

REPORT NO.

245



PARLIAMENT OF INDIA

RAJYA SABHA

COMMITTEE ON SUBORDINATE LEGISLATION

TWO HUNDRED FORTY FIFTH REPORT

on

**The Consumer Protection (E-Commerce)
Rules, 2020**

(Presented on 24th March, 2021)



**Rajya Sabha Secretariat, New Delhi
March, 2021/ Faghun, 1942 (Saka)**

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COMPOSITION OF THE COMMITTEE

(2019--2021)

1. Shri Partap Singh Bajwa *Chairman*
2. Shri Manas Ranjan Bhunia
3. Dr. Vikas Mahatme
4. Shri Surendra Singh Nagar
5. Dr. Amar Patnaik
6. Shri K. K. Ragesh
7. Shri V. Vijayasai Reddy
8. Shri Pradeep Tamta
9. Shri G.V.L. Narasimha Rao
10. Shri Rajendra Gehlot
11. Shri G.C. Chandrashekhar
12. Shri Prem Chand Gupta
13. Shri K.R. Suresh Reddy
14. Shri Tiruchi Siva
15. Vacant (*due to demise of Shri Abhay Bharadwaj*)

SECRETARIAT

1. Shri Arun Sharma, *Joint Secretary*
2. Shri Ravinder Kumar, *Director*
3. Shri Prem Singh, *Additional Director*
4. Shri R.K. Mecolt Singh, *Deputy Secretary*
5. Smt. Anju Bala Nayar, *Committee Officer*
5. Shri Priyanshu Vaidya, *Assistant Committee Officer*

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorized by the Committee to present the Report on its behalf, do hereby present this Two Hundred and Forty fifth Report of the Committee.

1.2 The Committee considered and adopted the Report in its meeting held on March 23rd, 2021.

1.3 The matter arises out of the examination of the Consumer Protection (e-Commerce) Rules, 2020 and related areas which was discussed by the Committee in consultation with the Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs. The observations and recommendations, which in the opinion of the Committee, should be brought to the notice of the House, are contained in the succeeding paragraphs of the Report.

NEW DELHI;
24th March, 2021

Shri Partap Singh Bajwa
Chairman,
Committee on Subordinate Legislation,
Rajya Sabha

REPORT

THE CONSUMER PROTECTION (E-COMMERCE) RULES, 2020

I. BACKGROUND

“A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work – he is the purpose of it. We are not doing him a favor by serving him. He is doing us a favor by giving us the opportunity to serve him.”

–Mahatma Gandhi

The Information Technology revolution at the beginning of the new century brought about a transformation in the way in which Commerce and Business are conducted throughout the world. The new terminologies like ‘dot com’ and ‘e’-version companies over-shadowed the old brick-and-mortar business industries. Technology and Business are becoming inextricably interwoven and this has fostered the growth of e-Commerce Industry. e-Commerce means application of electronics in Commerce. The influx of the Internet and World Wide Web has made it possible to communicate and transact over cyberspace and made the whole world into a ‘Global village’. This transformation has also brought a number of challenges like cyber crimes, quality issues, and payment related frauds and a pressing need for its regulation has emerged as a prime concern for the authorities. At the pace with which the e-Commerce industries are growing, regulation of this sector along with educating consumers about their rights has become vital for healthy growth of e Commerce industries.

2. The emergence of global supply chains, rise in international trade and the rapid development of e-Commerce have led to new delivery systems for goods and services and have provided new opportunities for consumers. The e-Commerce industry has been the backbone in the fight against the Covid-19 pandemic in the Country and it was because of this industry that the basic needs of the people could be met with. Consumers across the world are waking up to the true potential of the e-Commerce Industry and accepting it whole-heartedly. On the other-hand, the development of e-Commerce has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices and also violation of personal data and information secrecy. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-tailing pose new challenges to consumer protection. For redressal of such issues, the Consumer Protection (E-Commerce) Rules, 2020 (Rules hereinafter) were notified by the Government of India on 23.07.2020. These Rules were framed under the Consumer Protection Act, 2019 and are intended to complement the said Act by regulating all e-Commerce activities and transactions. The Rules have sought to govern all such e-Commerce activities by laying down duties and liabilities to be adhered to by e-Commerce entities, marketplace e-Commerce entities, sellers on marketplace, and inventory e-Commerce entities. The Act defines ‘e-Commerce’ under Section 2(16), as “*buying or selling of goods or services including digital products over digital or electronic network*”. The Rules are made applicable to (i) an e-Commerce entity operating in India and also (ii) an e-Commerce entity which ‘systematically offers’ goods and services to consumers in India. The Rules are expected to deter the e-

Commerce companies from indulging in unfair trade practices while protecting the rights of the consumers at the same time.

II. GENESIS OF CONSUMER PROTECTION LAWS IN INDIA

3. The e-Commerce platform is operating all over the world; however, laws governing e-Commerce are not globally uniform. With the ever evolving nature of the Telecommunication and Trade & Commerce, the old set of rules and practices governing communication and trading is largely incompatible with the emerging system of communication and trading practices in a borderless world created by the Internet. Thus, in order to pave the way for the development of internationally uniform and compatible e-Commerce rules and practices, the United Nations Commission on International Trade Law (UNCITRAL) established by the United Nations General Assembly in 1996 has adopted the Model Law of Electronic Commerce in 1996. The UNCITRAL Model Law on e-Commerce was drafted in order to serve as a document that the various countries of the world could use and evaluate and amend their own laws. On the basis of these Model Laws, India has enacted the Information Technology (IT) Act 2000. In India various offences relating to Internet are enumerated in the Information Technology Act, 2000 and the Information Technology (Amendment) Act, 2008. The Information Technology Act, 2000 deals with contractual aspects of use of electronic records. Another Act viz. Consumer Protection Act, 1986 (COPRA), which is considered as the magna carta of consumer protection in India, was an Act of the Parliament of India enacted in 1986 to protect the interests of consumers in India. It was replaced by the Consumer Protection Act, 2019, which provides for the establishment of consumer councils and other authorities for the settlement of consumer's grievances and matters connected therewith. Section 94 of the Act provides that, for the purposes of preventing unfair trade practices in e-Commerce, and also to protect the interest and rights of consumers, the Central Government may take such measures in the manner as may be prescribed. Section 101 empowers the Central Government to make rules to prevent unfair trade practices in e-Commerce. In the light of this background that the Consumer Protection (E-Commerce) Rules, 2020 has been notified on 23rd July, 2020, in an attempt to create more uniformity and transparency for buyers.

