

THE LEGAL COMPLIANCES OF E-COMMERCE ENTITIES UNDER THE CONSUMER PROTECTION ACT, 2019

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ABSTRACT

This paper attempts to analyze the Consumer Protection (E-Commerce) Rules, 2020 as enumerated by the Central Government to regulate the transactions in the digital market in India. With the wider application of the Consumer Protection Act, 2019 (“CPA, 2019”) to all goods or services bought or sold over the digital or electronic network, including digital products; marketplace e-commerce entities and inventory e-commerce entities; all e-commerce retail and unfair trade practices which falls within the definition as defined under the CPA, 2019 across all models of e-commerce, it is pertinent to discuss about the redressal mechanism which shall be available to a consumer in case his rights are violated. The Rules in addition to the duties and liabilities as seller, makes it mandatory for the foreign entities who carry on business in India through digital platforms, to appoint an Indian resident as a nodal person to ensure compliance with the CPA, 2019. Non-compliance with the rules will attract liability under the CPA, 2019 which may also result in fines or imprisonment. However, the question which needs to be answered is how far the redressal agencies under the CPA, 2019 can bring within its jurisdiction the foreign e-commerce entities. Will the nodal officer be vicariously responsible? Can they compel them to go for mediation? Thus, in this paper, the above-mentioned questions shall be discussed in length.

I. INTRODUCTION

The business of e-commerce is not a new phenomenon anymore. It has reached its zenith in India. The shift from traditional brick and mortar to the online purchase of goods and availing of services has opened the market so wide that it becomes difficult to trace the boundary to which it

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extends. The easy accessibility and the change in lifestyle of the people, coupled with the various offers available on online platforms inclines them to opt for the online purchase¹ of goods as well as to avail services. Thus, it is of utmost necessity that there needs to be in place certain regulatory frameworks so that the consumers do not find themselves in a helpless situation when any grievance creeps up. The consumers have the right to be protected against fraudulent, misleading or deceitful information and any other circumstances in which the consumer has to make an informed choice. The objective of consumer protection legislation is to prohibit unfair trade practices; to inform the consumers about quality, quantity, potency, price of the goods and services; to educate and to redress the consumers in case there is any defect in the goods or deficiency of services. These rights also extend to e-commerce transactions according to the Consumer Protection Act, 2019² (“**CPA, 2019**”) which has brought within its ambit e-commerce entities including foreign entities. E-commerce according to the CPA, 2019 means buying or selling of goods or services including digital products over a digital or electronic network.³ One of the challenges over sale of goods or services over electronic network is the territorial jurisdiction issue, where one cannot easily identify the place of contract or the jurisdiction where the contract was completed. With the acceptance of the terms and conditions in e-commerce transactions the buyer basically subjects oneself to the clauses of the seller without getting an opportunity to negotiate the terms. In such a situation when the goods received are defective or if there is any deficiency of service, the right to redressal of the consumers shall not be affected. The Consumer Protection Act, 1986 (“**CPA, 1986**”) failed to deal with those complexities which arose in the digital market. Thus, with the enactment of the 2019 Act, an attempt has been made to fill those gaps and protect the consumers in the digital platform. To provide a comprehensive legal framework to regulate the marketing, sale and purchase of goods and services online, the Ministry of

¹ D.K. Rigby, *The future of Shopping*, Harvard Business Review, available at <https://hbr.org/2011/12/the-future-of-shopping>, last seen on 24/12/2020.

² It has replaced the Consumer Protection Act, 1986 and was enacted on 9th August, 2019.

³ S. 2 (16), Consumer Protection Act, 2019.

Consumer Affairs, Food and Public Distribution has framed the Consumer Protection (E-commerce) Rules, 2020 (“**E-Commerce Rules**”). The E-Commerce Rules exhaustively deal with certain procedural requirements which need to be complied with by the e-commerce entities before offering goods and services in India. The violation of the Rules by any e-commerce entity, including a foreign entity, is liable for punishment as per the provisions of the CPA, 2019.⁴ In addition to the 2019 Act and the E-Commerce Rules, the entities who are engaged in e-commerce are also governed by numerous other regulations such as the Legal Metrology Packaged Commodities (Amendment) Rules, 2017, which requires all e-commerce entities to display certain information on their websites; The Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 which places specific conditions on marketplace entities with foreign direct investment; The Information Technology Act, 2000 which applies to electronic transactions and communications, and the Information Technology (Intermediaries Guidelines) Rules, 2011 which regulates intermediaries.⁵ However, the scope of this paper is limited only to the CPA, 2019, including the E-Commerce Rules which govern e-commerce entities and to look into whether the redressal agencies established under the CPA, 2019 can summon the foreign entities to its jurisdiction.

