

# THE CHAMBER OF TAX CONSULTANTS

Decoding the Consumer Protection Act, 2019

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# IMPORTANT

- \* This presentation is in the nature of a support note for the speaker
- \* Slides on standalone basis may not be self-explanatory

# The Consumer Protection Act, 2019

- 8 Chapters : 107 Sections
- Chapter I: Preliminary
- Chapter II: Consumer Protection Councils
- Chapter III: Central Consumer Protection Authority
- Chapter IV: Consumer Disputes Redressal Commission
- Chapter V: Mediation
- Chapter VI: Product Liability
- Chapter VII: Offences and Penalties
- Chapter VIII: Miscellaneous

# Power of Central Government to make rules – S 101

- (1) The Central Government may, by notification, make rules for carrying out any of the provisions contained in this Act.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for, —
  - (a) ,, ,, ,, ,, (z) , (za) ,, ,, (zj) - **36**

# Power of State Government to make rules – S 102

- (1) The State Govs may, by notification, make rules for carrying out the provisions of this Act:  
Provided that the CG may, frame **model rules** in respect of all or any of the matters //, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they shall conform to such model rules.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
  - (a) ,,,,, (q) - 17

# Power of National Commission to make regulations – S 103

- (1) The National Commission may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provisions for—
  - (a) ,,,,,,, (i) - 9

# Power of Central Authority to make regulations – S 104

- (1) The Central Authority may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act, for the purpose of giving effect to the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—
  - (a) ,,,,, (d) - 4

# Rules

- The Consumer Protection (Central Consumer Protection Council) Rules, 2020
- The Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020
- The Consumer Protection (Mediation) Rules, 2020
- The Consumer Protection (E-Commerce) Rules, 2020

# Regulations

- BY NCDRC
  - Consumer Protection (Consumer Commission Procedure) Regulations, 2020
  - Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2020
  - Consumer Protection (Mediation) Regulations, 2020
- BY CCPA
  - CCPA (Allocation and Transaction of Business) Regulations, 2020

# CHAPTER I

# PRELIMINARY

# Applicability

- The Act extends to the whole of India except the State of Jammu and Kashmir
- The CPA, 1986: It extends to the whole of India ~~except the State of Jammu and Kashmir~~ w.e.f. 31-10-2019

# Definitions

- 47 terms defined.
- New terms like advertisement, misleading advertisement, consumer rights, design, direct selling, e-commerce, establishment, harm, injury, mediation,, product, unfair contract etc.

# Complainant – S 2(5)

- (i) a consumer; or
- (ii) Any regd. consumer assn.; or
- (iii) the CG / any State Govt.; or
- (iv) *the Central Authority*; or
- (v) one or more consumers, where there are numerous consumers having the same interest; or
- (vi) deceased consumer - legal heir / representative; or
- (vii) minor - parent or legal guardian.

# Complaint – S 2(6)

- (i) an **unfair contract** or UTP or RTP has been adopted by any trader or service provider;
- (ii) defective goods;
- (iii) deficient services;
- (iv) charged, a price in excess of the price—
  - (a) fixed by or under any law; or
  - (b) displayed on the goods or any package; or
  - (c) displayed on the price list exhibited; or
  - (d) agreed between the parties;

- (v) the goods - hazardous to life and safety, are being offered for sale to the public—
  - (a) in contravention of safety standards;
  - (b) where the trader knows that the goods so offered are unsafe to the public;
- (vi) the services - hazardous to life and safety of the public when used - and knows it to be injurious to life and safety;
- (vii) a claim for product liability action

# Consumer – S 2(7)

- Buys any goods / hires or avails of any service
- For a consideration
- Does not include - goods for resale or service for any commercial purpose

# Explanation

- (a) ‘commercial purpose’ does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- (b) ‘buys any goods’ and ‘hires or avails any services’ includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

# Unfair trade practice

- 2(47) ‘unfair trade practice’ means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—
- (vii) not issuing bill or cash memo or receipt for the goods sold or services rendered;
- (ix) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

