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Analysing developments impacting business

CONSUMER PROTECTION ACT, 2019 – KEY HIGHLIGHTS

16 August 2019

The Digital Age has ushered in a new era of commerce and digital branding, as well as a new set of customer expectations. Digitisation has provided easy access, a large variety of choice, convenient payment mechanisms, improved services and shopping as per convenience. However, along the growth path it also brought in challenges related to consumer protection.

Keeping this in mind and to address the new set of challenges faced by consumers in the digital age, the Indian Parliament, on 6 August 2019, passed the landmark Consumer Protection Bill, 2019 which aims to provide the timely and effective administration and settlement of consumer disputes. The Consumer Protection Act, 2019 (New Act) received the assent of the President of India and was published in the official gazette on 9 August 2019. The New Act will come into force on such date as the Central Government may so notify. The New Act seeks to replace the more than 3 (three) decades old Consumer Protection Act, 1986 (Act).

Set out below are some of the Key Highlights of the New Act:

- **Covers E-Commerce Transactions:** The New Act has widened the definition of 'consumer'. The definition now includes any person who buys any goods, whether through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing. The earlier Act did not specifically include e-commerce transactions, and this lacuna has been addressed by the New Act.
- **Enhancement of Pecuniary Jurisdiction:** Revised pecuniary limits have been fixed under the New Act. Accordingly, the district forum can now entertain consumer complaints where the value of goods or services paid does not exceed INR 10,000,000 (Indian Rupees Ten Million). The State Commission can entertain disputes where such value exceeds INR 10,000,000 (Indian Rupees Ten Million) but does not exceed INR 100,000,000 (Indian Rupees One Hundred Million), and the National Commission can exercise jurisdiction where such value exceeds INR 100,000,000 (INR One Hundred Million).
- **E-Filing of Complaints:** The New Act provides flexibility to the consumer to file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer. This is unlike the current practice of filing it at the place of purchase or where the seller has its registered office address. The New Act also contains enabling provisions for consumers to file complaints electronically and for hearing and/or examining parties through video-conferencing. This is aimed to

provide procedural ease and reduce inconvenience and harassment for the consumers.

- **Establishment of Central Consumer Protection Authority:** The New Act proposes the establishment of a regulatory authority known as the Central Consumer Protection Authority (CCPA), with wide powers of enforcement. The CCPA will have an investigation wing, headed by a Director-General, which may conduct inquiry or investigation into consumer law violations.

The CCPA has been granted wide powers to take suo-moto actions, recall products, order reimbursement of the price of goods/services, cancel licenses and file class action suits, if a consumer complaint affects more than 1 (one) individual.

- **Product Liability & Penal Consequences:** The New Act has introduced the concept of product liability and brings within its scope, the product manufacturer, product service provider and product seller, for any claim for compensation. The term 'product seller' is defined to include a person who is involved in placing the product for a commercial purpose and as such would include e-commerce platforms as well. The defense that e-commerce platforms merely act as 'platforms' or 'aggregators' will not be accepted. There are increased liability risks for manufacturers as compared to product service providers and product sellers, considering that under the New Act, manufacturers will be liable in product liability action even where he proves that he was not negligent or fraudulent in making the express warranty of a product. Certain exceptions have been provided under the New Act from liability claims, such as, that the product seller will not be liable where the product has been misused, altered or modified.
- **Unfair Trade Practices:** The New Act introduces a specific broad definition of Unfair Trade Practices, which also includes sharing of personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of any other law.
- **Penalties for Misleading Advertisement:** The CCPA may impose a penalty of up to INR 1,000,000 (Indian Rupees One Million) on a manufacturer or an endorser, for a false or misleading advertisement. The CCPA may also sentence them to imprisonment for up to 2 (two) years for the same. In case of a subsequent offence, the fine may extend to INR 5,000,000 (Indian Rupees Five Million) and imprisonment of up to 5 (five) years. The CCPA can also prohibit the endorser of a misleading advertisement from endorsing that particular product or service for a period of up to 1 (one) year. For every subsequent offence, the period of prohibition may extend to 3 (three) years.

The New Act fixes liability on endorsers considering that there have been numerous instances in the recent past where consumers have fallen prey to unfair trade practices under the influence of celebrities acting as brand ambassadors. In such cases, it becomes important for the endorser to take the onus and exercise due diligence to verify the veracity of the claims made in the advertisement to refute liability claims.

- **Provision for Alternate Dispute Resolution:** The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. This will help with the speedier resolution of disputes and reduce pressure on consumer courts, who already have numerous cases pending before them.

With the New Act all set to become the law, gone are the days, where the 'consumer was asked to beware'. A consumer is now the one who assumes to be treated like a King. Hence, it is important for consumer driven businesses (such as, retail, e-commerce) to be mindful of the changes in the legal landscape and have robust policies

dealing with consumer redressal in place. Consumer driven businesses must also strive to take extra precautions against unfair trade practices and unethical business practices.

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