

Emphasis on Consumers, E-Commerce entities, and other businesses under the Consumer Protection Act, 2019, and its Rules: Rules under IT Act

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Abstract -- The E-Commerce is a fast-growing activity which has grown manifold with no boundaries, restrictions, and liabilities but ready to imbibe everything and everyone in the world in its fold. The growth of e-commerce from the late 1990s till date is enormous, due to the technological developments and opening of internet for business, its availability to all at an affordable cost. Further the support of the government bodies in all the countries, states and regions helped the growth of e-commerce to this level.

This enormous growth has made the e-commerce a separate entity and industry. The big businesses set up their own rules, regulations, boundaries to sustain and increase their profit-oriented business thereby putting into crisis the retailers, small traders and merchants having little resources. This resulted in awareness and unity among the retailers, small traders, and merchants to think of ways, to fight the big business houses for survival in their field. The e-commerce transactions resulted in consumer grievances which could not be resolved amicably and satisfactorily. Consumer complaints are increasing in various courts and forums to redress their grievances.

This awakening among the retailers, small traders, merchants and increase in consumer complaints forced the Governments of all the countries, states around the world to enact act, rules, and regulations to regulate the e-commerce industry and in the process protect all the consumers, small retailers, traders, and merchants to do their businesses also.

The Government of India in this process found out the inadequacies of the old Consumer Protection Act, 1986 enacted long before the development of the Information Technology.

This study brings out the necessities for regulating the E-Commerce businesses preferably large businesses, the various relevant rules framed under the Consumer Protection Act 2019, controlling authorities to streamline the business houses, the protections offered for the consumers and end users. Further the Act provides the

mechanism for the implementation of the rules and penal provisions for non-implementation of the rules. These rules provide a level playing field for the business entities and help consumers, end users, who are to be protected always and in all respects.

Keywords: Consumer Protection Act, 2019, Consumer Protection Act, 1986, Consumer Protection (E-Commerce), Rules, 2020, E-Commerce, Information Technology Act, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021.

INTRODUCTION

This is an Electronic Commerce Research and its Applications with specific emphasis on the Legal issues to protect the consumers from the E-Commerce entities in India in relation to Consumer Protection Act, 2019 and Consumer Protection (E-Commerce), Rules, 2020. These rules have been necessitated due to the various difficulties faced by the Consumers and the ways to protect the consumers from the large business houses which had all along, been doing their businesses without any liability and responsibility for their actions, capitalizing on the loopholes in the law and its applicability.

The rules have created the legal framework and restrictions for the E-Commerce entities, be it a Direct Selling Platform, Intermediary Platform or providing platforms for the Customers to Customers to sell their products or services through the internet on the entity's platform.

USA protects their users, through its different enacted laws such as The Federal Food, Drug and Cosmetic Act, Fair Debt Collection Practices Act, the Fair Credit Reporting Act, Truth in Lending Act, and certain other acts.

European Union has enacted two Acts Digital Markets Act (DMA) and DSA (Digital Services Act) to regulate the companies that operate “core platform services” like app. Stores, search engines etc., The EU has created the legal framework for the so-called “Gatekeepers” with several obligations to ensure consumer welfare and fairness of digital markets. The General Data Protection Regulation (GDPR) is also linked to DMA to ensure data portability and privacy.

OBJECTIVES

Importance of the Fair-Trade practices, Consumers’ Protection:

In India the Main Rules brought in to protect consumers is the Consumer Protection (E-Commerce), Rules, 2020. The Rules 4, 5, 6 framed under this Act state duties and liabilities of the entities, marketplace e-commerce entities, sellers, and inventory e-commerce entities. The Ministry of Consumer Affairs, Food and Public Distribution on July 23, 2020, notified the said rules with the intention to prevent unfair trade practices in e-commerce and facilitate consumer welfare.

The new Act and rules are undoubtedly beneficial to consumers, making them more powerful as there is going to be a complete shift of onus from buyer to manufacturer/advertiser. Considering the supply chain of goods and services, these have a very serious implications of Consumer Protection Act 2019. The entities manufacturers, advertisers, publishers, and celebrity endorsers need to take up the liability and safeguard the interest of every consumer as per the regulations of new Act. The objective is to assess how the implementation of Consumer Protection Act 2019, which is in force from 24th July 2020 would affect the Manufacturers, Service Providers, Advertisers, Sellers (both Offline and Online) and Celebrity Endorsers of the integrated communication channel. (Balachandran Viswanathan, September 2021)

Applicability of the rules:

The Rules framed apply to the following categories and entities.

1) All goods and services available over the digital or electronic network. 2) All models of e-commerce entity and inventory e-commerce entity. 3) All e-commerce retailers. 4) All forms of unfair trade practices across all models of e-commerce.