III. VARIOUS THREATS TO CONSUMER ON E-COMMERCE PLATFORM

4. Before the features of the Rules and its objectives are discussed, it is important to understand the risks that e-Commerce Consumers are exposed to and the various types of threats they could encounter at each level of his/her online shopping process. The following table illustrate some of the most popular form of threats encountered by the e-Consumers: -

Sl.No.	Activities of e-Consumer	Common threat at each level of Consumer activity
I.	Information Sharing	Unwanted Program- Adware, Spyware, Browser Parasites Cyberstalking. Risk to behavioural pattern data.
II.	Ordering of Product	Risk of misuse of the behavioural pattern data, malicious recommender system algorithm.
III.	Payment	Phishing, Pharming attacks, Salami attacks and Risk to transaction related data.
IV.	Delivery	Breach of contract of sale e.g., Product Quality, delivery time etc.
V.	Support	Processing of cancellation and refund request, Service related issues

Table: Showing various stages in e-Commerce purchasing and threats associated at each stage.

IV. SALIENT FEATURES OF THE CONSUMER PROTECTION (E-COMMERCE) RULES, 2020

5. The Consumer Protection (E-Commerce) Rules, 2020 has been brought to regulate all goods and services bought and sold over digital or electronic network including digital products; all models of e-Commerce, including marketplace and inventory models of e-Commerce; all e-Commerce retail, including multi-channel single brand retailers and single brand retailers in single or multiple formats; and all forms of unfair trade practices across all models of e-Commerce. However, these rules do not apply to any activity of a natural person carried out in a personal capacity not being part of any professional or commercial activity undertaken on a regular or systematic basis. Furthermore, these rules also apply to an e-Commerce entity, which is not established in India, but systematically offers goods or services to consumers in India.

6. The Rules specify the duties of e-Commerce entities, liabilities of marketplace e-Commerce entities, duties of sellers on marketplace and duties and liabilities of inventory e-Commerce entities. The Rules also clarify the distinct scope of responsibilities between the marketplace platform and the sellers on the marketplaces. This clarity will help in effective enforcement of the provisions of the Rules and creating a congenial business atmosphere. In order to understand the mandate of the Rules, the salient features of these rules given by the nodal ministry are as under :

(i) Appointment of nodal person: Every e-Commerce entity is to appoint a nodal person of contact or an alternate senior designated functionary who is resident in India, to ensure compliance with the provisions of the Act or the rules made thereunder.

(ii) Providing certain information:

- a. Every e-Commerce entity is to provide on its platform information on legal name, principal geographic address of its headquarters and all branches; name and details of website; and contact details like e-mail address, fax, landline and mobile numbers of customer care as well as of grievance officer.
- b. Marketplace e-Commerce entity is to provide details about the sellers including the name of their business, whether registered or not, their geographic address, customer care number, any rating or other aggregated feedback about such seller.
- c. Both Marketplace and Inventory e-Commerce entities are to provide information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redressal mechanism information on available payment methods, the security of those payment methods, any fees or charges payable by users, the procedure to cancel regular payments under those methods, charge-back options, if any, and the contact information of the relevant payment service provider.

(iii) Grievance redressal mechanism:

- a. Every e-Commerce entity shall establish an adequate grievance redressal mechanism and shall appoint a grievance officer for consumer grievance redressal, and shall display the name, contact details, and designation of such officer on its platform.

- b. The grievance officer is to acknowledge the receipt of any consumer complaint within forty-eight hours and redress the complaint within one month from the date of receipt of the complaint.
- **Cancellation charges:** No e-Commerce entity shall impose cancellation charges on consumers cancelling after confirming purchase unless similar charges are also borne by the e-Commerce entity, if they cancel the purchase order unilaterally for any reason.
 - **Recording consent of consumer:** Every e-Commerce entity shall only record the consent of a consumer through an explicit and affirmative action for the purchase of any good or service offered on its platform and not automatically, including in the form of pre-ticked checkboxes.
- c. **Effecting payments towards accepted refund requests:** Every e-Commerce entity shall effect all payments towards accepted refund requests of the consumers as prescribed by the Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time, or as prescribed under applicable laws.
- d. **No manipulation of price:** No e-Commerce entity shall manipulate the price of the goods or services offered on its platform in such a manner as to gain reasonable profit by imposing on consumers any unjustified price having regard to the prevailing market conditions, the essential nature of the good or service, any extraordinary circumstances under which the good or service is offered, and any other relevant consideration in determining whether the price charged is justified. Sellers have also been strictly warned against “manipulating the price” of the goods and services offered on their platforms to gain unreasonable profit.
- e. **Record of sellers:** Every marketplace e-Commerce entity shall take reasonable efforts to maintain a record of relevant information allowing for the identification of all sellers who have repeatedly offered goods or services that have previously been removed or access to which has previously been disabled under the Copyright Act, 1957, the Trade Marks Act, 1999 or the Information Technology Act, 2000.
- f. **Prohibition of fake reviews:** These rules prohibit inventory e-Commerce entities and the sellers from posting fake customer reviews about their own goods or services, or misrepresent their qualities or features.
- g. **Advertisements for marketing of goods or services:** Every inventory e-Commerce entity and seller on marketplace are to ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.
- h. **Importer/country of origin:** Where an e-Commerce entity offers imported goods or services for sale, the name and details of the importer have to be mentioned. A seller on a marketplace has also to provide all relevant details about the goods and services offered for sale including country of origin which are necessary for enabling the consumer to make an informed decision at the pre-purchase stage.
- i. **Taking back defective goods/deficient services:** In case of defective or spurious goods, or deficient services, or goods/services not conforming to characteristics as advertised, or late delivery of the goods/services, no inventory e-Commerce entity shall refuse to take back such goods, or withdraw or discontinue such services or refuse to refund consideration, if paid.