II. E-COMMERCE UNDER THE CONSUMERS PROTECTION ACT, 1986

Prior to the enactment of the CPA, 1986, the rights of consumers were scattered in various legislations in India. A comprehensive legislation on consumer protection in India was enacted in line with the United Nations Guidelines on Consumer Protection⁶ in 1986. With technological advancement, the E-Commerce market reached its own zenith, however there was no specific legislation to govern the E-Commerce entities in

⁴ Supra 3, Ss. 88, 89, 90 and 91.

⁵ *India: Consumer Protection (E-Commerce) Rules, 2020*, Mondaq, available at <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/980140/consumer-protection-e-commerce-rules-2020>, last seen on 24/12/2020.

⁶ U.N. General Assembly, *United Nations Guidelines for Consumer Protection*, Res. 39/248, Sess. 39, U.N. Document A/RES/39/248, available at https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf, last seen on 24/12/2020.

India. Under the CPA, 1986 complaints against online transactions were brought under the provisions of 'deficiency in service' under S. 2(1)(g) or 'unfair trade practices' under S. 2(1)(r) of the Act. Some of the major challenge(s) in electronic transactions is lack of transparency as to the parties to the contract, the place of jurisdiction, greater risk of fraud, problems relating to delivery, return of goods etc.

Some of the decisions of the consumer courts with respect to online transactions are reproduced herein. In the case of *Rediff.com India Ltd. v. Urmil Munjal*⁷, there was no Return Policy mentioned in the online portal; where the consumer on being dissatisfied with the product wanted to return, it was considered to be a 'deficiency of service' by the consumer court.

In one case, the consumer court could not reach to a concrete decision when an online transaction involved different jurisdictional areas.⁸

III. E-COMMERCE UNDER THE CONSUMER PROTECTION ACT, 2019

As discussed above, the CPA, 1986 failed to protect Indian consumers in the e-commerce market, which compelled the Government of India to enact a legislation to protect the 21st century consumers in the era of globalization. To unfold the discussion on the changes pertaining to the governance of E-Commerce under the CPA, 2019 it is important to look into some of the important definitions which has been explicitly inserted in the CPA, 2019 and analysis about the feasibility of its implementation.

- (i) E-consumer: One of the drastic changes which has been brought under the CPA, 2019 is to define who is an 'e-consumer'. Certainly, without a concrete definition about an e-consumer one cannot even think about protecting e-consumers rights in the E-Commerce market. To enjoy the rights provided under the repealed Act as well as the recent CPA, 2019, it is necessary for an aggrieved person to fall within the definition of a consumer. This was

⁷ *Rediff.com India Ltd. v. Urmil Munjal*, 2013 SCC OnLine NCDRC 348.

⁸ *Rajinder Chawla v. M/s Make My Trip India Pvt. Ltd.*, First Appeal No. 355/2013 (SCDRC Chandigarh, 22/08/2013).

certainly the biggest challenge which was posed before an aggrieved person prior to the new definition. The new definition of a consumer includes both online and offline purchases⁹.

S. 2(7) of the CPA, 2019 defines a “consumer” as any person who—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

The two category of consumers who are excluded from the purview of the Act are:

- i. Any person who purchases any goods or avails any service for resale, or;
- ii. For any commercial purpose.

The ambit of the term ‘Commercial Purpose’ has been slightly altered under the CPA, 2019 which excludes any goods bought and used exclusively for the purpose of earning one’s livelihood by means of self-employment.¹⁰ This certainly means that any person who buys goods or avails any services online for earning his livelihood will be governed by the provisions of the CPA, 2019.

⁹ Supra 3, Explanation (b) of S. 2 (7).

¹⁰ Supra 3, Explanation (a) of S. 2 (7).