Now this applicability of the rules for unfair trade practices across all models of e-commerce is the most basic thing affecting the e-commerce entities.

The Duties of the entities are summed up as under:

- 1) Appointment of Nodal Officer
- 2) Disclosure of its full legal name, Principal addresses of its Headquarters and all other branches
- 3) Website addresses, email addresses, fax and mobile numbers of customer care, grievance cell and other contact persons,
- 4) No Unfair trade practices allowed. No cancellation charges to be made. No manipulation or discrimination allowed.
- 5) Setting up of grievance redressal mechanism by appointing officers, who shall acknowledge receipt of complaints within 48 hours and redress the grievances within 1 month from the date of complaint.
- 6) Display country of Origin of products, become partner in National Consumer Helpline,
- 7) Lastly consent of consumers to be obtained but no automatic consent to be recorded with checkboxes.

Further in addition to the above duties, the Marketplace entities and Inventory model entities are required to always furnish and display following details.

1. Seller Details containing all the names, addresses about the seller and the products and services with ratings and other feedback to enable consumer to make informed decisions before purchase and provide further information needed to seller for effective dispute resolution.
2. Keep record to all complaints, refund and exchange details, payment methods, and explaining the listing method on the platform, disclosure of differential treatment, record of counterfeit products, and their sellers.
3. No misleading or fake advertisements,
4. No preferential sellers or deep discounting.
5. Should take the responsibility for their actions except when they are exempted and protected under Sec. 79 of the Information Technology Act, 2000.

Thus, the Marketplace entities and Inventory model entities are made liable for the following activities:

1. Non-disclosures of the duties mentioned above for all the entities.
2. Violating any of the provisions of the rules.

Now the word “Unfair trade practice” is interpreted differently by the entities, Government and Consumers, leading to misconceptions and the extent it affects the entities, is the part of this study.

The Consumer Protection Act, 2019, with its innovative changes, thus would help in empowering consumers and provide justice to the needy in time. (Kapoor, August 2020)

But time will only prove the efficacy of the Act and the Rules. Now the various entities have started questioning the rules by initiating proceedings in the various forums and one has to wait the outcome and effect of the rules.

ISSUES UNDER THE SAID RULES

The business houses and entities such as Amazon, Flipkart and others challenged these rules, as violating their rights and freedom of doing business. The entities filed cases in the Courts of law for redressal of their grievance and obtained interim favorable orders from the Courts.

1. Delhi Vyapar Mahasangh approached the Competition Commission of India seeking investigation against the Amazon and Flipkart for alleged anti-competitive trade practices such as 1) Preferential tie-ups with selected smartphone manufacturers 2) Preferential treatment to certain allegedly related sellers such as Cloudtail, Appario (for Amazon), WS Retail (for Flipkart), 3) Deep discount practices and 4) Preferential listing/promotion of private labels. The CCI initially passed a preliminary order restraining such practices. Karnataka High Court in its writ petition/appeal initially stayed the said order but in the final order in June 2021 dismissed the Amazon and Flipkart’s Appeal and confirmed the CCI’s order i.e., W.P.No. 3363/2020 and W.P.No. 4334/2020 – High Court of Bengaluru Order dated 11.06.2021 before Hon’ble Justice P.S.Dinesh Kumar. Amazon Sellers Services Pvt. Ltd., and Flipkart Internet Private Ltd., Applicants in 3363/2020 and 4334/2020 resp. against the order of the CCI dated 13.01.2020.

The Division Bench of Karnataka High Court in the Writ Appeals W.A.Nos. 562/2021 and 563/2021 filed against the Order passed by the single judge in W.P. Nos. 3363/2020 and W.P.No. 4334/2020 dismissed the same, orders passed by Hon’ble Justices Satish Chandra Sharma and Justice Nataraj Rangaswamy dated 23.07.2021 directing the Appellants to face the enquiry and not to scuttle the administrative proceedings of the CCI under Sec. 26 (1) of the Competition Act, 2002 to investigate the complaint filed by the Delhi Vyapar Mahasangh filed under Sec. 19 (1) of the said Act, alleging unfair trade practices by the Amazon and Flipkart.

Against the Karnataka High Court Division Bench’s Order SLP was filed by the Amazon and Flipkart and the same was dismissed at the admission stage itself directing the Petitioner/Appellant to reply the CCI’s notice within 4 weeks’ time.

2. In Future Retail Ltd., Vs. Amazon, the Delhi High Court observed that Amazon has violated the FEMA FDI rules through different agreements it had with unlisted units of Indian companies to gain control over the company and prevent its agreement with Reliance Retail. It shows unfair trade practice. But the Supreme Court upheld the Order of the Singapore International Arbitral Tribunal and restrained the merger of Future Retail Ltd., with the Reliance Industries Ltd.,

Mostly it is observed that there are different views about the efficiency of the rules and the jurisdiction of the CCI in deciding these matters. There are also opinions by different experts in the field that these are to be decided on case-to-case basis only for the present, before deciding on a common applicability of all the rules for all the entities.