# CHAPTER II

## CONSUMER PROTECTION COUNCILS

### The Consumer Protection (Central Consumer Protection Council) Rules, 2020

..... to render advice on promotion and protection of the consumers' rights

# CONSUMER PROTECTION COUNCILS

- Central Council : headed by Minister-in-charge of the Department of Consumer Affairs
- State Council : headed by Minister-in-charge of Consumer Affairs
- District Council : headed by Collector

# CHAPTER III

## CENTRAL CONSUMER PROTECTION AUTHORITY (CCPA)

..... to promote, protect and enforce the rights of  
consumers as a class

## STATEMENT OF OBJECTS AND REASONS

- To promote, protect and enforce the rights of consumers; make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to **initiate class action** including enforcing **recall, refund and return of products**, etc.
- This fills an institutional void in the regulatory regime

# CCPA

- Established w.e.f. 20<sup>th</sup> July, 2020.
- HQ : National Capital Region of Delhi
- Chief Commissioner and Commissioners
- May engage experts and professionals
- Investigation Wing : headed by **Director General**
- District Collector : CCPA may ask Dist. Collector to inquire

# Functions include

- **File complaints** / intervene before NC/ SC/ DC; recommend adoption of international covenants; undertake research; promote awareness; encourage NGOs; issue safety notices; advise the Ministries; issue guidelines

# Power to recall goods – S 20

## On being satisfied on the basis of investigation

- Recalling goods / withdrawal of services - dangerous, hazardous, unsafe
- Reimbursement of the prices
- Discontinuation of practices which are unfair and prejudicial to consumers' interest

# Directions and penalties against false or misleading advertisements – S 21

- Issue directions to the concerned trader or manufacturer or **endorser** or advertiser or publisher : discontinue advertisement or modify the same
- Manufacturer or **endorser** : penalty upto Rs.10 lakh
- Subsequent contravention : penalty up to upto Rs.50 lakh
- Prohibit endorser : for a period up to 1 year
- Subsequent contravention : prohibit up to 3 years
- No penalty on endorser :if exercised due diligence to verify the veracity of the claims

# Endorsement

- In relation to an advertisement, means
- (i) any message, verbal statement, demonstration; or
- (ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or
- (iii) depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement;

# CCPA

- Power of search and seizure
- Designation of any statutory authority or body to act as Central Authority
- Appeal : National Commission - 30 days
- Non compliance of direction of CCPA regarding recall etc. or advertisements : fine / imprisonment / both
- Compounding of offences

# CHAPTER IV

# CONSUMER DISPUTES REDRESSAL COMMISSION(CDRC)

# Commissions

- District Consumer Disputes Redressal Commission - District Commission
- State Consumer Disputes Redressal Commission - State Commission
- National Consumer Disputes Redressal Commission - National Commission

## Pecuniary jurisdiction – value of goods or services paid

<b>Commission</b>	<b>Monetary Limits (Old Act)</b>	<b>Monetary Limits (New Act)</b>
<b>District</b>	Upto to Rs.20 Lakhs	Upto to Rs.1 Crore
<b>State</b>	From Rs.20 Lakhs to Rs. 1 Crore	From Rs.1 Crore to Rs. 10 Crores
<b>National</b>	Above Rs. 1 Crore	Above Rs. 10 Crores

## Fee for lodging complaints

<b>Amount (Rs.)</b>	<b>Fee payable (Rs.)</b>
<b>District Commission</b>	
▪ Up to 5 Lakh	Nil
▪ Above 5 lakh – up to 10 lakh	200
▪ Above 10 lakh – up to 20 lakh	400
▪ Above 20 lakh – up to 50 lakh	1000
▪ Above 50 lakh – up to 1 Crore	2000
<b>State Commission</b>	
▪ Above 1 crore and up to 2 crore	2500
▪ Above 2 crore – up to 4 crore	3000
▪ Above 4 crore – up to 6 crore	4000
▪ Above 6 crore – up to 8 crore	5000
▪ Above 8 crore – up to 10 crore	6000
<b>National Commission</b>	
▪ Above 10 crore	7500