V. ORAL EVIDENCE TENDERED BY THE MINISTRY AND OBSERVATIONS OF THE COMMITTEE THEREON.

7. The Consumer Protection (e-Commerce) Rules, 2020, placed at *Annexure I*, was taken up for examination by the Committee and a questionnaire on the subject was forwarded to the Ministry of Consumer Affairs, Food & Public Distribution on the subject. The Ministry furnished their comments/clarification on each question, a copy of which has been included as *Annexure II* of the Report. During the examination of the rules, the Committee held a meeting on the 19th August, 2020 to deliberate upon the subject matter, Minutes of which has also been provided in the Report. The Committee heard the Secretary, Department of Consumer Affairs alongwith other officials of the Department and the subject was examined and discussed in depth. The following points raised by the Committee and the Ministry's comments-thereon are given below:-

- **Protection of Personal Data**

8. The Committee, first took up the issue of protection of personal data of the consumers, which has become a burning topic during the recent times. The Committee raised concerns over the leakage of consumer data by the e-Commerce call-centres and the lack of law to deal with this leakage. The e-Commerce service provider, for initiating the payment on their platform tends to save the details of credit/ debit cards of the customer. The Committee enquired about the safety of the transaction/ payment related data of the consumers. The Committee also enquired about the steps that are being taken to address the issue of data security. The Secretary informed the Committee that the provisions of the Information Technology Act, 2000 are fully applicable to address these kind of issues. She further informed that a Central Consumer Protection Authority (CCPA) has been set up under the Consumer Protection Act, 2019, whose mandate includes inquiry into such kinds of leakages of data privacy and also to recommend appropriate penal action against the culprits. On a query raised by the Committee regarding safety of the financial data like credit card details and payment related information of customers, the Ministry replied that issues in relation to the protection of personal data of an individual is governed generally under data protection laws wherein, these financial data of the customer are included within the definition of 'sensitive personal data or information' under the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. The Committee then enquired about the number of cases of violation of personal data till now. The Ministry informed that the Consumer Protection Act, 2019, itself was enforced on 20th July 2020 and the CCPA was constituted only on 24th July, 2020 and hence, no such cases have been reported as yet.

Recommendation:

9. The Committee felt that the privacy of users and their data security are of utmost importance and the citizen's 'right to be forgotten' online are paramount. The Committee appreciates that these rules have provision mandating the record of the consent of a consumer through an explicit and affirmative action for the purchase of any good or service offered on its platform and not automatically, e.g., in the form of pre-ticked checkboxes. However, the Committee feels that this itself is not sufficient for protecting the users' personal data. The Committee, therefore, recommends that user's personal data may be categorized as per their level of sensitivity and appropriate protection level may be assigned for each level. The Committee further recommends that the Ministry should ensure that a secured and robust system of payment gateway is made available to the Consumers so that the transaction related data of the users is not compromised in any way.

10. Further, the Committee felt that all major e-marketplace entities should establish their data centre in India, so that the Consumer data are not hosted in a server located beyond the borders of the Country, which may be misused by an enemy Country. The Committee also felt that Hyperscale Data Centres, which are data centre hubs, can be established in India that can empower India as a Global IT hub in near future. In view of this, the Committee recommends innovating new economic models that promote establishment of global hyperscale data centres in India and it also recommends to make all major e-marketplace entities to establish their data centres locally.

11. The Committee recommends that a provision may be given in the Consumer Protection Rules itself stating that the protection to the personal data of the consumers using e-marketplace, will be given under the Personal Data Protection Bill, 2019.

- **Unfair Trade Practices/ Monopolies**

12. The Committee observed from International experiences that the e-Commerce platforms initially offer a good discount and sell goods at cheap prices. However, after destroying all smaller retailers/ MSMEs in the market, they manipulate the prices of commodities; employ unfair trade practices and monopolies. The Committee enquired whether this price advantage remains there in the long term or is it only a method of inducing the customers or getting him hooked so that they can charge whatever they like later on, which is also popularly called as "Predatory Pricing" and whether such unfair trade practices be identified and dealt with under the present Rules. The Secretary clarified that this is a crucial element in the entire legislation and through the new Consumer Protection Act, 2019; the Ministry has tried to define what the unfair trade practices are. The Ministry further informed the Committee that the Competition Act, 2002 defines that offering products or services at an unfair or discriminatory price either

directly or indirectly constitutes abuse of dominant position and prohibits the abuse of dominant position under Section 4 of the Act. The Ministry also informed that Clause (ix) of Press Note 2(2018) issued by DPIIT on FDI policy on e-Commerce sector, stipulates that an e-Commerce entity providing marketplace will not, directly or indirectly, influence the sale price of goods or services. The Secretary assured that the Ministry will certainly study and incorporate the lessons learnt in the implementation of the Act so that while going forward, the Ministry will come out with exhaustive explanation of what practices could constitute Unfair Trade Practices and the Consumer Redressal Commissions or the CCPA are able to identify any unfair trade practices and how to deal with it.

13. The Committee noted that exclusive sales tie-ups of seller and the e-marketplace has become a new upcoming trend. The exclusive tie-ups that are happening can be broadly classified into two categories, totally exclusive and exclusive only online. This considerably reduces the choices available to consumers, apparently creating a situation of monopoly. Exclusive agreements are not per se anti-competitive. However, they raise potential competition concern when used as an exclusionary tactic to foreclose competition to rivals. The Committee is of considered view that such practices by the e-marketplace entities of holding exclusive tie ups with the sellers should be discouraged. The Committee noted that a firm's ability to raise its prices is usually constrained by competitors and the possibility that its customers can switch to alternative sources of supply. When these constraints are weak, a firm may gain market power.

Recommendation:

14. The Committee is of the considered view that predatory pricing as a short term strategy, adopted by some of the market giants with deep pockets to sustain short-term losses and reduce the prices of their products below the average variable costs may lead to wiping out competition from the market and could be detrimental to the consumers in the long run. However, the Committee observes from a legal standpoint that it is very hard to substantiate allegations of predatory pricing against e-Commerce giants, since the impact of such practice on the competition in the market would be very difficult to prove. The Committee, therefore, recommends that there should be a more clear-cut definition of what constitute Unfair Trade Practice and practical legal remedy to tackle such circumventing practices by e-Commerce entities specifically Multinational Companies and Kirana Small Vendors.

15. The Committee observes that the tremendous growth of e-Commerce is a major threat to traditional stores. Many retail enterprises are stepping up by opening online stores and adopting tech solutions to offer e-payment options, quicker deliveries, and better customer experiences. However, small-scale brick-and-mortar stores with limited capitals and infrastructure accessibilities are struggling to keep up. This is hurting the interests of local vendors and may ultimately lead to closure of such shops with low capitals. The Committee is of the considered view that wiping out of small/local vendors from the market may lead to reduced choices available to the consumer, which in turn will put consumers in a disadvantageous position in the long run. The Committee enquired about the steps taken by Ministry to strike a balance between the two, so that the dominant e-marketplace entity does not hurt the interest of the small/local vendors and a level-playing field is available to them. However, no satisfactory

response in this regard was received from the Ministry. The Committee gave an excellent example of necessity becoming mother of invention in favour of the small vendors, which can be seen in the testing times of COVID-19, as many local vendors/shops started serving via various means of telecommunication and e-Commerce platforms like Swiggy, Urbanclap etc. These small scale e-Commerce entities largely remain unorganized, unregulated and unnoticed.

