

# HILLI MULTIPURPOSE II: SUPREME COURT ENDS HUMPTY DUMPTY JURISPRUDENCE ON NATURE OF §13(2)(A) OF THE CONSUMER PROTECTION ACT

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*The Constitution Bench of the Supreme Court in New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd. defined the scope of §13(2)(a) of the Consumer Protection Act, 1986. It held that the provision which lays down the timeline for filing of a reply by the opposite party is mandatory in nature. Prior to this ruling, the conflicting decisions in this regard led to immense delay in adjudication of consumer disputes at the district level, with certain cases reaching the Supreme Court at the interim stages itself. We argue that the decision of New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., has ended a decade and a half of humpty dumpty jurisprudence on the nature of §13(2)(a). We also argue that this decision will lead to a speedy disposal of consumer cases, and consumers will no longer have to rush to multiple forums at the interim stage itself.*

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## I. INTRODUCTION

In *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.* ('Hilli Multipurpose II'),<sup>1</sup> the Supreme Court of India sitting in a five-judge bench, clarified the nature of §13(2)(a) of the Consumer Protection Act, 1986 ('CP Act').<sup>2</sup> §13(2)(a) of the CP Act provides the opposite party an opportunity to file a reply once the complaint of a consumer is admitted. The District Consumer Forum is required to send a copy of the consumer's complaint to the opposite party to enable them to file their reply within thirty days, or within an extended period decided by the District Consumer Forum. However, the extended period cannot be greater than fifteen days. The interpretation of this provision is important as this is the only opportunity for the opposite party to file a reply in consumer cases, and there are no similar opportunities available at the appellate stages. Therefore, the interpretation of §13(2)(a) of the CP Act is crucial to the right of opposite parties to file their version in consumer cases.

In Hilli Multipurpose II, the five-judge bench had two questions pertaining to §13(2)(a) of the CP Act before it. The first question was whether the time period provided to file a reply before the District Consumer Forum under §13(2)(a) of the CP Act is mandatory or directory.<sup>3</sup> This was referred to it by a two-judge bench vide an order dated February 11, 2016, in *Bhasin Infotech and Infrastructure (P) Ltd. v. Grand Venezia Buyers Assn.* ('Bhasin'), which noted the conflict between a series of decisions of the Supreme Court on this issue.<sup>4</sup> The second question pertained to the commencing point for the limitation period for filing a reply as provided under §13(2)(a) of the CP Act. This question was placed before the constitution bench by another division bench of the Supreme Court through order dated January 18, 2017 in *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*<sup>5</sup> This reference was made after noting that the ruling in *J.J. Merchant v. Shrinath Chaturvedi* ('J.J. Merchant'),<sup>6</sup> pertaining to the commencing point for the limitation period as provided in §13(2)(a) of the CP Act, requires a 'more critical analysis'.<sup>7</sup>

<sup>1</sup> *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, 2020 SCC OnLine SC 287.

<sup>2</sup> The Consumer Protection Act, 1986, §13(2)(a).

("The District Forum shall, if the complaints admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,-

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum").

It is pertinent to note that §13(2)(a) of the Consumer Protection Act, 1986 is similar to §38(2)(a) of the Consumer Protection Act, 2019.

<sup>3</sup> *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, 2020 SCC OnLine SC 287.

<sup>4</sup> *Bhasin Infotech and Infrastructure (P) Ltd. v. Grand Venezia Buyers Assn.*, (2018) 17 SCC 255.

<sup>5</sup> *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, (2018) 17 SCC 247.

<sup>6</sup> *J.J. Merchant v. Shrinath Chaturvedi*, (2002) 6 SCC 635.

<sup>7</sup> *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, (2018) 17 SCC 247.