Thus, after the rules were notified each and every entity covered under these rules, approached the courts of jurisdiction under it, to redress their grievance asking for stay, injunction, and other reliefs from the implementation of the rules for their continuing in the business.

The Courts have interpreted the same and have pronounced interim orders giving relief to the entities concerned but with riders stating that the same shall depend on the result of main cases after trial. Various courts in different states of India have alleged the

intervention and dominating attitude of the governments in such matters. The Courts have stayed the provisions of the certain specified Rules.

Another important Amendment is the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021. This amendment has created a lot of friction between various entities and the government.

The definition of intermediary means, as per the Act is, an entity, a marketplace e-commerce entity, which acts as a Third-party facilitator or conduit for transactions between clearly identifiable buyers and sellers.

The entity operating under the inventory-based model, selling goods and services owned by it directly to customers will not come under this definition of Intermediary.

Various conditions are laid down for the intermediaries under Sec. 79 (2) and 79 (3) of the Act. A clear distinction has been made about active or a passive intermediary in the Delhi High Court Judgement in Christian Louboutin SA Vs. Nakul Bajaj and Others called “Louboutin Case.” The case decided about the identification of seller, details of the seller, quality assurance, authenticity guarantees or storage facilities assistance for placing or booking of the product packaging, transportation, delivery, advertisement etc., to make such entity an active participant or a passive one. The active participation of the entity on the platform or online marketplace completely removes the ring of protection or exemption which exists for intermediaries under Section 79.

But the judgement of the Division Bench of Delhi High Court in Amazon Seller Services Pvt. Ltd., Vs. Amway India Enterprises Pvt. Ltd., and others “Amazon Case” dealt with the active and passive intermediaries’ definition and observed that restricting the protection provided under Section 79 (1) to passive intermediaries would be a misinterpretation of Section 79. The appellants Amazon argued that the value-added services as provided by the online marketplaces do not dilute the safe harbor granted under Section 79. The Division bench did not go into the merits of the claim, to set aside the concept of categorization of intermediaries as active and passive participants but stated that the same will be determined in the Trial.

The Karnataka High Court in Kunal Bahl and others Vs. State of Karnataka in Crl.P. 4676/2020 and

4712/2020 to quash the complaint dated 05.06.2020 in C.C.No. 156/2020 pending before the Principal Civil Judge and CJM, Mysuru, held that Snapdeal being a marketplace entity and intermediary could claim protection under Section 79 (1) of the IT Act and it satisfied the conditions laid down in Section 79 (2) and 79 (3).

Further the Consumer Protection (E-Commerce), Rules, 2021 has added sub rule (1) to rule 4, stating therein that the entities shall appoint a nodal officer or an alternate designated functionary, who is resident in India, to ensure compliance of the Act or rules made thereunder.

CONCLUSION

The summing up of this study arrives at a point that, the entire efforts of the government to streamline the Trade Practices of the various big houses to confine their activities for the beneficial purpose of the consumers and to be within the legal framework to redress any grievances that may arise due to the transactions is now in the nascent state. It requires further in depth study of the various forces acting in the industry which is also interested in the making of profit out of their investments. It will be a driving force on the consumers point of view, their grievances, redressal combined with the difficulties faced by the big business houses which have entered the markets to gain something out of their investments. It can also be justified as the government’s initiative for future amicable settlement of all the issues that are faced now and will be resolved to the satisfaction of all the players in the e-commerce industry.

Cases:

1. a) CCI’s Notice to Amazon and Flipkart against the complaint preferred under Sec. 19(1) of the Competition Act, 2002, W.P.No. 3363/2020 and W.P.No. 4334/2020 – High Court of Bengaluru Order dated 11.06.2021.
b) High Court of Karnataka in W.A.Nos. 562/2021 and 563/2021 filed against the Order passed by the single judge in W.P. Nos. 3363/2020 and W.P.No. 4334/2020 were dismissed. Supreme Court also dismissed the SLP filed by Amazon and Flipkart giving 4 weeks’ time to reply to CCI’s notice.
2. Future Retail Ltd., Vs. Amazon, Delhi High Court

3. 236 (2017) DLT478 and 253 (2018) DLT728 Delhi High Court Judgement in Christian Louboutin SA Vs. Nakul Bajaj and Others called “Louboutin Case”.
4. 2020 (81) PTC399 (Del) Division Bench of Delhi High Court in Amazon Seller Services Pvt. Ltd., Vs. Amway India Enterprises Pvt. Ltd., and others “Amazon Case”.
5. Crl. P. 4676/2020 and 4712/2020 Karnataka High Court in Kunal Bahl and others Vs. State of Karnataka.

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