Recommendations:

16. The Committee noted that many MNCs as well as off-shore based companies are involved in the market e-Commerce entity model of the e-Commerce. The Committee feels imperative to devise some regulatory mechanism so that the local vendors/ 'kirana' shops are not wiped out of the market. It is also crucial in view of the employment opportunities to small scale/local vendors. The Committee, therefore, recommends that sufficient protection to such small/local vendors should be given in the Rules itself and the Ministry should devise out ways in which such small retailers may also become part of e-Commerce.

- **Manipulation of Algorithm, Fake reviews and other malpractices**

17. The Committee then enquired about the steps taken to ensure that certain companies do not benefit from algorithm (i.e. a computer programme which displays certain products favourably and more frequently than the others). The Secretary informed the Committee that the Rules stipulates that the E-Commerce entity shall not display undue bias towards any of the sellers or manipulate the rankings to show the consumer that a certain product is more favoured among consumers or is more beneficial. The Secretary clarified that in order to enable the consumers to make an informed decision on the products being purchased by them, all the terms and conditions, the MRP, packaging date, etc., have to be necessarily included in the information given on the product labels. The Committee then raised the issue of fake reviews or sponsored reviews posted on the e-Commerce platforms. The Committee noted that the Rule 6 of the Consumer Protection (e-Commerce) Rules, 2020 states that “No such seller shall falsely represent itself as a consumer and post reviews...”. The Committee, then enquired about the mechanism available with the regulator to check this malpractice by the e-service providers. The Secretary informed the Committee that the Central Consumer Protection Authority (CCPA) is going to have an investigation wing headed by, Director General (Investigation) assisted by a team of experts having the required expertise and domain knowledge to investigate such matters. She further informed that when it is sufficiently proved that any e-Commerce entity has posted fake reviews or tinkered with the algorithm, class action against it would be initiated by CCPA.

Recommendation:

18. The Committee noted the clarifications provided by the Ministry regarding the legal provisions to deter deceptive tactics used by the merchants in order to gain competitive advantage over others. The Committee, is however, not inclined to agree with the comments of the Ministry as the cases of fake reviews, unfair favouritism in the display of goods are still increasing every day. The Committee, therefore, recommends that some corrective mechanism to discourage deceptive tactics including manipulation of algorithms, fake product reviews & ratings must be created so that the consumer interest is not harmed in any way.

19. The Committee then raised its concern over the Drip pricing, which is a technique used by online retailers of goods and services whereby a headline price is advertised at the beginning of the purchase process, following which additional fees, taxes or charges, which may be unavoidable, are then incrementally disclosed or "dripped". The Committee considers this practice of misleading and/or inadequately disclosed fees at the time of final checkout as a breach of rights of consumers. The Secretary informed the Committee that the Consumer Protection (e-Commerce) Rules, 2020 provide that all the additional charges, has to be mentioned upfront on the platform, so that it does not get added later on, without the knowledge of the consumer. However, the Ministry did not clarify as to how they keep check on such activities on e-platform and what is the penalty imposed on the e-marketplace entity which is involved in drip pricing.

Recommendations:

20. The Committee recommends that the Ministry should clearly define the Drip pricing in the Rules and sufficient protection to consumer should be given as a provision in the Rules itself including penal provisions for violation.

21. In the e-Commerce context, the Committee observes that there are many 'click farms' that are used to click a merchant's advertisement without any intention of actually purchasing the advertised product. The Committee noted that such an exercise tends to inflate the web traffic to a particular product, which ultimately affects the decision making of the consumer. The Committee is of the view that the Ministry should take strict actions against such click farms which intend to distort the healthy market practices.

- **Greivance Redressal & Consumer Helplines**

22. The Committee then enquired about the mechanism set up by the Ministry for grievance redressal of the consumers. The Ministry informed the Committee that an e-Commerce entity is required to appoint an easily accessible nodal person of contact or a senior designated functionary who is resident in India, for ensuring compliance with the Consumer Protection Act, 2019. The Secretary also informed that the Rule 5 of the Rules talks about liabilities of the marketplace entities wherein every marketplace entity is required to provide a dedicated customer care number. However, the Committee noted that the duties and responsibilities of the customer care service provided by the marketplace entity is not included in the Rules.

Recommendations:

23. The Committee recommends that the duties and responsibilities of customer care service provided by the marketplace entity should be clearly spelt out in the Rules itself. Further, the Rules should explicitly mention different levels at which a customer can approach eventually, if his/her grievance is unresolved.

24. The Committee noted that often inordinate delays in contacting customer care service and long call delays are tiring and irritating. The Committee, therefore, recommends that the Ministry should not only direct the e-Commerce entities to provide dedicated customer care number but also should direct the entities to create mechanism to monitor the time taken by the customer care executives to resolve an issue. The entities may be directed by the Ministry to maintain a record of the same which may be presented by the entities when asked upon.

- **Regulation of Delivery Charges**

25. The Committee observes that there is no clear mechanism to monitor the delivery charges paid by the consumer for delivery of products bought by them online. The Committee raised concerns over the unregulated delivery charges paid by the consumers. The Committee enquired whether the Ministry can put a cap on the highest limits of delivery charges. The Secretary informed that rules provide that all additional charges, as to what is the postal charge, what is the delivery charge, that has to be mentioned, so that it does not get added on without the knowledge of the consumer.

Recommendations:

26. The Committee recommends that the Ministry should issue broad guidelines for the fixation of delivery charges charged by the marketplace entities. Further, the Committee recommends that a cap on the highest limits of the delivery charges in peak hours of service should also be ensured by the Ministry.

- **Product Information and related Issues**

27. There is a growing concern that the first generation internet users may not have adequate digital-education, which makes them more vulnerable to internet based frauds. Under such circumstances, the Committee feels that the consumer must have access to accurate, unbiased information about the products and services they purchase. The Committee enquired about the standards and formats set up by the Ministry for the purpose of product labelling so that a consumer may take an informed decision before the purchase. The Secretary clarified that in order to enable the consumers to make an informed decision on the products being purchased by them, all the terms and conditions, the MRP, packaging date, etc., have to be necessarily included in the information given on the product labels. She further informed that all e-Commerce entities have been directed to ensure that the products, which are for sale on their platforms, must necessarily include information regarding their country of origin. The Committee appreciates the Ministry for including provision for mandating display of product information in the rule 4 of the Rules. However, the Committee feels that the Ministry should create a mechanism to monitor that the provisions of this rule is followed by the e-Commerce entities in its letter and spirit.