In Hilli Multipurpose II, the Supreme Court answered the said questions and held that §13(2)(a) of the CP Act is a mandatory provision, and that District Consumer Forums could not extend the time period for filing a reply to a complaint, beyond the statutorily stipulated period. Further, the Supreme Court held that the time period for filing such a reply would commence only after the opposite party received notice of the complaint and a copy thereof.<sup>8</sup>

In this article, we argue that the decision in Hilli Multipurpose II is in consonance with the aims and objectives of the CP Act, as it will lead to a speedy disposal of cases at District Consumer Forums. In Part II, we will analyse the conflicting decisions on the nature of §13(2)(a) of the CP Act, which necessitated a reference to a five-judge bench in Hilli Multipurpose II. In Part III, we will analyse the effective approach of the Supreme Court in Hilli Multipurpose II which provided clarity on the nature of §13(2)(a) of the CP Act and ended its humpty jurisprudence,<sup>9</sup> unlike the earlier benches of the Supreme Court which faced the same question and failed to provide clarity. In Part IV, we highlight how the Supreme Court's decision has furthered the cause of consumers, and apart from enabling a speedy disposal of cases, has also made the resolution of consumer disputes pocket friendly. Finally, in Part V, we offer concluding remarks and discuss the way forward.

## II. EVOLUTION OF THE LAW ON THE NATURE OF §13(2)(A) PRIOR TO HILLI MULTIPURPOSE II

§13(2)(a) of the CP Act states that the District Consumer Forum “shall” upon the admission of a complaint, refer a copy of the same to the opposite party to reply within a period of thirty days, or any such extended period not more than fifteen days, as the statute mandates.<sup>10</sup> From a bare reading of this provision, it may be argued that since it uses the term ‘shall’, the provision is mandatory. However, as has been held in several cases, the usage of the term ‘shall’ is not always indicative of the mandatory nature of the provision.<sup>11</sup> In *Salem Advocate Bar Assn.(2) v. Union of India*, the Supreme Court observed that the nature of any provision has to be determined on the basis of the purpose and object of the statute, of which the said provision is a part.<sup>12</sup> Further, courts have observed that another determinative factor of the nature of the provision is whether it provides consequences for its non-compliance.<sup>13</sup> If the consequences are provided, then the provision is considered mandatory, otherwise the provision is considered as directory.<sup>14</sup>

<sup>8</sup> *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, 2020 SCC OnLine SC 287.

<sup>9</sup> In this paper, the term “humpty dumpty” has been used to describe a set of cases where interpretation employed by the courts lacked logic and reasoning.

<sup>10</sup> The Consumer Protection Act, 1986, §13(2)(a).

<sup>11</sup> *State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472, ¶12.

<sup>12</sup> *Salem Advocate Bar Assn.(2) v. Union of India*, (2005) 6 SCC 344, ¶20.

<sup>13</sup> *Id.*, ¶19; *State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472, ¶10.

<sup>14</sup> *Ram Deen Maurya v. State of U.P.*, (2009) 6 SCC 735, ¶52.

While these principles are settled, the usage of these to arrive at a conclusion on the nature of §13(2)(a) was far from settled, as discussed below.

In 2002, a two-judge bench of the Supreme Court in *Topline Shoes Ltd. v. Corporation Bank* (“Topline”) considered whether District Consumer Forum had the power to extend the time to file a reply beyond the cumulative forty-five day period under §13(2)(a) of the CP Act.<sup>15</sup> In this case, the Court opined that §13(2)(a) is a procedural provision, and does not provide any penal consequences for its non-compliance.<sup>16</sup> The Court further noted that the Statement of Objects and Reasons of the CP Act provided that the principles of natural justice must be kept in mind, while adjudicating consumer disputes.<sup>17</sup> Accordingly, the Court held that §13(2)(a) is directory in nature, and District Consumer Forums have discretion to grant time beyond forty-five days as well.<sup>18</sup>

In contrast to the Topline decision, a three-judge bench of the Supreme Court in the J.J. Merchant case, held that §13(2)(a) is a mandatory provision. However, the ruling of this case may be construed as *obiter dicta* as the question at issue pertained to the inclusivity of medical negligence within the jurisdiction of consumer courts.<sup>19</sup> The main thrust of the Court’s reasoning was that the speedy disposal of cases is essential to the mandate of the CP Act, especially because the Statement of Objects of the CP Act specifically emphasise on the need for “simple, inexpensive and speedy justice to consumers”.<sup>20</sup> They elaborated on the objective of speedy disposal by relying on §13(3A) of the CP Act, which delineates that an endeavour shall be made to dispose consumer cases within three months.<sup>21</sup> In line with this, the Court observed that the time limit under §13(2)(a) of the CP Act to file written submissions should be held to be mandatory, to ensure the speedy disposal of cases in accordance with the objectives of the CP Act. However, it is important to note that the court in J.J. Merchant, did not consider the earlier decision of Topline while opining on this issue.<sup>22</sup>

Further, in 2005, in *Kailash v. Nanhku* (“Nanhku”),<sup>23</sup> a three-judge bench of the Supreme Court while addressing the nature of Order VIII, Rule 1 of

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<sup>15</sup> *Topline Shoes Ltd. v. Corporation Bank*, (2002) 6 SCC 33.