# Filing of complaints

- E filing
- hearing through video conferencing
- Can be filed where complainant resides or works

# CHAPTER V

## MEDIATION

..... mediation as an alternate dispute resolution  
mechanism under the Act

# CONSUMER MEDIATION CELLS

- Attached to the District Commissions, State Commissions and the National Commission
- Established by the Govt.
- Submit a quarterly report to the DC / SC / NC

# Maintenance of records and submission of Report

Consumer mediation cell shall maintain -

- List of empanelled mediators;
- List of cases handled by the cell;
- Record of proceeding; and
- Such other information as may be specified

# Empanelment of mediators

- A selection committee consisting of the President and a member of the Commission shall recommend the names for the panel
- Panel of mediators shall be valid for 5 years

# Reference to mediation and procedure thereafter

- If it appears to the Commission that there exists elements of a settlement which may be acceptable to the parties, it may **direct the parties to give in writing, consent to have their dispute settled by mediation**
- The mediation shall be held in the consumer mediation cell attached to the concerned Commission

# Settlement Report

- Mediator to prepare a Settlement Report and forward the signed agreement along with Report to the Commission
- No agreement : prepare report accordingly

# Passing of the order

- Commission : within 7 days, pass suitable order recording settlement
- Dispute settled only in part : record settlement of the issues which have been settled and continue to hear other issues
- **No appeal** shall lie from any order passed by the Commission pursuant to a settlement by mediation.

# The Consumer Protection (Mediation) Rules, 2020

- Rule 4: Certain matters not to be referred to mediation – complex medical negligence; fraud, fabrication of documents, forgery, impersonation, coercion; criminal and non-compoundable offences; involve public interest
- Rule 6: Parties shall not initiate any arbitral or judicial proceedings in respect of a matter which is the subject-matter of the mediation

# Regulations

## Eligibility

- Professionals from Judiciary and associated with it
  - (viii) a person having experience of at least 5 years in mediation or conciliation;
  - (ix) experts or other professionals with at least 15 years' experience or retired senior bureaucrats or retired executives.
- 
- The Companies Act, 2013: Section 442: **Mediation and Conciliation Panel**

# Regulations

- Procedure for empanelment of mediator
- Fee of mediators
- Mediation proceedings
- Role of mediator
- Reports

e-commerce

# The Consumer Protection (E-Commerce) Rules, 2020.

## E-commerce – S 2(16)

- means buying or selling of goods or services including digital products over digital or electronic network

## Electronic service provider – S 2(17)

- means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites;

## E-commerce entity – R 3(b)

- 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;

## Grievance – R3(c)

- includes any complaints to an e-commerce entity regarding violations of the provisions of the Act and the rules made thereunder

## Inventory e-commerce entity – R 3(f)

- means an e-commerce entity which owns the inventory of goods or services and sells such goods or services directly to the consumers and shall include single brand retailers and multi-channel single brand retailers

## Marketplace e-commerce entity – R 3(g)

- means an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers;

## Platform – R 3(i)

- means an online interface in the form of any software including a website or a part thereof and applications including mobile applications;

# Scope and Applicability

- (a) all goods and services bought or sold over digital or electronic network including digital products;
- (b) all models of e-commerce, including marketplace and inventory models of e-commerce;
- (c) all e-commerce retail, including multi-channel single brand retailers and single brand retailers in single or multiple formats; and
- (d) all forms of unfair trade practices across all models of e-commerce:
- Rules shall apply to a e-commerce entity which is not established in India, but systematically offers goods or services to consumers in India

## E-commerce entity shall

- be a co. incorporated under Co. Act, 1956 or Co. Act, 2013 or a foreign company covered under S 2(42) of Co. Act, 2013; or
- an office, branch or agency outside India owned or controlled by a person resident in India as provided in S 2(v)(iii) of FEMA, 1999;

# Nodal person

- An e-commerce entity shall
- 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.