Recommendations:

28. The Committee recommends that the Ministry should clearly distinguish in the Rules itself the cases of misinformation, no information and the information which is otherwise correct but creates a false impression and provide for penal provision for each case in the Rules itself.

29. The Committee recommends to either lay down in the Rules itself or to publish supplementary guidelines for the consumers to educate them in simpler words about how to and whom to approach, in case their grievances are not being satisfactorily addressed by the customer care service. The Committee recommends that the steps to be followed by the Consumer, if he/she is misled by the product information or the product was not delivered as promised by the seller in the contract should be clearly spelt out in the rules/guidelines thereunder.

SUMMARY OF OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

- 1. The Committee felt that the privacy of users and their data security are of utmost importance and the citizen's 'right to be forgotten' online are paramount. The Committee appreciates that these rules have provision mandating the record of the consent of a consumer through an explicit and affirmative action for the purchase of any good or service offered on its platform and not automatically, e.g., in the form of pre-ticked checkboxes. However, the Committee felt that this itself is not sufficient for protecting the users' personal data. The Committee, therefore, recommends that user's personal data may be categorized as per their level of sensitivity and appropriate protection level may be assigned for each level. The Committee further recommends that the Ministry should ensure that a secured and robust system of payment gateway is made available to the Consumers so that the transaction related data of the users is not compromised in any way.**
- 2. Further, the Committee felt that all major e-marketplace entities should establish their data centre in India, so that the Consumer data are not hosted in a server located beyond the borders of the Country, which may be misused by an enemy Country. The Committee also feels that Hyperscale Data Centres, which are data centre hubs, can be established in India that can empower India as a Global IT hub in near future. In view of this, the Committee recommends to innovate new economic models that promote establishment of global hyperscale data centres in India and it also recommends to make all major e-marketplace entities to establish their data centres locally.**
- 3. The Committee recommends that a provision may be given in the Consumer Protection Rules itself stating that the protection to the personal data of the consumers using e-marketplace, will be given under the Personal Data Protection Bill, 2019.**
- 4. The Committee is of the considered view that predatory pricing as a short term strategy, adopted by some of the market giants with deep pockets to sustain short-term losses and reduce the prices of their products below the average variable costs may lead to wiping out competition from the market and could be detrimental to the consumers in the long run. However, the Committee observes from a legal standpoint that it is very hard to substantiate allegations of predatory pricing against e-Commerce giants, since the impact of such practice on the competition in the market would be very difficult to prove. The Committee, therefore, recommends that there should be a more clear-cut definition of what constitute Unfair Trade Practice and practical legal remedy to tackle such**

circumventing practices by e-Commerce entities specifically Multinational Companies and Kirana Small Vendors.

5. The Committee noted that many MNCs as well as off-shore based companies are involved in the market e-Commerce entity model of the e-Commerce. The Committee feels imperative to devise some regulatory mechanism so that the local vendors/'kirana' shops are not wiped out of the market. The Committee, therefore, recommends that sufficient protection to such small/local vendors should be given in the Rules itself and the Ministry should devise out ways in which such small retailers may also become part of e-Commerce.

6. The Committee noted the clarifications provided by the Ministry regarding the legal provisions to deter deceptive tactics used by the merchants in order to gain competitive advantage over others. The Committee, is however, not inclined to agree with the comments of the Ministry as the cases of fake reviews, unfair favouritism in the display of goods are still increasing every day. The Committee, therefore, recommends that some corrective mechanism to discourage deceptive tactics including manipulation of algorithms, fake product reviews & ratings must be created so that the consumer interest is not harmed in any way.

7. The Committee recommends that the Ministry should clearly define the Drip pricing in the Rules and sufficient protection to consumer should be given as a provision in the Rules itself including penal provisions for violation.

8. In the e-Commerce context, the Committee observes that there are many 'click farms' that are used to click a merchant's advertisement without any intention of actually purchasing the advertised product. The Committee noted that such an exercise tends to inflate the web traffic to a particular product, which ultimately affects the decision making of the consumer. The Committee is of the view that the Ministry should take strict actions against such click farms which intend to distort the healthy market practices.

9. The Committee recommends that the duties and responsibilities of customer care service provided by the marketplace entity should be clearly spelt out in the Rules itself. Further, the Rules should explicitly mention different levels at which a customer can approach eventually, if his/her grievance is unresolved.

10. The Committee noted that often inordinate delays in contacting customer care service and long call delays are tiring. The Committee, therefore, recommends that the Ministry should not only direct the e-Commerce entities to provide dedicated customer care

number but also should direct the entities to create mechanism to monitor the time taken by the customer care executives to resolve an issue. The entities may be directed by the Ministry to maintain a record of the same which may be presented by the entities when asked upon.

11. The Committee recommends that the Ministry should issue broad guidelines for the fixation of delivery charges charged by the marketplace entities. Further, the Committee recommends that a cap on the highest limits of the delivery charges in peak hours of service should also be ensured by the Ministry.

12. The Committee recommends that the Ministry should clearly distinguish in the Rules itself the cases of misinformation, no information and the information which is otherwise correct but creates a false impression and provide for penal provision for each case in the Rules itself.

13. The Committee recommends to either lay down in the Rules itself or to publish supplementary guidelines for the consumers to educate them in simpler words about how to and whom to approach, in case their grievances are not being satisfactorily addressed by the customer care service. The Committee recommends that the steps to be followed by the Consumer, if he/she is misled by the product information or the product was not delivered as promised by the seller in the contract should be clearly spelt out in the rules/guidelines thereunder.

**MINUTES OF THE MEETING OF THE COMMITTEE ON
SUBORDINATE LEGISLATION, RAJYA SABHA**

VI

SIXTH MEETING

The Committee met at 03:30 P.M. on Wednesday, the 19th August, 2020 in Committee Room 'A', Parliament House Annexe, New Delhi. The following Members of the Committee were present in the meeting:-.