<sup>16</sup> *Id.*, ¶8.

<sup>17</sup> While the Supreme Court was correct in highlighting that the Statement of Objects and Reasons of the CP Act provides that the principles of natural justice must be kept in mind, it failed to take note of the fact that a challenge based on such principles had been specifically excluded under §13(3) of the CP Act, if the statutorily mandated time was provided to the opposite party.

<sup>18</sup> *Topline Shoes Ltd. v. Corporation Bank*, (2002) 6 SCC 33, ¶¶12,13.

<sup>19</sup> *J.J. Merchant v. Srinath Chaturvedi*, (2002) 6 SCC 635, ¶13.

<sup>20</sup> *Id.*, ¶26.

<sup>21</sup> It is pertinent to note that when this judgment was pronounced, §13(3A) was sought to be introduced by Consumer Protection (Amendment) Bill, 2002. After the judgment, both houses of Parliament in the same year passed the Consumer Protection (Amendment) Bill, 2002.

<sup>22</sup> This was also noted by J. Nariman in *State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472, ¶15.

<sup>23</sup> *Kailash v. Nanhku*, (2005) 4 SCC 480.

the Code of Civil Procedure, 1908 ('Code'),<sup>24</sup> approved the decision of Topline. It also held the decision in J.J. Merchant as *obiterdicta*. It is pertinent to note that the observations in this case regarding the nature of §13(2)(a) of the CP Act could also be construed as *obiter* as the issue before the Court was on the nature of Order VIII, Rule 1 of the Code.<sup>25</sup> Moreover, the court's reasoning in this case was directly borrowed from Topline, as they observed that since Order VIII, Rule 1 of the Code— which is similar to §13(2)(a) of the CP Act—is a procedural provision and does not provide penal consequences for its non-compliance, it is a directory provision. The Court further highlighted that that the decision in Topline was not considered by the Supreme Court in J.J. Merchant, thereby delegitimising the J.J. Merchant decision.<sup>26</sup>

In light of these conflicting decisions, a three judge bench of the Supreme Court in *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.* ('Hilli Multipurpose'),<sup>27</sup> was tasked with deciding whether the view in J.J. Merchant held the field with regard to the nature of §13(2)(a) of the CP Act, or whether the law had changed in light of the Nanhku judgment. In this case, the court observed that the judgment in J.J. Merchant was by a three-judge bench, and would therefore hold the field in comparison to Topline, as the latter was rendered by a two-judge bench. The court further observed that the decision in Nanhku related to whether the limitation under Order VIII, Rule 1 of the Code of Civil Procedure was mandatory or directory in context of an election law case. Therefore any observation in Nanhku pertaining to §13(2)(a) of the CP Act would be *obiter dicta* as the that was not directly in issue.<sup>28</sup> However, the Court failed to note that the question before the court in J.J. Merchant was also not regarding nature of §13(2)(a) of the CP Act, but on whether medical negligence fell within the scope of CP Act. Therefore, observations in J.J. Merchant could also be *obiter* with regard to § 13(2)(a) of the CP Act and would not bind subsequent courts either.<sup>29</sup>

Despite the ruling of Hilli Multipurpose, the question of the nature of §13(2)(a) came up again before the Supreme Court, in 2016, in Bhasin.<sup>30</sup> Here, the conflict between Topline and Nanhku on one hand, and J.J. Merchant and Hilli Multipurpose on the other, was highlighted to the Court.<sup>31</sup> In light of the conflicting decisions between co-ordinate benches of equal strength, the three-judge

<sup>24</sup> The Court in this case failed to take note of the difference between the Code and the CP Act. See discussion infra Part III.

<sup>25</sup> *Kailash v. Nanhku*, (2005) 4 SCC 480.

<sup>26</sup> *Id.*, ¶38.

<sup>27</sup> *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, (2015) 16 SCC 20.