- (ii) Deficiency of Service: The E-Commerce entities prior to the enactment of CPA, 2019 could be held liable for deficiency of services only on limited grounds. However, the gap has been fixed under Section 2(11) of CPA, 2019, which in addition to any fault, imperfection or inadequacy in the quality, which is expected to be maintained and regulated in accordance with the law in force or in accordance with a contract/agreement undertaken by a person with respect to the products and goods, also includes any act of negligence or omission or commission and deliberate withholding of relevant information by such person due to which a consumer had to suffer loss or injury. The comprehensive definition will certainly protect the rights of the e-consumers too.
- (iii) The Consumer Disputes Redressal Agencies: The Consumer Disputes Redressal Agencies were established under the CPA, 1986 to redress the grievances of the consumers, which at its inception was far beyond the foresight of the legislators about e-consumers. An aggrieved consumer can approach the consumer redressal agencies when there is a defect in goods or deficiency of services. The defaulted E-Commerce entities prior to the enactment of the CPA, 2019, were also brought under the unfair trade practices clause in the absence of a concrete legal provision. The CPA, 2019 has made a drastic change in the process of initiating a complaint, whereby any aggrieved consumer can register the complaint electronically.¹¹ In addition to e-filing of complaints the entire edifice of adjudication has been streamlined by authorizing District Forums and State Commissions to address, to review applications and also advice mediation wherever possible,¹² thus making the process time efficient which was the intention behind establishing consumer redressal agencies parallel to civil courts. The pecuniary jurisdiction of the three-tier redressal agencies has been enhanced one more time under the present CPA, 2019. The District Forum

¹¹ Ibid., S. 17.

¹² Ibid., S. 37.

is now entitled to hear disputes from claims of INR 1 crore or less; the State Commission can hear disputes from claims of INR 10 crores or less, and the National Forum to hear disputes above INR 10 crores. With the enhancement of the pecuniary jurisdiction of the District Forum to hear claims which do not exceed INR 1 crore rupees, it is evident that the number of complaints will also increase. To illustrate further, if 'A' is an e-consumer who has purchased a diamond set worth INR 75 lakh from 'Z' e-commerce website, 'A' needs to approach the District Forum first, and if not satisfied with the decision can then appeal to the State Commission and further to the National Commission. The entire process will consume more time of a consumer to get their rights redressed. Even under the CPA, 1986 the pendency of cases under the consumer disputes redressal agencies have drawn much attention. Additionally, the vacancies, infrastructural deficiencies added to the disadvantage. Efforts should be made to overcome the deficiencies which has been witnessed under the CPA, 1986. The CPA, 2019 certainly demands improved infrastructural requirements with internet connectivity to dispose of e-complaints. Even the members must undergo compulsory training to be familiar with the process of receiving e-complaints and disposing it off.

(iv) Online Consumer Mediation Centre: In order to redress the grievances of the e-consumers in India, the Online Consumer Mediation Centre was established at National Law School of India University, in 2016, under the aegis of the Ministry of Consumer Affairs, Government of India.¹³ The objective of the Centre is to use mediation as a tool to resolve consumer disputes with e-commerce entities. The Centre is wholly dedicated to resolve e-commerce disputes through face-to-face mediation and online mediation. The medium of mediation to resolve consumer disputes has now been explicitly provided under the CPA, 2019. Resolving

¹³ *The Consumer Grievance Redressal Mechanism of E-Commerce Sites*, National Law School of India University, available at <https://clap.nls.ac.in/wp-content/uploads/ConsumerGuide/8E-COMMERCE.pdf>, last seen 05/05/2021.

disputes amicably is better in many ways, it not only takes less time to arrive at an agreement, also saves money.

The CPA, 2019 has tried to fix the loopholes which existed under the CPA, 1986 with respect to the protection of consumer rights in e-commerce in India. The comprehensive rules which are required to be adhered to by an E-Commerce entity to carry on business in India is provided under the E-Commerce Rules. The next part of the paper critically analyzes the E-Commerce Rules which an E-Commerce entity, who is already carrying business in India or for any new e-commerce entity has to comply with while offering goods or services in India.