# Information to be displayed – R 4(2)

- Every e-commerce entity to provide following information in a clear and accessible manner on its platform, displayed prominently to its users
- (a) legal name of the e-commerce entity;
- (b) principal geographic address of HQ and all branches;
- (c) name and details of its website; and
- (d) contact details like e-mail address, fax, landline and mobile numbers of customer care as well as of grievance officer.

## Grievance redressal mechanism – R 4(4)

- Establish an adequate grievance redressal mechanism having regard to the number of grievances ordinarily received by such entity from India, 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.

- acknowledges the receipt of any consumer complaint within 48 hours and
- redresses the complaint within 1 month from the date of receipt of the complaint

# Imported goods or services for sale

- mention the name and details of any importer from whom it has purchased such goods or services, or who may be a seller on its platform.

# CHAPTER VI

## PRODUCT LIABILITY

..... claim for compensation under a product liability action for any harm caused by a defective product **manufactured** by a product manufacturer or **serviced** by a product service provider or **sold** by a product seller

# Product – S 2(33)

- means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs;

# Product liability – S 2(34)

- means the responsibility of a -  
product manufacturer or  
product seller,  
product service provider
- to compensate for any harm caused to a  
consumer by such defective product  
manufactured or sold or by deficiency in  
services relating thereto

## Product liability action – S 2(35)

- means a complaint filed by a person before a DC or SC or NC, for claiming compensation for the harm caused to him;

# Product manufacturer - S 2(36)

- means a person who—
- (i) makes any product or parts thereof; or
- (ii) assembles parts thereof made by others; or
- (iii) puts or causes to be put his own mark on any products made by any other person; or
- (iv) makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains such product or is otherwise involved in placing such product for commercial purpose; or
- (v) designs, produces, fabricates, constructs or re-manufactures any product before its sale; or
- (vi) being a product seller of a product, is also a manufacturer of such product;

# Product seller – S 2(37)

- means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose and includes—
  - (i) a manufacturer who is also a product seller; or
  - (ii) a service provider, but does not include—
    - (a) a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats;
    - (b) a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction;

- (c) a person who—
- (I) acts only in a financial capacity with respect to the sale of the product;
- (II) is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider;
- (III) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor;

## Product service provider – S 2(38)

- means a person who provides any service in respect of such product;

# Liability of product manufacturer

- manufacturing defect; defective in design; deviation from manufacturing specifications; does not conform to the express warranty; fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage
- A product manufacturer shall be 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.

# Liability of product service provider

- Service - faulty or imperfect or deficient or inadequate in quality, nature or manner of performance
- act of omission or commission or negligence or conscious withholding any information which caused harm
- did not issue adequate instructions or warnings to prevent any harm; or
- did not conform to express warranty or the terms and conditions

# Product seller who is not manufacturer

- exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product;
- altered or modified the product and such alteration or modification was the substantial factor in causing the harm;
- an express warranty of a product and such product failed to conform to the express warranty made by the product seller which caused the harm;
- identity of product manufacturer is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him

- failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions regarding the dangers involved or proper usage of the product and such failure was the proximate cause of the harm.

# CHAPTER VII

# OFFENCES AND PENALTIES

# OFFENCES AND PENALTIES

- Punishment for Manufacturing for sale or storing, selling or distributing or importing products containing adulterant
- Punishment For manufacturing for sale or for storing or selling or distributing or importing spurious goods
- Vexatious search

# CHAPTER VIII

# MISCELLANEOUS

# MISCELLANEOUS

- Measures to prevent unfair trade practices in e-commerce, direct selling, etc. – CG
- Compounding of offences
- Act not in derogation of any other law

**THANK YOU ALL**

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