<sup>28</sup> *Id.*

<sup>29</sup> *J.J. Merchant v. Srinath Chaturvedi*, (2002) 6 SCC 635.

<sup>30</sup> *Bhasin Infotech and Infrastructure (P) Ltd. v. Grand Venezia Buyers Assn.*, (2018) 17 SCC 255.

<sup>31</sup> While the court in *Hilli Multipurpose* did rule that *J.J. Merchant* held the field, it failed to highlight any flaw in *Topline* nor did it analyse the provisions of the CP Act satisfactorily. Therefore, the clarity required in interpreting §13(2)(a) of the CP Act was found lacking and questions regarding its interpretation continued to come up before courts in various cases.

bench in Bhasin, vide an order dated February 11, 2016, referred the matter to a larger bench to definitively resolve the issue.<sup>32</sup>

Even after the aforementioned reference, the question pertaining to the nature of §13(2)(a) continued to come up before the Supreme Court. In 2018, in *State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti*,<sup>33</sup> the question before the Supreme Court related to §34(5) of the Arbitration and Conciliation Act, 1996 and whether it was a mandatory or a directory provision.<sup>34</sup> Justice Nariman observed in relation to §13(2)(a), that what was missed in Hilli Multipurpose was the fact that Topline was not cited before the three-judge bench in J.J. Merchant.<sup>35</sup> He observed that non-citing and non-consideration of Topline in J.J. Merchant took away the precedential value accorded to the latter, as an earlier judgment could not be overruled without upsetting the reasons on which it was based. Therefore, in effect, Justice Nariman observed that Topline still held the field with regard to the nature of §13(2)(a) of the CP Act.<sup>36</sup>

This was the evolution of law on the nature of §13(2)(a) of the CP Act till the matter was placed for hearing before the constitution bench in Hilli Multipurpose II.

### III. ANALYSIS OF SUPREME COURT'S APPROACH IN HILLI MULTIPURPOSE II

In Hilli Multipurpose II, the court held that – *first*, §13(2)(a) of the CP Act was a mandatory provision and District Consumer Forums could not extend the time granted to file a reply beyond the statutorily stipulated forty-five day period, and *second*, that this time limit would only commence after the opposite side had received notice and a copy of the complaint.<sup>37</sup> Unlike the earlier decisions on this issue, the Supreme Court in this case carried out a holistic analysis of the CP Act, clarified the distinction between the CP Act and the Code of Civil Procedure, and constructively engaged with existing judicial precedents. The Court's analysis has been discussed in detail in the following chapters.

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<sup>32</sup> Bhasin Infotech and Infrastructure (P) Ltd. v. Grand Venezia Buyers Assn., (2018) 17 SCC 255

<sup>33</sup> State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472.

<sup>34</sup> Arbitration and Conciliation Act, 1996, §34(5).

(“34. Application for setting aside arbitral award:[...] (5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.”).

<sup>35</sup> State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472, ¶16. (per R.F. Nariman, J.).

<sup>36</sup> *Id.*; However, this ruling can also be construed as *obiter* as the question in this case was regarding the nature of §34(5) of the Arbitration and Conciliation Act, 1996.

<sup>37</sup> New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., 2020 SCC OnLine SC 287.

### A. HOLISTIC ANALYSIS OF THE CP ACT

Unlike the judgments in J.J. Merchant, Nanhku and Hilli Multipurpose,<sup>38</sup> the Supreme Court in Hilli Multipurpose II interpreted §13(2)(a) holistically, in accordance with the Statement of Objects & Reasons, and other provisions of the CP Act. It began by stating that one of the objects of the CP Act is to provide a speedy and simple redressal of consumer disputes.<sup>39</sup> The Preamble to the CP Act specifies that its objective is “to provide for better protection of the interests of the consumers”,<sup>40</sup> that the notion of consumer protection and speedy disposal has been specifically reiterated by the legislature in §13(2)(c) and §13(3A) by CP Act of 2002 as well.<sup>41</sup> The Court also noted that the nomenclature of the CP Act also reflects that its primary purpose is to protect and benefit consumers.<sup>42</sup>