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

1. To Whom are the E-Commerce Rules Applicable?

The governance of any e-commerce entity who directly or indirectly offers goods or services to consumers in India must necessarily abide by the E-Commerce Rules. The ambit of the E-Commerce Rules extends to all goods and services bought or sold over digital or electronic network including digital products; all models of e-commerce including marketplace e-commerce entities¹⁴ and inventory e-commerce entities¹⁵; all e-commerce retail including multi-channel single brand retailers and single brand retailers in single and multiple formats; all forms of unfair trade practices¹⁶ across all models of e-commerce.¹⁷ According to sub clause (2) of Rule 2 of E-Commerce Rules, “*These rules shall apply to an e-commerce entity which is not established in India, but systematically offers goods or services to consumers in India.*” However, the word systematically is not defined and is open for interpretation. To cite an illustration, if a foreign website sells goods online and does not categorically offer its products only in India (which means

¹⁴ Marketplace Entities are those entities which provide an information technology platform to facilitate transactions, while Inventory Entities own the inventory of goods/services and sell them directly to consumers. The E-Commerce Rules also apply to entities which are not established in India but systematically offer goods or services to consumers in India.

¹⁵ Ibid.

¹⁶ Supra 3, S. 2 (47).

¹⁷ Rule 2 (1), The Consumer Protection (E-Commerce) Rules, 2020.

that it has a global outreach), it raises a moot point that whether these rules would be applicable on such websites. Certainly, these rules cannot be imposed on other nations without undergoing their process of ratification.

2. Consumer Complaints and Jurisdictional Aspect

The most pertinent issue concerning E-Commerce entities is the complex web or sequence of events, which extends to multiple countries and jurisdictions. For instance, it is possible to order a book online by a consumer present in India, while the seller, the server connection, and the headquarters of the Internet Service Provider are present in 3 different countries with different jurisdictions and all of these elements together make an online order possible. Therefore, dilemma arises as to where the consumer needs to seek redressal i.e., under which jurisdiction should a consumer take its grievance in case a dispute arises? The jurisprudence regarding jurisdictional issues where the defendant is not a habitual resident of the forum state, started developing in the United States (“US”) and the European Union (“EU”) in cases that are discussed below:

2.1 Jurisdictional aspects in the US

The doctrine of Minimum Contract, the primary rule regarding cross-border jurisdiction, was first established in the US through *International Show Co. v. Washington*¹⁸. It established a dual test in which the plaintiff, in order to show a sufficient ‘minimum contracts’ in the forum state, would have to establish that the defendant either purposefully directed, or purposefully availed itself of the privilege to conduct business in the forum state, or delivered one’s product into the stream of commerce in the forum state. Moreover, the traditional notions of fair play and substantial justice must not be violated,¹⁹ if the court assumes personal jurisdiction against the defendant. To show personal jurisdiction, sufficient ties or connections must be there between the forum state and defendant, and the minimum contracts doctrine is the litmus test to establish the same so that a

¹⁸ *International Show Co. v. Washington*, 326 U.S. 310 (1945, Supreme Court of the United States).

¹⁹ *Ibid.*

judgement can be passed *in personam*. Ultimately, the question is whether the defendant's 'minimum contacts' with the forum state can cause him to reasonably anticipate being sued in the forum state's Court. In *Burger King Corp v. Rudzewicz*,²⁰ it was held that the contracts referred to by plaintiff must not be random or fortuitous, but those contracts should result from "actions by the defendant himself that created a substantial connection with the forum state."

2.2 European Approach

The European approach is similar. Brussels I, an attempt to modernize the original Brussels Regulation, had a similar approach as discussed above.²¹ Brussels I confirmed the conventional view that the consumer is the weaker party. According to Article 15(1)(c)²² of the Regulation and also Article 6(1) of the Rome I Regulation²³, if the business targets its customers in a particular country, the business should be subject to the protective rules which either assign jurisdiction to that state or apply the national law of that state to govern the contract. Brussels I Regulation invokes the burden on the plaintiff to prove that the advertisement or online offer was specifically addressed towards the website user i.e., plaintiff. It suffices, for the purpose of the provision, that the online vendor directs its activities to the Member State, or any part of it where the consumer is domiciled. The above reasoning can be applied in case of India as well.

