

Consumer Protection Act, 2019 – An Overview

The Consumer Protection Act, 2019 (“CP Act 2019”) received the Presidential assent and was published in the Official Gazette on August 9, 2019. The Central Government, vide notification dated July 15, 2020, has brought into force certain provisions of the CP Act 2019, relating to product liability, consumer protection councils, mediation etc. effective from July 20, 2020. Section 107 of the CP Act 2019 has also been notified which repeals the Consumer Protection Act, 1986 (“CP Act 1986”). However, provisions in relation to the Central Authority, liability for endorsing misleading advertisements and certain ancillary provisions have not been notified yet. In light of the above, it becomes imperative for every consumer to understand the spectrum of rights available to them under the CP Act 2019.

WHAT SETS THE CP ACT 2019 APART FROM THE CP ACT 1986?

The CP Act 2019 is a progressive step towards recognizing and protecting the rights of the consumers. The CP Act 2019 has attempted to include under its ambit, various aspects like product liability, liability on endorsers and advertisers of products, regularization of e-commerce, alternate dispute resolution mechanism for consumer grievances etc.

The key highlights of the CP Act 2019 are as follows:

Establishment of Central Authority

While the provisions are yet to be enforced, the CP Act 2019, under Section

10, provides for the establishment of a central authority known as the Central Consumer Protection Authority (“Central Authority”). The Central Authority has been allotted the powers to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class. The Central Authority will also have an investigation wing, to conduct enquiries or investigation on the complaints received in relation to violation of consumer rights, unfair trade practices and false or misleading advertisements. Powers have also been granted to the Central Authority to recall goods, issue directions in cases of false and misleading advertisements, order the discontinuation of unfair practices etc.

It is pertinent to note that the Central Authority can initiate any inquiry or take any action either on its own or pursuant to receiving directions from the Central Government. The Central Authority is a body in addition to the District, State and National Commissions and any appeal against the order passed by the Central Authority will lie before the National Commission. Barring the increase in pecuniary jurisdiction as detailed below, the CP Act 2019 does not contemplate any alterations to the District, State and National commissions.

Definition of 'Consumer Rights'

In an endeavour to cover all aspects of rights available to a consumer, a definition of what constitutes 'consumer rights' has been inserted in the CP Act 2019. It includes (i) right to be protected against marketing which are hazardous to life and property, (ii) right to be informed, (iii) right to be assured, (iv) right to be heard, (v) right to seek redressal and (vi) right to consumer awareness.

Liability on endorser / advertiser

The CP Act 2019 provides for penalties against false or misleading advertisements not just against manufacturers, traders, advertisers and publishers, but also against endorsers of these products. The Central Authority has been granted the power to impose a fine of INR Ten Lakhs for the first occasion of violation and a fine extending up to INR Fifty Lakhs for every ensuing contravention. Further, the Central Authority can also ban an endorser from endorsing any products or services for a period extending up to one year for the first instance and period extending up to three years for every subsequent contravention. However, the endorser will not be penalized if they can prove that due diligence was exercised by them to verify the authenticity of the claims made in the advertisement. The provisions of the CP Act 2019 in relation to the above have not been brought into force yet.

Unfair contracts

The CP Act 2019 has introduced the concept of unfair contracts. An 'unfair contract' is defined as a contract between a consumer and a manufacturer, trader or service provider containing terms which significantly change the rights of the consumers and it includes: (i) requiring an excessive security deposit for the performance of a contract; (ii) imposing a

disproportionate penalty for breach of contract; (iii) refusing to accept early repayment of debts; (iv) unilaterally terminating a contract without reasonable cause; (v) transferring a contract to a third party to the detriment of the consumer without the consumer's consent; or (vi) imposing unreasonable charges or obligations which put the consumer at a disadvantage.

Inclusions to 'unfair trade practices'

In addition to the unfair trade practices under the CP Act 1986, the CP Act 2019 lists three more practices as unfair trade practices. These are: (i) the failure to issue a bill or receipt; (ii) the refusal to accept goods returned within 30 days; and (iii) the disclosure of a consumer's personal information given in confidence (unless required by law or in public interest).

Regulation of e-commerce

The CP Act 2019 accounts for unfair trade practices in the e-commerce sector and grants the government power to take any measures to prevent malpractices in the e-commerce sector. The government has rolled out draft rules seeking public comments in this regard. The rules, inter alia, cover the general conditions for carrying on e-commerce business, liabilities of the e-commerce entity, and liabilities of the seller.

Consumer Mediation Council

The CP Act 2019 provides for the establishment of a consumer mediation cell, which will be attached to each District Commissions and State Commissions and the National Commission. The empanelment of mediators will be based on the recommendation of a selection committee consisting of the President and a member of the District, State or

National Commission, as the case may be. The procedure for mediation has been detailed out in the CP Act 2019. The settlement arrived at between the parties shall be duly recorded by the mediator and submitted to the respective commission. The government has issued draft rules in this regard for comments from the public stakeholders.

Inclusion of Product Liability

The term 'product liability' has been defined under the CP Act 2019. The manufacturer or service provider is bound to compensate the consumer if the goods or services have caused any harm or injury, or if they are defective in design, specifications, warranty etc. The liability of the manufacturer, service provider as well as the seller has been described in detail. Further, a product manufacturer will be held liable in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product.

Increase in pecuniary jurisdiction

The CP Act 2019 has also increased the scope of pecuniary jurisdiction of the consumer forums. Where the value of goods and services paid is up to INR One Crore, the jurisdiction lies with the District Commission. If the value is above INR One Crore but does not exceed INR Ten Crore the State Commission has the jurisdiction to entertain such matters. Any claims above INR Ten Crore shall lie before the National Commission.

Under the CP Act 1986, the pecuniary limit was inclusive of the value of goods and services along with the compensation sought by the consumer. However, under the CP Act 2019, only the value paid for

the goods or services will be considered for the purpose of assessing the limit.

CONCLUSION

The CP Act 2019 has made a tremendous attempt in addressing the needs of consumers in a dynamic market environment. The inclusion of provisions for regulating e-commerce businesses is a welcome change, keeping in mind the fact that large number of consumers have now shifted to using online platforms for buying goods and availing services. Further, including false and misleading advertisements under the spectrum of the CP Act 2019 in addition to holding the endorser liable for any false claims, is a positive change, especially at a time when blind faith is being placed in the words of an endorser as well as the excessive coverage of brand endorsements on social media.

The expansion of the scope of unfair trade practices is progressive. Most importantly, the disclosure of consumer information as a means of unfair trade practice is a laudable move which becomes relevant at a time when personal data protection is becoming more and more important. Mediation as a mode of dispute resolution and the introduction of product liability are also noteworthy.

The establishment of the Central Authority, which has a plethora of powers under the CP Act 2019, will ensure that consumer rights are upheld. At the same time, the CP Act 2019 strikes a fine balance between accommodating the needs of the consumers as well as the right of the sellers or service providers to defend themselves from consumer claims. Once notified, the CP Act 2019 will steer in an improved mechanism for redressal of consumer grievances.

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