Present

1. *Shri Partap Singh Bajwa*

Chairman

2. Shri V. Vijayasai Reddy

3. Dr. Vikas Mahatme

4. Shri Prem Chand Gupta

5. Shri G.V.L Narsimha Rao

6. Shri Amar Patnaik

7. Shri Surendra Singh Nagar

8. Shri Pradeep Tamta

Secretariat

1. Shri Arun Sharma, *Joint Secretary*

2. Shri Rakesh Anand, *Additional Director*

3. Shri R.K. Mecolt Singh, *Under Secretary*

4. Smt. Anju Bala Nayar, *Committee Officer*

Witnesses:

Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs)

1. Ms. Leena Nandan, Secretary
2. Ms. Nidhi Khare, Additional Secretary
3. Shri Anupam Mishra, Joint Secretary

2. The Chairman, at the outset, welcomed the Members and Officers to the meeting of the Committee. Explaining the mandate of the Committee, he stated that the main function of the Committee is to examine and report to the House whether the powers to make rules, regulations etc., given to the Government by the Constitution or by an Act of the Parliament, have been properly exercised, both in letter and spirit.

3. x x x x x x x

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10. The Committee then took up discussion with the Secretary, Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) on the Consumer Protection (e-Commerce) Rules, 2020. The Additional Secretary, Department of Consumer Affairs gave a brief Power Point Presentation on the subject. Thereafter, The Secretary, Department of Consumer Affairs invited the Committee to raise any query on the said subject. The Committee at the outset, raised concerns about the leakage of consumer data by the e-Commerce call centers and the lack of law to deal with this leakage. The Committee then enquired about the steps that are being taken to address this issue. The Secretary informed the Committee that the provisions of IT Act, 2000 are fully applicable to address these kinds of issues. She further informed that a Central Consumer Protection Authority (CCPA) has been set up under the Consumer Protection Act, 2019, whose mandate includes inquiry into such kinds of leakages of data privacy and also recommend appropriate penal action against the culprits. On a query regarding the number of such cases till now, she replied that the Act itself was enforced on 20th July 2020 and the CCPA was constituted only on 24th July 2020.

11. The Committee observed that from International experiences, the e-Commerce platforms initially offer a good discount and sell goods at cheap prices. However, after destroying all smaller retailers/ MSMEs in the market, they manipulate the prices of commodities, employ unfair trade practices and monopolies. The Committee enquired whether this price advantage remains there in the long term or is it only a method of inducing the customers or getting him hooked so that they can charge whatever they like and whether such unfair trade practices be identified and dealt with under the present Rules. The Secretary clarified that this is a crucial element in the entire legislation and through the new Consumer Protection Act, 2019, the Ministry has tried to define what the unfair trade practices are and the Ministry will certainly study and incorporate the lessons learnt in the implementation of the Act so that while going forward, the Consumer Redressal Commissions or the CCPA are able to identify any unfair trade practices and how to deal with it.

12. The Committee then enquired on what basis it is decided as to whether a product is returnable or non-returnable on an E-Commerce website. The Committee felt that the rules are not uniform therein. The Secretary informed the Committee that the return policy may differ from product to product and it is not possible to envisage the entire range of products. However, she stated that whichever product is advertised for sale, its terms and conditions, its warranty or guarantee, or whether it is returnable or non-returnable, should all be there. She further stated that there will always be some products which cannot be returned if the consumer has utilized them. The Committee further observed that on return of certain products, the customers don't get their hard cash but instead, they get a voucher for buying another product from the same platform. The Committee requested the Ministry to look into this issue.

13. The Committee then enquired about the steps taken to ensure that certain companies do not benefit from algorithm (i.e. a computer programme which displays certain products favorably and more frequently than the others). The Secretary informed the Committee that the Rules stipulates that the E-Commerce entity shall not display undue bias towards any of the sellers or manipulate the rankings to show the consumer that a certain product is more favoured among consumers or is more beneficial. The Secretary clarified that in order to enable the consumers to make an informed decision on the products being purchased by them, all the terms and conditions, the MRP, packaging date, etc., have to be necessarily included in the information given on the product labels. She further informed that it has also been communicated to all E-Commerce entities that the products, which are for sale on their platforms, must necessarily include information regarding their country of origin. She stated that the Legal Metrology Act prescribes the mandatory information that needs to be complied with by E-Commerce entities and sellers who are selling their products on E-Commerce

platforms. However, if there is any violation of the Consumer's rights, then the consumer can go to the National Consumer Helpline or directly access the e-Commerce entity's consumer redressal mechanism through telephone or e-mail, which are required to be provided by the entity.

14. The Committee observed that the Consumer Protection Act *per se* doesn't take care of data leakage or data breach and these result in compromise on consumer's data privacy, which is ultimately used to manipulate the rating of products. Moreover, the CCPA cannot take care of this issue as its focus is only on the Consumers' rights. Hence, the Committee suggested that an umbrella kind of structure should be there encompassing various Personal data issues under other Acts/Regulators e.g., RERA Act, Competition Commission of India Act and Personal data Protection Bill etc. The Secretary informed that on issues like data privacy, there is much more detailing that has to be done with the regulators on those fronts. She further stated that the Central Consumer Protection Authority, established to promote, protect and enforce the rights of consumers shall take note of instances and take appropriate action against E-Commerce entities, where the manipulation of data to influence consumers or to wrongly attract them to certain products, is brought to its attention.

15. The Committee then raised issues like prevention of fake reviews of products, transparent pricing, term of National Consumers' Disputes Redressal Commission (CDRC) Members etc. The Secretary informed the Committee that the Central Consumer Protection Authority (CCPA) is going to have an investigation wing headed by, Director General (Investigation) assisted by a team of experts having the required expertise and domain knowledge to investigate such matters. She further informed that when it is sufficiently proved that any E-Commerce entity has posted fake reviews or tinkered with the algorithm, class action against it would be initiated by CCPA. As regards the transparent pricing, all e-Commerce entities are required to display all charges including price, taxes and delivery charges for the Consumer. She further informed that the term of the NCDRC Members is of 4 years as notified by the Finance Act, 2017 and the Tribunal Rules, 2020 and for the State and the District Commission also, the tenure is of 4 years and these are subject to the final decision of the Supreme Court, which is considering the matter.

16. A verbatim record of the proceedings of meeting was kept.

17. The Committee meeting adjourned at 05:16 P.M.

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ORAL EVIDENCE ON E-COMMERCE (CONSUMER PROTECTION) RULES, 2020

REPLY TO QUESTIONNAIRE

1. What were the reasons that led to the framing of e-Commerce (Consumer Protection) Rules, 2020? What were the lacunas, if any, in the framework of e-Commerce that the present Rules seek to address?