2.3 Indian Stance

The CPA, 1986 failed to resolve the cross-border e-commerce transactions as it did not contain any specific provisions to redress the same. Prior to

²⁰ *King Corp v. Rudzewicz*, 471 U.S. 462 (1985, Supreme Court of the United States).

²¹ European Union, *Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, O.J. L 12/1 (16/01/2001), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R0044&from=EN>, last seen on 05/04/2021.

²² *Ibid*, Art. 15 (1) (c).

²³ Art. 6 (1), *European Union, Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)*, O.J. L 177/6 (04/07/2008), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008R0593&rid=2#d1e538-6-1>, last seen on 05/04/2021.

the enactment of the CPA, 2019 the jurisdictional aspect was governed by the Information Technology Act, 2000. It was pertinent that the ambit of the CPA, 1986 be given a wider perspective to include within its clutches the e-commerce transactions which take place between a consumer in India and any other entity outside the territory of India. In India, Section 20 of the Civil Procedure Code, 1908 (“**CPC**”) is the primary statutory provision responsible to govern jurisdictional questions related to civil matters. It states that a plaintiff could initiate an action either at the place where the defendant ordinarily resides or carries business or at the place where the cause of action arose.²⁴ The provisions of Section 20 of CPC are *para materia* to Section 34(2) (District Forum) and Section 47(4) (State Commission) of CPA, 2019. Thus, the rationale held in judgements suggestive of jurisdictional issues under Section 20 of CPC could be used as precedent in cases filed under consumer fora too as the consumer courts have now been granted jurisdiction to adjudicate over consumer complaints against e-commerce entities.

The applicability of Section 20 CPC was extensively used in *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy*²⁵ (“**Banyan Tree**”) which held that in absence of a “*long arm statute*”, the plaintiff would have to show that the defendant “*purposefully availed*” itself of the jurisdiction of the forum court. A dual obligation is put forth on the plaintiff to prove the “*purposeful availment*”, which encompasses that the defendant’s use of the website was with an intention to commence a commercial transaction with the website user, and that such commercial transaction resulted in an injury or harm to the plaintiff, should occur within the forum court. The court in this case also held that:

For the purposes of Section 20(c) CPC, in order to show that some part of the cause of action has arisen in the forum state by the use of the internet by the Defendant, the Plaintiff will have to show prima facie that the said website, whether euphemistically termed as “passive plus” or “interactive”, was specifically targeted at viewers in the forum state for commercial transactions. The Plaintiff would have to plead this and produce material to prima

²⁴ S. 20, The Code of Civil Procedure, 1908.

²⁵ *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy*, (2010) 42 PTC 361.

facie show that some commercial transaction using the website was entered into by the Defendant with a user of its website within the forum state resulting in an injury or harm to the Plaintiff within the forum state.

Thus, a mere interactive website with no commercial activity whatsoever by the plaintiff in the forum state would not attract the jurisdiction of the forum state, as there has been no harm or injury *per se*. Moreover, it was held that the plaintiff had the burden to prove the intention of the defendant to conclude a commercial transaction with the website user.

A judgement which was indicative of the precedent of *Banyan Tree* and affirmed the decision held was that in *World Wrestling Entertainment Inc. v. M/s. Reshma Collection*²⁶. *Inter alia*, the court observed that “*the availability of transactions through a website at a particular place is virtually the same thing as a seller having shops in that place in the physical world*” and thus held that it had the jurisdiction to entertain the suit. The same analogy can also be applied in case of jurisdictional disputes with respect to e-commerce transactions.

To ensure that the e-consumer rights are not affected due to the jurisdictional uncertainty, in addition to the insertion of specific provisions under the CPA, 2019, the E-Commerce Rules lays down a detailed provision to resolve such matter smoothly. The aspects relating to enforceability of the provisions of the E-Commerce Rules to the foreign business also remain to be clarified given that handling a dispute involving a foreign entity may have territorial and jurisdictional constraints. Through the E-Commerce Rules it would now be a mandatory provision for all the foreign entities who wish to carry on business in India to appoint a Nodal Officer who shall be the representative to redress the consumer grievances before bringing it before the Consumer Courts. This indeed would resolve the dispute with respect to jurisdiction.