Further, the Supreme Court read §13(2)(a) and §13(3) of the Act collectively, to note that the language of §13(2)(a) was couched in mandatory terms and §13(3) provided that if a period of thirty days plus a discretionary period of maximum fifteen days was provided, no challenge based on the grounds of principles of natural justice could be entertained.<sup>43</sup> Therefore, the Court in Hilli Multipurpose II effectively countered the observation of Topline that principles of natural justice must be kept in mind in accordance with the Statement of Objects & Reasons of the CP Act. It noted that while the principles of natural justice must be kept in mind, a challenge on account of non-compliance of principles of natural justice could not be allowed if the statute explicitly bars such a challenge.<sup>44</sup> Accordingly, the court specifically noted §13(3A) of the CP Act and stated that it bars a challenge on the grounds of natural justice if the statutorily mandated forty-five days have been granted by District Consumer Forum in accordance with §13(2)(a) of the CP Act.<sup>45</sup>

The Court noted that within §13, wherever the legislature intended that the timeline should not be rigid, it added appropriate language to reflect its intentions. For instance, §13(3A) of the CP Act, while endeavouring to resolve consumer disputes expeditiously, allows for an extended period beyond what is provided in the statute.<sup>46</sup>

The Court then compared §13(2)(a) of the CP Act with its other provisions, that stipulated the time for filing an appeal, or a complaint vis. §15, §19 and

<sup>38</sup> These judgments attempted to take a differing view as against Topline but failed to deal with its the reasoning.

<sup>39</sup> New India Assurance Co.Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., 2020 SCC OnLine SC 287, ¶6.

<sup>40</sup> The Consumer Protection Act, 1986, Preamble.

<sup>41</sup> New India Assurance Co. Ltd.v. Hilli Multipurpose Cold Storage (P) Ltd., 2020 SCC OnLine SC 287, ¶12.

<sup>42</sup> *Id.*, ¶6.

<sup>43</sup> *Id.*, ¶15.

<sup>44</sup> The Consumer Protection Act, 1986, §13(3).

<sup>45</sup> New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., 2020 SCC OnLine SC 287, ¶13.

<sup>46</sup> *Id.*

§24A. Upon such comparison, the Court noted that all these provisions provided discretion to extend time beyond the statutorily mandated period if ‘sufficient cause’ was shown.<sup>47</sup> The Court observed that the aforementioned provisions were in contradistinction with §13(2)(a), where no discretion was left with the District Consumer Forum.

To invalidate the argument that §13(2)(a) of the CP Act was directory due to its lack of consequences for non-compliance, the Court relied on §13(2)(b) (ii) of the CP Act. §13(2)(b)(ii) provides that in the event that a reply is not filed within the stipulated period of forty-five days, the District Consumer Forum must proceed with hearing the dispute on the basis of the evidence brought before it by the complainant.<sup>48</sup>

On the basis of these reasons, the Court clarified that the decision in *Topline* was incorrect, and *Nanhku’s* reliance on the same was inconsequential as the latter’s ruling on §13(2)(a) of the CP Act was *obiter dicta*.<sup>49</sup> The Court took cognisance of the concern that leaving no discretion could cause injustice and hardship in cases where a party was not able to file a reply within forty-five days due to circumstances beyond their control.<sup>50</sup> However, this argument did not find favour with the Court, as the possibility of hardship to an individual or a group, could not be a ground to not give effect to the clear language of a statute.<sup>51</sup>

## B. CLARIFYING THE DISTINCTION BETWEEN THE CP ACT AND THE CODE OF CIVIL PROCEDURE

In *Hilli Multipurpose II*, it was contended that the language of §13(2) (a) of the CP Act is similar to that of Order VIII, Rule 1 of the Code, and if the time period could be extended beyond the statutorily prescribed limit under the Code, then there was no reason that the same could not be done under the CP Act.<sup>52</sup> The court noted that while the language of §13(2)(a) of the CP Act is similar to Order VIII, Rule 1 of the Code, a holistic analysis of both the statutes would be needed to decide if the extension of time period under the Code could be done under the CP Act as well.<sup>53</sup>

After analysing both statutes, the court pointed to Order VIII, Rule 10 of the Code which states that where a written statement has not been filed for 120 days, “the court shall pronounce the judgment against him, or make such order

<sup>47</sup> *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, 2020 SCC OnLine SC 287, ¶21.