Reply

The mandate of the Department of Consumer Affairs is consumer advocacy. The overall policy on e-Commerce is the domain of the Department for Promotion of Industry and Internal Trade (DPIIT). The DPIIT has issued Foreign Direct Investment (FDI) policy on E-Commerce sector. The space of e-Commerce suffered from a lack of consumer-oriented legislation which was specifically developed for the business models prevalent in this space. Accordingly, the **Consumer Protection (E-Commerce) Rules, 2020** was notified with a view to prevent unfair trade practices, with a view to protect and safeguard the ultimate interests and rights of consumers to enable the consumers to make informed decisions on purchases, prevent fraudulent transactions and unfair and deceptive trade practices, control sale of counterfeits etc.

The e-Commerce Rules address various lacunas in the present grievance redressal mechanism on e-Commerce trade such as those relating to fake non-delivery/ delay delivery, non-refund of the items in case found not upto the mark, fake goods etc, and put in place a robust grievance redressal mechanism.

The E-Commerce rules clarify the liabilities of the platform both in a marketplace model and in inventory model, setting up of an adequate Grievance redressal mechanism, not refuse to take back goods, discontinue services or stop refunds if the products are found to be fake, defective, delivered late or look different from description on the platform etc. This would help the grievances to be resolved at a pre-litigation stage as an Alternate Dispute Resolution mechanism thereby ensuring efficiency and reducing the cases in Consumer Commissions/other courts. In terms of Rule 6(4)(1) of the ibid rules, a grievance officer shall be appointed for consumer grievance redressal and it shall be ensured that the grievance officer acknowledges the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint;

2. What has been the experience of the Ministry regarding implementation of these Rules so far? What are the major challenges faced by the Ministry while implementing these Rules?

Reply

The rules have been notified recently on 23rd July 2020. It is too early to comment on the experience and challenges faced by this Ministry as the rules notified is one month old and its implementation is at nascent stage.

3. Are there any proposals for amendments to the Rules? If so, then please explain the reasons that have necessitated an amendment to the Rules?

Reply

The Rules have been notified only on 23rd July 2020. Government will assess the challenges and problems that may come up and if required, consider addressing the issues appropriately.

4. Rule 3(b) of the e-Commerce (Consumer Protection) Rules, 2020, defines ‘e-Commerce entity’ as any person who owns, operates or manages digital or electronic facility or platform for electronic Commerce, but does not include a seller offering his goods or services for sale on a marketplace e-Commerce entity; whereas there is a slight difference in the definition of e-service provider in the guidelines pertaining to FDI regulations in e-Commerce Sector. What are the reasons behind not including marketplace e-Commerce entity under the definition of e-Commerce entity?

Reply

Rule 3(b) of the Consumer Protection (e-Commerce) Rules, 2020 defines e-Commerce entity as “E-Commerce entity means any person who owns, operates or manages digital or electronic facility or platform for electronic Commerce, but does not include a seller offering his goods or services for sale on a marketplace e-Commerce entity;”

Marketplace e-Commerce entities are therefore included within the definition of e-Commerce entity. It is only “sellers on a marketplace e-Commerce entity” who have been excluded from the scope of this definition. The reason for this is because the obligations of sellers are markedly different from the obligations of a marketplace e-Commerce entity. Marketplace e-Commerce entities only offer the platform through which a seller sells goods owned by them to a consumer. Since these entities (i.e, marketplace e-Commerce entities, inventory e-Commerce entities and sellers on marketplaces) exercise different levels of control over the goods and information related to the goods, there is a need to recognise the distinction between them in the placement of any obligation on them. Therefore, the rules specifically place certain obligations on sellers on marketplace e-Commerce entities, which is done through the provisions of Rule 6.

5. As per the Rule 4(10) of the said Rules, “every e-Commerce entity shall effect all payments towards accepted refund requests of the consumers as prescribed.....under

applicable laws”. Does this clause include payments made through 3rd party Payment Processors also? If not, how will such payments be regulated?

Reply

As per Rule 4 (10), every e-Commerce entity shall effect all payments towards accepted refund requests of the consumers as prescribed by the Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time, or as prescribed under applicable laws.

Thus Rule 4(10) makes a reference to any relevant or applicable law or regulation that may be made by the Reserve Bank of India, or any other competent authority. Therefore, the scope of this Rule and the manner of effecting the payment will be determined by the precise nature of such laws or regulations. The obligation placed by Rule 4(10) is to comply with such laws or regulations in the course of effecting payments towards accepted refund requests.

RBI has issued guidelines on Regulation of Payment Aggregators and Payment Gateways vide notification RBI/DPSS/2019-20/174 DPSS. CO. PD. No. 1810/02.14.008/2019-20 dated March 17, 2020, which applies to all Payment System Providers and System Participants.

6. Rule 3(g) of the said Rules defines ‘marketplace e-Commerce entity’. It is established that many MNC’s as well as off-shore based companies are involved in the market e-Commerce entity model of the e-Commerce. The Walmart-Flipkart Deal, for example, had faced much revolt by the traders association and small and domestic retailers as they have alleged that FDI norms have been violated by them. Under such circumstances how does this Regulations make sure that there is no possibility of predatory pricing by these industry-giants, which may lead to small enterprises running out of business?

Reply

The purpose of the Consumer Protection Act, 2019 is to protect and safeguard interests of the consumers. Various measures have been provided in the Act to protect the interest of consumers such as establishment of the Central Consumer Protection Authority to protect, promote and enforce the rights of consumers as a class, filing complaints from any place and e-filing in consumer Commissions, product liability, etc.

The E-Commerce Rules have been framed to ensure that the interests of the consumers are protected in the e-Commerce space by empowering consumers. As per the rules, the e-Commerce entities are required to set up a grievance redressal mechanism and acknowledge the consumer grievances within 48 hours and resolve within a month. This will work as an alternate dispute resolution mechanism at pre-litigation stage. The duties of E-Commerce entities under Rule 4(9) states that every e-Commerce entity shall only record the consent of a consumer for the purchase of any goods or service offered on its platform where such consent is expressed through an explicit and affirmative action, and no such entity shall record such consent automatically, including in the form of pre-ticked checkboxes. FAQs on e-Commerce rules will further enlighten the consumers to take informed decisions.

