



April 2025

Delhi High Court holds mandatory service charges by restaurants to be unlawful

On March 28, 2025, the Delhi High Court (“**Dehi HC**”) in the significant case of *National Restaurant Association of India and Ors. vs. Union of India & Anr.*¹ and *Federation of Hotel and Restaurant Associations of India and Ors.*², in which the main point of contention was whether the collection of mandatory service charges by restaurants and other establishments is permissible under the Consumer Protection Act, 2019 (“**CPA 2019**”). The dispute stemmed from petitions filed by the National Restaurants Association of India (“**NRAI**”) and the Federation of Hotels and Restaurants Association of India (“**FHRAI**”) ³ challenging a set of guidelines issued by the Central Consumer Protection Authority (“**CCPA**”) on July 4, 2022 (hereinafter, the “**CCPA Guidelines**”).

Brief facts

1. The CCPA issued the CCPA Guidelines in response to several complaints regarding the levy of service charges by restaurants over and above the cost of food items. The CCPA Guidelines prescribe *inter alia*:
 - a) restaurants or hotels cannot automatically add service charges to a consumer’s bill;
 - b) any service charge must be optional;
 - c) service charge cannot be collected under any other name;
 - d) restrictions cannot be imposed for entry or provision of services based on collection of service charge; and
 - e) Goods and Services Tax (“**GST**”) cannot be collected on the service charge amount.
2. It should be noted that prior to the issuance of the CCPA Guidelines, several notifications and advisories have been issued by the Department of Consumer Affairs and Ministry of Consumer Affairs, Food and Public Distribution to the effect that the levy of service charge is discretionary in nature and that the same must be waived by the restaurants if prompted by the consumer.
3. The Petitioners, claiming to represent the interests of a substantial number of restaurant establishments across the country, have approached the Delhi HC challenging the CCPA Guidelines, praying for issuance of an appropriate writ under Article 226 of the Constitution of India (“**Constitution**”) and for quashing or setting aside of the CCPA Guidelines.

¹ W.P.(C) 10683/2022 & CM APPLs.31033/2022, 45891/2023

² W.P.(C) 10867/2022 & CM APPLs.31645/2022, 38599/2022, 23175/2024

³ The NRAI and FHRAI are collectively referred to as the “**Petitioners**”.

Key issue

Whether the collection of mandatory service charge by restaurants and other establishments is permissible under the CPA 2019?

Key findings of the Delhi HC

The Delhi HC adopted a multi-faceted approach when deciding the issue, examining *inter alia* (a) the jurisdiction and authority of the CCPA to issue the CCPA Guidelines; (b) whether the CCPA Guidelines violate the Petitioners' rights under Article 19(1)(g) of the Constitution which recognises the right to practise any profession, trade or business without restriction; and (c) determining the enforceability of mandatory service charges by restaurants and other establishments.

In particular, the following aspects are relevant:

1. The CCPA is the authority fully empowered and has the jurisdiction to pass the guidelines under the CPA, 2019. In fact, issuing guidelines in consumer interest is an essential function of CCPA under Section 18(2)(l) of the CPA, 2019. The said guidelines would have to be mandatorily complied with as the scheme of the Act clearly provides for enforcement of guidelines. It was also observed that the CCPA dons three hats as designated under the CPA 2019: (a) as a guardian of consumer rights; (b) as an enforcer of consumers' rights; and (c) as an expert body to represent the voice of consumers before consumer commissions;
2. The guidelines issued by the CCPA would not curtail fundamental right to conduct business under Article 19(1)(g) of the Constitution in any manner as the guidelines are in the larger interest of the consumers and have been issued in accordance with law. It was clarified that in this case the role of the Delhi HC was to balance the right of restaurant establishments to conduct their business and also the rights of consumers, who are entitled to know the price being charged. As such, the larger interest of the consumer cannot be ignored or stifled in a manner contrary to law;
3. Service charge or 'TIP' as is colloquially referred, was a voluntary payment by the customer. It could not be compulsory or mandatory. The practice undertaken by the restaurant establishments of collecting service charge that too on a mandatory basis, in a coercive manner, would be contrary to consumer interest and is violative of consumer rights. Mandatory levy was viewed as a sovereign function in matters such as taxation and service charge by a private party such as a restaurant establishment should not be given the same standing. In particular, where the service charge is double whammy on the consumer as there is a GST amount that the customer is compelled to pay on the service charge;
4. The collection of service charge and use of different terminologies for the said charge is misleading and deceptive in nature. The camouflage and coercive manner of charging service charge demonstrates the unlawful nature of service charge. As such, the same constitutes an 'unfair trade practice' under Section 2(47) of the CPA, 2019;
5. The justification posited on behalf of the Petitioners for collection of service charge, being that they are part of labour settlements and agreements with staff, was not supported by any material on record. Accordingly, the same stood rejected;
6. The fact that service charge can be collected as it is part of a voluntary contract/agreement made by the consumer who enters the establishment and avails of the services after seeing the chargeability of service charge on the menu card is an argument which was also considered as not tenable. It was, instead, deemed to constitute 'unfair contract' under Section 2(46) of the CPA, 2019;
7. Consumer rights could not be subjugated to an argument that a contract is being entered into by the consumer while entering the establishment to pay service charge as the payment and collection of service charge is itself contrary to law;

8. If consumers wish to pay any voluntary *tip* for services which they had enjoyed, the same would not be barred. The amount, however, ought not to be added by default in the bill/invoice and should be left to the customer's discretion.
9. The CCPA may consider permitting change in the nomenclature for service charge which is nothing but a 'tip or a gratuity or a voluntary contribution'. Terminology such as 'voluntary contribution', 'staff contribution', 'staff welfare fund' or similar terminology could be permitted. The use of the word 'service charge' is misleading as consumers tend to confuse the same with service tax or GST or some other tax which is imposed and collected by the government.

Eventually, the writ petitions along with applications by the Petitioners was dismissed, with costs of INR 1,00,000 (Indian Rupees one lakh) each to be deposited with CCPA to be utilised for consumer welfare.

Conclusion

While in the coming days and months it will be seen if the CCPA takes the route of renaming 'service charge' as suggested by the Delhi HC, the current implications of this detailed decision by the Delhi HC would be widespread. In the first instance, a common practice by many establishments that have a notice or equivalent within the premises regarding levy or service charge may not be sufficient notice, especially if the invoice automatically includes the same. Given that the Delhi HC has frowned upon this practice, the practice of omitting the service charge and submitting a revised invoice after the customer has requested exclusion of service charge may also not be compliant action. Enforcement of the positions taken by the Delhi HC remains the biggest challenge for the CCPA of course, even as some restaurant establishments may revise prices in their menu card upwards in lieu of excluding the service charge component. In any event, it will also have to be seen if the CCPA focuses on implementing this position in Delhi in the first instance because of the Delhi HC's order, though the CCPA Guidelines are applicable across India.

Consumer Protection Practice

JSA has extensive experience in consumer protection laws and related matters. We have advised clients (both domestic and global), across sectors and industries on complex queries around consumer protection laws and rules thereunder, and its interplay with other related legislations, like data privacy and exchange control laws.

We have developed a leading consumer protection practice supported by a group of insightful and experienced solicitors with knowledge of the essential consumer law sector. Our team has experience in managing complex consumer matters (transactional, advisory and contentious), domestic and cross border. We are renowned for our proficiency in successfully defending the interests of our clients.

Our key areas of advice include:

- Structuring business activities and governance of consumer sector entities;
- Corporate transactions in consumer and allied sectors, such as M&A, investments, restructuring and joint ventures;
- Review of business and operations from consumer protection laws perspective including import regulations and foreign trade policy of India;
- Advice on registration and licensing requirements;
- Advising on e-commerce rules;
- Advise on single brand retail and multi-brand retail from foreign exchange laws perspective;
- Advise on product liability issues and compliances;
- Advising on standards issued by the BIS and quality control orders including advisory in relation to inspection and enquiries by authorities;
- Advising on advertisement, packaging and labelling requirements.

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