<sup>48</sup> *Id.*, ¶22. The Court noted that through the Amendment Act 62 of 2002 (w.e.f. 15<sup>th</sup> July, 2003), the legislature has post the judgment in *Topline* amended §13(2)(b)(ii) to provide that the District Consumer Forum shall proceed to settle the dispute “*ex parte* on the basis of the evidence”.

<sup>49</sup> *Id.*, ¶22.

<sup>50</sup> *Id.*, ¶22.

<sup>51</sup> *Id.*, ¶30.

<sup>52</sup> *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, 2020 SCC OnLine SC 287, ¶31.

<sup>53</sup> *Id.*, ¶21



in relation to the suit as it thinks fit”.<sup>54</sup> The Court observed that the latter part of Order VIII, Rule 10 was wide and gave the Court discretion to pass an order granting extension of time to file a reply.<sup>55</sup> However, as there are no such provision under the CP Act, the extension of the time period beyond the statutorily prescribed limit cannot be allowed.<sup>56</sup>

Further, the Court also noted that §13(4) of the CP Act grants the powers provided under the Code to civil courts, to the District Consumer Forums for purposes enumerated thereunder.<sup>57</sup> However, a condonation of delay for filing a written statement is not within the scope of such powers.<sup>58</sup> Therefore, the court observed that the Code is unlike the CP Act, as it provides discretion to the courts to extend the time for filing written statement beyond 120 days in certain cases, whereas no such discretion is provided under §13 of the CP Act.<sup>59</sup>

### C. ENGAGING WITH EXISTING JUDICIAL PRECEDENTS

One of the problems with the judicial precedents on this issue was the lack of constructive engagement with existing precedents to arrive at their conclusions. To exemplify, the decision in J.J. Merchant was rendered after the decision in Topline,<sup>60</sup> but failed to consider Topline or address its reasoning in any manner whatsoever.<sup>61</sup> Thereafter, the Court in Nanhku relied upon Topline and observed J.J. Merchant as *obiter*,<sup>62</sup> and in Hilli Multipurpose, they merely restated that J.J. Merchant held the field without taking note of the observations of Nanhku, that the ruling in J.J. Merchant is *obiter*.<sup>63</sup> Therefore, we are of the opinion that none of the decisions that sought to overturn Topline addressed its reasoning, which in turn created a lot of confusion on the jurisprudence on this issue, which was clarified in Hilli Multipurpose II.

The Court in Hilli Multipurpose II clarified the flaws in Topline and noted that Topline did not account for §13(2)(b)(ii) of the CP Act, which provided for consequences of not filing a reply in the stipulated time period, thereby making §13(2)(a) a mandatory provision.<sup>64</sup> The Court further noted that the bench in Topline failed to note §13(3) of the CP Act, which specifically excludes a challenge on the principles of natural justice if the statutorily mandated time had been

<sup>54</sup> The Code of Civil Procedure, 1908, Or. 8 R. 10.

<sup>55</sup> New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., 2020 SCC OnLine SC 287, ¶33.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*, ¶32.

<sup>58</sup> The Consumer Protection Act, 1986, §13(4).

<sup>59</sup> New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., 2020 SCC OnLine SC 287, ¶33.

<sup>60</sup> J.J. Merchant v. Srinath Chaturvedi, (2002) 6 SCC 635.

<sup>61</sup> Nariman, J. in State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472, ¶¶15,16.

<sup>62</sup> Kailash v. Nanhku, (2005) 4 SCC 480, ¶38.

<sup>63</sup> New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., (2015) 16 SCC 20.

<sup>64</sup> New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., 2020 SCC OnLine SC 287, ¶47.

provided.<sup>65</sup> The Court therefore, rejected the reasoning of *Topline* and upheld the reasoning of J.J. Merchant on substantive grounds, thereby ending the humpty dumpty jurisprudence on §13(2)(a).<sup>66</sup>

#### IV. IMPACT OF THE RULING IN HILLI MULTIPURPOSE II

Prior to the decision of Hilli Multipurpose II, consumer forums took differing stances with regard to their discretion to grant time beyond the statutorily stipulated time period provided in §13(2)(a) of the CP Act.<sup>67</sup> Further on February 10, 2017, in *Reliance General Insurance Co. Ltd. v. Mampee Timbers and Hardwares (P) Ltd.* ('Reliance'),<sup>68</sup> and after taking note of the order dated February 11, 2016, in *Bhasin*,<sup>69</sup> the Supreme Court observed that proceedings in several cases have been held up on account of uncertainty in law. In the light of the same, the court directed that it would be open to the consumer forums to accept the written submissions filed beyond the stipulated period of time on appropriate terms in suitable cases.<sup>70</sup>

