, the Commission below failed to examine the expert report of M/s.Truth lab who confirmed that Complainant’s email account and social media account also continued to remain hacked. It is found from the record that the Truth lab had benefit of examining devices furnished to it which can be found in their report. It is also found in this report as to the expert profile, nature of examination, thereby recorded

observations and findings by physical examination of the media along with mobile phone analysis, forensic bit-stream imaging, hard disk analysis, email account and social media account analysis, thereby further recorded inference as ‘the data retrieved from the mobile phone marked Q1 indicated that some devices not recognized or used by the user, were found to be using the *wifi* network connected with this mobile phone and hence the possibility of the *wifi* being compromised cannot be ruled out.’ Further Truth lab report along with Certificate U/s.65-B of the Indian Evidence Act reporting the data retrieved from the mobile phone marked Q1 indicated that the possibility of remote monitoring using the connected *wifi* network cannot be ruled as the data indicated signs of unknown devices connected with the *wifi* network as well as the fact that the screen of the mobile phone had been mirrored with a personal computer, other than the laptop marked Q2. It is further informed that investigation of this nature is beyond the scope of private agencies and the same may be initiated through Law Enforcement agencies. The hard disk marked Q2a of the laptop marked Q2 did not indicate any signs of possible intrusions. Thus considering this report in consideration of inference drawn by the Truth lab in this consumer complaint, Complainant has

been availed the service of OP, as to be held proved deficiency in service on the part of OP in some respect which is not at all examined by the Commission below. The OP is mean to render services of this nature had received amount from complainant as stated supra, which in fact is not disputed by OP, since he is placed exparte, yet the Commission below has failed to notice all such facts found from the enquiry record. In such view the impugned order could be said contrary to the facts and law. Further to be noticed herein that not only from the proceedings, but also from the proceedings before the Commission below, OP remained absent and he failed to participate in both the proceedings at least to enable the Commission to arrive at a right conclusion or to rebut the documents placed by the complainant as the case may be. In such view, inferences drawn of the commission below in favour of the OP and against the complainant have to be said incorrect. If OP comes and participated in the proceedings of the Complainant case and this appeal which would be made more strong to opine definitely on any of the points raised within the purview of the consumer law to decide on the complaint, however OP leaved the matter to the Commission to decide unilaterally and commission below wrongly drew-up inference against the complainant.

6. In the above conclusion, we are of the view that the Complainant is entitled for refund of the amount. However, he could not be said entitled for Rs.1 lakh towards damages as claimed. Accordingly, we proceed to allow the appeal filed U/s.41 of CPA 2019. Consequently, set aside the impugned order dtd.30.06.2021 passed in CC.No.1004/2020 by 1st Addl., District Consumer Disputes Redressal Commission, Bengaluru Urban District and the Complaint filed by the Complainant is allowed in part and directed the OP to refund Rs.35,000/- along with interest at 6% p.a. from the date of receipt till realization and to pay Rs.10,000/- towards compensation and Rs.5,000/- towards litigation cost within 60 days from the date of receipt of this order, failing which, the amount so awarded shall carry interest at 9% p.a. from the date of complaint till realization.
7. Notify copy of this Order to the District Commission and parties.

Judicial Member

President

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