



TO PAY OR NOT TO PAY?

“Money is a bottomless sea, in which honor, conscience, and truth may be drowned.”

- Eugene Arthur Kozlay

OVERCHARGING

Consumers may have observed that each time they visited a hotel or a restaurant, packaged commodities such as bottled mineral water, or snacks and items from the mini-bar present in the hotel room were priced extravagantly, often with their prices inflated anywhere between 100-200%.

Though the said practice seems ridiculous and contrary to law, the reality is that the whole question of overcharging for pre-packaged commodities is still under debate. The dispute occurred when the Federation of Hotels and Restaurants Association of India filed Writ Petitions before the Delhi High Court, seeking clarification on whether it was impermissible for the Petitioners to charge their guests any price higher than the MRP on mineral water, packaged and bottled by third parties as per the provisions of the Standards of Weights & Measures. On March 05, 2007, Hon’ble Mr. Justice Vikramajit Sen of the Delhi High Court held that overcharging did not violate the provisions of the Standards of Weights and Measures Act on the grounds that the sale of food items in such hotels cannot be constituted as “sale” of the said items, (as per the Supreme Court’s decision titled ***State of Himachal Pradesh vs. Associated Hotels of India (AIR 1972 SC 1131)***) and that when making a purchase from a hotel or restaurant, the customer is also paying for the ambience. The said viewpoint was also followed by the Kerala High Court in the case titled ***M/s. Hotel Savoy Bar & Ors. vs. The State of Kerala & Anr (2016 (2) KHC 377)***., wherein the Hon’ble Court mentioned Hon’ble Mr. Justice Vikramjit Sen’s judgment, and held that the overcharging of MRP of beer at the Hotel Savoy Bar was justified as the customer was not only paying for the product, but also for satisfactorily rendering of services and the ambience.

Thereafter, an appeal was filed by the Union of India with the Division Bench of the Delhi High Court. Vide judgment dated February 11, 2015, the Division Bench comprising of the Hon’ble Chief Justice Ms. G. Rohini and Hon’ble Mr. Justice Rajiv Sahai Endlaw, held that the Single Judge’s decision shall neither be set aside, nor be affirmed, and if the Union of India is of the opinion that under the new Legal Metrology Act, it is entitled to take action against hotels/restaurants for sale of packaged mineral water at more than MRP, it should

concentrate thereon. The Division Bench further held that the learned Single Judge's judgment shall not be treated as a precedent, and that the question of law shall be open to further adjudication. Thereafter, two special leave petitions bearing nos. 28685/2015 and 27629/2015 were filed by the Federations of Hotels against the Union of India in the Supreme Court of India and the same are currently pending adjudication. The judgment titled *The Federation of Hotels and Restaurants Association of India & Ors. Vs. Union of India* by the Delhi High Court on March 05, 2007 can be read [here](#), while the Division Bench's order in *Union of India vs. National Restaurants Association & Anr.* can be read [here](#).

It stands to reason that the basic contention which will be taken up by every hotel or restaurant when asked to justify their extravagant costs would be to state that not only are they charging for pre-packaged commodities, but also for the ambience, décor and maintenance of the premises. It shall be interesting to see on which side the Apex Court of the country will lean on, and how it will maintain balance in the aforementioned SLPs filed by the Federation of Hotels.

DUAL PRICING

While the above dispute was only restricted to overcharging of pre-packaged commodities sold in hotels and restaurants, there was another issue that has gained considerable importance and traction with the consumers. This issue was of dual pricing of pre-packaged commodities. Dual pricing is a practice undertaken by manufacturers of pre-packaged commodities, where they affix a higher retail sale price on a batch of pre-packaged commodities, which are then sent to restaurants, hotels, cinema halls, etc. These products have the disclaimer "FOR SELECT CHANNELS ONLY" printed on them, signifying that the printed MRP is applicable only in the establishment where they have specifically sent that particular batch.

In this regard, the National Consumer Dispute Redressal Forum (hereinafter referred to as the 'NCDRC') has pronounced a judgment on February 01, 2016 in the case titled *BIG Cinemas & Anr. Vs. Manoj Kumar*, in favour of the consumers and against BIG Cinemas, wherein it held that the higher MRP on mineral water bottles sold in BIG Cinemas was bad in law, and was contrary to the provisions of the Legal Metrology Act, 2009, and Legal Metrology (Packaged Commodities) Rules, 2011, thereby affirming the order of the District Forum and the State Commission, Rajasthan. The NCDRC further imposed costs of Rs. 5 lakhs (USD 7718 approx.) on BIG Cinemas and Reliance Media (the second petitioner) on account of illegal enrichment by charging/extorting money from the consumers. In the said judgment, the NCDRC went as far as to ask the Director of Legal Metrology to "wake up, make an enquiry and take legal action against the wrongdoers". In fact, the presiding members captured the same quote as has been mentioned above, while addressing the illegal practices of the petitioners. The

judgment by the NCDRC titled BIG Cinemas & Anr. Vs. Manoj Kumar dated February 01, 2016 can be read [here](#).

It is pertinent to note that after the said judgment was passed by the NCDRC, the Deputy Director of the Legal Metrology Department issued a notification on August 04, 2016 sending the aforesaid judgment to various authorities. The notice as uploaded on the Delhi Government's website can be accessed [here](#).

With a rise in the number of consumers protesting against the aforementioned dual pricing of the MRP on pre-packaged commodities, the Ministry of Consumer Affairs has finally paid heed to the consumers' complaints. Based on the experience of implementing the Packaged Commodities Rules, and after receiving valuable input from a detailed stakeholder consultation, the Department has amended the rules. The said amendments to the Legal Metrology (Packaged Commodities) Rules, 2011 is stated to come into effect from January 01, 2018. In the said amendments, it has been specifically mentioned that no person shall declare different MRPs (dual/differential MRP) on an identical pre-packaged commodity, unless allowed under any other law.

The press release for the aforementioned amendment on the website of the Press Information Bureau has gone as far as to categorically state that this amendment has been brought in as a result of various consumer complaints against Cinema Halls, Airports, Malls, etc. where the practice of dual pricing is prevalent. It is uplifting to see the Government listening to the voices of the consumers and taking action against malpractices designed to extract undue gain from such consumers.

However, the National Restaurants Association of India (hereinafter referred to as the 'NRAI') has reportedly approached the Ministry of Consumer Affairs regarding the above mentioned amendments coming into effect from January 01, 2018. It has been reported in the Economic Times that the restaurateurs and other such Companies in the hospitality industry are particularly unhappy with the aforesaid laws, stating the reason that they are not only selling a product, but are also selling services, ambience, infrastructure, and manpower. Considering how two SLPs as mentioned above are already pending adjudication, it shall be interesting to see how the Ministry for Consumer Affairs addresses the said issue.