Further, there was no clarity on when the forty-five day period would commence, as the statute was silent in this regard.<sup>71</sup> On account of this, several matters, where the respondent had not filed a reply within the statutorily prescribed period and the District Consumer Forum had refused to entertain the filing of a reply at a later stage, would move an appeal against the said interim order. These included cases such as *Reliance* which reached the Supreme Court after multiple levels of appeals.<sup>72</sup> Thus, the adjudication of consumer disputes before the District Consumer Forum would in most cases take a back seat while the adjudication of these appeals of interim orders would take years for a decision from Appellate Consumer Forums and/or from the Supreme Court. This delay in

<sup>65</sup> *Id.*, ¶22.

<sup>66</sup> *Id.*

<sup>67</sup> On account of the conflicting decisions, there was a lack of clarity leading to some judges taking a lenient view similar to the one taken in *Topline*.

<sup>68</sup> *Reliance General Insurance Co. Ltd. v. Mampee Timbers and Hardwares (P) Ltd.*, Civil Appeal Diary No. 2365 of 2017, decided on 10-2-2017 (SC).

<sup>69</sup> *Bhasin Infotech and Infrastructure (P) Ltd. v. Grand Venezia Buyers Assn.*, (2018) 17 SCC 255.

<sup>70</sup> Our experience shows that this order led consumer forums to accept written submissions after imposing costs on the other side, leading to substantial delay in adjudication of consumer disputes in most cases. Further, there were appeals in cases where the consumer forum refused to accept written submissions. Therefore, in either of the aforementioned situations, there were substantial delays in adjudication of consumer disputes; For more information on delays in adjudication of consumer disputes, See Y.G. Muralidharan, *Grievance forums need surgical strike*, Deccan Herald, January 11, 2019, available at <https://www.deccanherald.com/opinion/perspective/grievance-forums-need-surgical-712590.html> (Last visited on April 19, 2020); Department of Consumer Affairs, Government of India, *Working of District Forums in Jharkhand*, January 20, 2010, available at <http://www.consumereducation.in/ResearchStudyReports/workingofdistrictforuminjarkhand.pdf> (Last visited on April 19, 2020);

<sup>71</sup> See discussion supra Part II.

<sup>72</sup> *Reliance General Insurance Co. Ltd. v. Mampee Timbers and Hardwares (P) Ltd.*, Civil Appeal Diary No. 2365 of 2017, decided on 10-2-2017 (SC).

adjudication went directly against the Statement of Object and Reasons of the CP Act, which stated that it was enacted to provide “speedy and simple redressal to consumer disputes”.<sup>73</sup> Therefore, we are of the opinion that the major impact of the Hilli Multipurpose II decision will be to ensure that the opposite parties do not have a chance to delay the adjudication of consumer disputes by appealing the decision of the consumer forum to appellate forums, if they are not allowed to file a reply after the statutorily mandated time period.

We are cognisant of the fact that the decision will be criticised for being harsh on opposite parties as there is no discretion left with District Consumer Forums to account for hardships or extreme cases.<sup>74</sup> However, we agree with the Supreme Court that when the wordings of a statute and the intent of the legislature clearly indicate that a certain provision is mandatory,<sup>75</sup> the courts cannot use hardship as a ground to change the nature of that provision.

Further, we are of the opinion that the decision in Hilli Multipurpose II will make dispute resolution pocket friendly, as it will ensure that innocent consumers are not made to rush to multiple forums in appeal against interim orders on this issue.<sup>76</sup> Following this clarification by a Constitution Bench of the Supreme Court, it is highly unlikely that smaller composition benches of the Supreme Court or consumer forums will entertain interim appeals on this issue. Prior to Hilli Multipurpose II, the consumers were made to spend exorbitant amounts on the hearings of these interim appeals which included costs for travel, and lawyers’ fees due to the lack of clarity in law. The expenditure can be particularly harsh on the pockets of the consumers as matters were taken right up to the Supreme Court at the interim stage. In these matters, even if the Supreme Court eventually decided in favour of the consumers, the process and the time it took for the decision was itself a punishment and a roadblock for consumers. Therefore, in removing such difficulties faced by consumers, we feel that this judgment will go a long way in achieving the objectives of the CP Act.