The Competition Act, 2002 defines and prohibits the abuse of dominant position in Section 4 of the Act. Section 4(2) further states that offering products or services at an unfair or discriminatory price either directly or indirectly constitutes abuse of dominant position.

Further, Section 4(2) (a) (ii) mentions 'Predatory Pricing' as a form of unfair or discriminatory pricing and ultimately as abuse of dominant position. Predatory pricing is a competition issue and the Competition Commission of India (CCI) has also issued a set of self-regulation guidelines for the e-Commerce sector.

Clause (ix) of Press Note 2(2018) issued by DPIIT stipulates that an e-Commerce entity providing marketplace will not, directly or indirectly, influence the sale price of goods or services, which also renders such business as an inventory based model. The aforesaid Press Note on FDI policy on e-Commerce sector was issued to ensure that the rules are not circumvented.

7. Rule 4 of the e-Commerce (consumer protection) Rules,2020, enumerates the Duties of e -Commerce entities. Further, the sub-rule (4) of this Rule states “Every e-Commerce entity shall establish an adequate grievance redressal mechanism...”. As per the previous consumer protection Acts, a consumer can institute a complaint only in the place where the transaction took place. How does these Rules regulates this issue of jurisdiction and place of complain in case of e-transactions?

Reply

As per Rule 5 of the Consumer Protection (E-Commerce) Rules, 2020, a marketplace e-Commerce entity shall, on a request in writing made by a consumer after the purchase of any goods or services on its platform by such consumer, provide him with information regarding the seller from which such consumer has made such purchase, including the principal geographic address of its headquarters and all branches, name and details of its website, its email address and any other information necessary for communication with the seller for effective dispute resolution. As per the rules, the e-Commerce entities are required to set up a grievance redressal mechanism and acknowledge the consumer grievances within 48 hours and resolve within a month.

As per consumer protection Act, 2019, a consumer can file a complaint in a Consumer Commission having jurisdiction over his place of residence/work. Hence a consumer who purchased online can file complaint in the district where he resides or works.

8. As per the Rule 4(3) of the said Rules, “No e-Commerce entity shall adopt any unfair trade practice, whether in the course of the business on its platform or otherwise”. The e-Commerce service provider, for initiating the payment on their platform tends to save the details of credit/debit cards of the customer. How does these Rules make sure that the digital data like card details and payment information of the customer are not compromised by these e-service providers?

Reply

E-Commerce websites operating in India are required to follow many laws of India including the Information Technology Act, 2000.

The issues in relation with the protection of personal data (including financial data) of an individual will be governed generally under data protection laws. For instance, financial data

such as credit card details and payment information, are included within the definition of 'sensitive personal data or information' under the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. These rules place strict restrictions on how such data may be used by an e-service provider.

These Rules will run parallelly with, and not in contradiction to any other law, rules or regulation that may be made with regard to the protection of financial data in India.

9. As per the Rule 4(5) of the said Rules, “every e-Commerce entity shall ensure that the grievances officer acknowledges the complaint receipt ...”. What are the mechanisms put in place to monitor the implementation of these Rule and to whom violations, if any, are reported?

Reply

As per the duties of sellers on market place stipulated vide Rules 6(4) of Consumer Protection(E-Commerce) Rules, 2020, any seller offering goods or services through a marketplace e-Commerce entity shall:

(a) have a prior written contract with the respective e-Commerce entity in order to undertake or solicit such sale or offer;

(b) appoint a grievance officer for consumer grievance redressal and ensure that the grievance officer acknowledges the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint;

(c) ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.

(d) provide to the e-Commerce entity its legal name, principal geographic address of its headquarters and all branches, the name and details of its website, its e-mail address, customer care contact details such as fax, landline, and mobile numbers and where applicable, its GSTIN and PAN details.

Rule 8 of the E-Commerce Rules provides that Act shall apply in the event of any violation of these Rules. The Central Consumer Protection Authority (“CCPA”) established under the Act has been vested with the power and function to protect, promote and enforce the rights of consumers as a class, and to prevent violation of consumer rights or unfair trade practices. Any violation of these E-Commerce Rules affecting a class of consumers can be reported to the CCPA, and the appropriate redressal mechanisms as envisaged under the Act will be set in motion.

CCPA can also take suo motu cognizance of such complaints& get it investigated through Director General (Investigations) for needful action where the Central Authority is of the opinion that the matter is to be dealt by a regulator, it may refer such matter to the concerned regulator alongwith its report.

10. Rule 5 of the said Rules mentions about the liabilities of marketplace e-Commerce entities. How will the liabilities shared between the e-service provider, physical store which holds the inventory and the third party payment processor?

Reply

Liabilities of marketplace e-Commerce entities will be shared w.r.t. the area of the service provided by each viz. e-service provider, physical store which holds the inventory and the third party payment processor.

Rule 5 provides that marketplaces should provide information on available payment methods, the security of those payment methods, any fees or charges payable by users, the procedure to cancel regular payments under those methods, charge-back options, if any, and the contact information of the relevant payment service provider. Rule 6 provides the liabilities of Sellers on the platforms as indicated in response to question No. 9

11. Rule 6 of the e-Commerce Rules, 2020 states that “No such seller shall falsely represent itself as a consumer and post reviews...”. What is the mechanism available with the regulator to check this malpractice by the e-service providers? What are the penalties in case such malpractice is caught?

Reply

The reviews on products or services provided on e-Commerce platform as customer reviews are to be genuine and verifiable and not tutored. Intermediary platforms are expected to provide those details on asking by the Regulator. The Central Authority can pass such order as may be necessary, including discontinuation of practices which are unfair and prejudicial to consumers 'interest.

12. E-Commerce has no physical and political boundaries. How are e-Commerce entities of foreign origin regulated or monitored? What mechanisms are available to ensure that these rules are followed by them in its letter and spirit?

Reply

The overall policy on e-Commerce is the domain of DPIIT. DPIIT has issued Foreign Direct Investment (FDI) policy on E-Commerce sector. Action on such matters will be taken by that Department.

As regards the Consumer Protection (e-Commerce) Rules, 2020, an e-Commerce entity shall be a company incorporated under the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013 (18 of 2013) or a foreign company covered under clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) or an office, branch or agency outside India owned or controlled by a person resident in India as provided in sub-clause (iii) of clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999); and appoint a nodal person of contact or an alternate senior designated functionary who is resident in India, to ensure compliance with the provisions of the Act or the rules made thereunder. So a foreign company has to have a nodal person located in India to ensure compliance of these Rules.