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Analysing developments impacting business

CORONAVIRUS AND ITS IMPLICATIONS ON THE RETAIL INDUSTRY

20 March 2020

With the continuing spread of the Coronavirus Disease 2019 (Covid-19 or "coronavirus"), various businesses across the globe are facing an increasing number of challenges and issues that need to be addressed and mitigated. Retail sector is no exception to this. This article attempts to summarise issues that are being faced by retail companies and the mitigating steps they should be taking to remain compliant in challenging times, to avoid business and reputational disruptions:

- (a) Operation of retail shops: The Health and Welfare Ministry along with various state Governments across the country have been issuing press releases on almost daily basis, whereby they have been laying down conditions on which retail shops need to operate themselves, to prevent and control spread of coronavirus.

Certain states, however, have taken more stringent measures. For example, in Delhi, from 20 March, all malls (except grocery, pharmacy and vegetable shops in them shall remain closed until further orders. Similarly, in Mumbai, all shops and offices, except those providing essential services such as banking, internet, transportation, groceries and medical stores, shall remain closed with effect from the midnight of 20 March 2020 till 31 March 2020. Since press releases are being issued daily (based on gravity of situation in each state), retail companies need to keep themselves updated on the local requirements, to ensure compliance. The Gurgaon administration has on 18 March 2020 directed all shopping malls in the district to remain closed until 31 March 2020.

Additionally, the Ministry of Corporate Affairs has also issued an advisory to all companies and limited liability partnerships on 19th March to all companies to put in place an immediate plan to implement the 'work from home' policy as a temporary measure till 31 March 2020.

- (b) Maintaining proper sanitization: The Ministry of Consumer Affairs, Food and Public Distribution Vide Notification No. S.O. 1087 (E) dated 13 March, 2020 (Notification) has ordered all e-commerce platforms to ensure maintenance of proper hygiene and sanitation of the last mile delivery personnel kitchen, packing areas and delivery vehicle. These should be cleaned and disinfected with detergent / soap water or alcohol-based sanitizer from time to time. All last mile delivery staff suffering symptoms of common cold and flu should be off duty. Special arrangements may be made for delivery of groceries and cooked food for those who are in home quarantine by following expected standards and procedures.

Whilst the aforesaid guideline has been mandated for e-commerce companies, it is advisable for all retail companies (especially those which involve last mile delivery), to ensure basic sanitization and hygiene conditions across all levels for preventing and controlling the spread of the disease.

- (c) Delivery delays and other contractual considerations: With the supply chain getting disrupted, most of the retail companies will find it difficult to make deliveries on time. This makes imperative for retail companies to review terms and conditions of their sale and not to make commitments guaranteeing delivery of an item or availability of an item if supply chain concerns prevent them from fulfilling those promises.

Whilst Covid-19 would have an impact on performance of various contractual obligations (including under lease arrangements), it becomes imperative for retail companies to review their existing contracts, for key clauses, such as, force majeure, material adverse effect, termination, etc). It is also important to assess contractual and commercial obligations of the parties in good faith and cooperation and have a mutual dialogue as a risk mitigation strategy to decide on best possible future course of action. This will minimise the impact of contract termination and possible disputes.

- (d) Advertising or labelling claims: Retailers should be careful when making claims in relation to their products, which would be related to coronavirus. The Ministry of Consumer Affairs, Food and Public Distribution vide the Notification has ordered that no manufacturer, importer, packer, re-labeler, distributor or retailer will issue any advertisement in any media using coronavirus, COVID-19 and other variant of these names and making wrongful claims about their products and services. It is pertinent to note that the government may also enforce this restriction against e-commerce entities and require them to take down any products using coronavirus, COVID-19 and other variant of these names and making wrongful claims about their products and services.

- (e) "Made In" Claims: It may be noted that specifying the country of origin is a mandatory declaration which needs to be affixed on the labels under the Legal Metrology (Packaged Commodities) Rules, 2011. Retailers and e-commerce companies should remain vigilant in complying with laws and regulations requiring labels accurately describing the location where any item was made, manufactured, or assembled. Retailers cannot skirt these laws simply because they may not want to identify the origin of their products.

- (f) Price increase: The Essential Commodities Act, 1955 prohibits sharp price increase on products which are considered essential supplies. The Ministry of Consumer Affairs, Food and Public Distribution vide the Notification ordered inclusion of Masks (2ply and 3ply surgical masks, N95 masks) and hand sanitizers in Schedule of the Essential Commodities Act, 1955 in order to regulate the production, quality, distribution and logistics of these two items. This order shall remain into effect up to 30 June 2020. E-commerce entities will be required to enforce the above by ensuring that sellers sell the aforesaid products on MRP on the e-commerce portals.

Whilst it cannot be denied that globally, business communities are experiencing challenging and unprecedented times, companies need to stay vigilant, assess the situation and make corresponding adjustments to ensure minimum disruptions and non-compliances.

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