## V. CONCLUSION

After more than a decade and a half of humpty dumpty jurisprudence on the nature of §13(2)(a) of the CP Act, a Constitution Bench of the Supreme Court gave much needed clarity on this issue and held the provision to be mandatory. This decision will ensure that multiple interim appeals by opposite parties in consumer matters, through the filing of written submissions beyond the statutorily mandated timeline, will not be possible anymore. This will not only lead to the

<sup>73</sup> The Consumer Protection Act, 1986, Statement of Objects and Reasons.

<sup>74</sup> See A. Bansal & P.P. Singh, *Impunity v. Jeopardy: The Partisan Provisions of Consumer Protection Act*, April 8, 2020, available at <https://www.livelaw.in/columns/impunity-vs-jeopardy-the-partisan-provisions-of-consumer-protection-act-154955> (Last visited on April 19, 2020)

<sup>75</sup> Intent of the legislature in making the provision mandatory is clearly seen as it has provided the consequences for its non-compliance.

<sup>76</sup> *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, 2020 SCC OnLine SC 287.

speedy disposal of consumer disputes but will also ensure that the dispute redressal mechanism is pocket friendly.

One leeway that the opposite parties have after the Hilli Multipurpose II decision, is to raise a challenge on the date of entering appearance that they have received an incomplete set of the notice and complaint filed before the District Consumer Forum. We believe that to overcome this, District Consumer Forums must ensure that the filing of complaint and service of notice, along with a set of the complaint and its annexures, is done online via email(s). If online service is undertaken, there will be no leeway with opposite parties to raise a false challenge of receiving an incomplete set of the complaint or notice.<sup>77</sup> However, these challenges and appeals for an extension of time are unlikely to be entertained by consumer forums.

Another leeway that certain opposite parties may try to leverage is the Supreme Court's Special Leave Petition Jurisdiction under Article 136 of the Indian Constitution.<sup>78</sup> Under Article 136, the Supreme Court has the discretion to grant leave against any order of any tribunal or court within the Indian Territory.<sup>79</sup> Further, in exercise of jurisdiction under Article 136, the Supreme Court is empowered to do 'complete justice' by making use of Article 142 of the Indian Constitution.<sup>80</sup> However, we believe that any such challenge is unlikely to be appreciated by the Supreme Court. This is because benches comprising either of two or three judges hear admission hearings of Special Leave Petitions and will be bound by the categorical decision of Hilli Multipurpose II.<sup>81</sup> Further, they may not exercise power to do complete justice in light of the clear language in §13 of the CP Act, as the said power cannot be used in derogation of statutory provisions.<sup>82</sup> Thus, we believe that this decision has effectively settled a decade and a half of humpty dumpty jurisprudence on nature of §13(2)(a) of the CP Act.

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<sup>77</sup> The High Courts of Delhi and Bombay already permit this practice of e-service in certain cases; *See* Delhi Courts Service of Processes by Courier, Fax and Electronic Mail Service (Civil Proceedings) Rules, 2010, February 9, 2011, available at [http://delhihighcourt.nic.in/writereaddata/upload/Notification/NotificationFile\\_NCJIIRHG.PDF](http://delhihighcourt.nic.in/writereaddata/upload/Notification/NotificationFile_NCJIIRHG.PDF); Bombay High Court Appellate Side Rules, 1960, available at <https://bombayhighcourt.nic.in/libweb/rules/BHCASR.html>.

<sup>78</sup> The Constitution of India, 1950, Art. 136.

<sup>79</sup> *Id.*

<sup>80</sup> The Constitution of India, 1950, Art. 142.

<sup>81</sup> *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, 2020 SCC OnLine SC 287.

<sup>82</sup> This is particularly because powers under Article 142 cannot be used to supplant the law applicable. As §13(3) bars any challenge on grounds of principle of natural justice, it is unlikely that the Supreme Court will make use of its power to do complete justice and allow for such challenge in derogation of §13(3); *See* *Spencer & Co. Ltd. v. Vishwadarshan Distributors (P) Ltd.*, (1995) 1 SCC 259.