3. Appointment of Nodal Officer

²⁶ *World Wrestling Entertainment Inc. v. M/s. Reshma Collection*, (2014) 58 PTC 52.

As pointed out in *Sri Kunal Bahl, Chief Executive Officer v. State of Karnataka*,²⁷ an intermediary as defined under Section 2(w) of the Information Technology Act or its directors/officers would not be liable for any action or inaction on part of a vendor/seller making use of the facilities provided by the intermediary in terms of a website or in a market place. Thus, directors/officers of marketplace E-Commerce entity cannot be held vicariously liable for the actions of third-party sellers if due-diligence²⁸ has been committed by the e-commerce entity to intimate seller of their rights and duties, as the E-Commerce entity cannot control and check all the goods which are being sold on the website.

As per CPA, 2019, to ensure compliance with the provisions of the Act or the E-Commerce Rules, an E-Commerce entity has an obligation to appoint a nodal officer of contact or an alternate senior designated functionary who is resident in India.²⁹ The E-Commerce Rules do not, however, set out any clarification if he will be vicariously liable, and the qualifications of such nodal officer are also not provided. This also will be an additional cost on the part of the E-Commerce entities who wish to offer goods or services to consumers in India. Whether the nodal person will be the point of contact for all the consumers from different parts of India who transact through e-commerce entity is something which is not clearly provided in the E-Commerce Rules. It would certainly be important for the nodal officers to be well versed with varied languages as the consumers would generally be comfortable in conversing in their native language. The nodal officers will be under an obligation to resolve the disputes within a period of one month after acknowledging the complaint within 48 hours³⁰ which is a welcome provision to restrict the number of cases to go before the redressal agencies.

4. Consent of the Consumers

²⁷ *Sri Kunal Bahl v. State of Karnataka*, CrI.P. No. 4676 & 4712 of 2020 (Karnataka High Court).

²⁸ Rule 3, Information Technology (Intermediary Guidelines) Rules, 2011.

²⁹ *Supra* 16, S. 4 (1) (a).

³⁰ *Ibid*, S. 4 (5).

Before the enactment of the E-Commerce Rules, the e-consumer had to mandatorily accept the terms and conditions of the E-Commerce entity, if he chooses to purchase a good or avail any services. The consent of the E-Consumers was not taken into consideration. Under the CPA, 1986, consumers did not have a choice but to consent to the checkboxes provided. Rule 4(9) is a welcome provision where it makes it mandatory on every E-Commerce entity to only record the consent of a consumer for the purchase of any good or service offered on its platform where such consent is expressed through an explicit and affirmative action thus doing away with the practice of recording the consent automatically in the form of pre-ticked checkboxes.

For the consumers to make an informed choice at the pre-purchase stage from market E-Commerce entities, Rule 5(d) of the E-Commerce Rules has made it an obligation to highlight the 'country of origin' of the goods. However, the challenge will be when a single product has multiple 'country of origin'. Also, the E-Commerce Rules are not applicable to inventory e-commerce entities.³¹

5. Cancellation Charges

Rule 4(8) intends to provide equal liability on both the consumers and the entity in terms of imposing cancellation charges. Unless the E-Commerce entity is ready to bear similar expenses when they cancel any order unilaterally for any reason, they are prohibited to impose any cancellation charges on the consumers as well. However, the imposition of cancellation charge should be something which needs to be decided on case-to-case basis depending upon the genuineness of the reasons cited.

6. Grievance Redressal Mechanism of Service provider

The first step that an aggrieved consumer should think of is approaching the competent Grievance Redressal Mechanism or regulatory bodies

³¹ PTI, *Delhi HC asks govt to verify if e-commerce sites display country of origin on products*, The Print, available at <http://theprint.in/judiciary/delhi-hc-asks-govt-to-verify-if-e-commerce-sites-display-country-of-origin-on-products/563720/>, last seen at 24/12/2020.

maintained by the service providers only. For instance, many companies and organizations have their internal grievance redressal mechanism and before resorting to legal means against the service provider, an aggrieved consumer can approach this mechanism, which has a dual advantage of being cost and time effective. In order to circumvent the judicial process of consumer complaint, the aggrieved consumer could also send a legal notice to the service provider encompassing all the essential details such as particulars of complaints, relief sought, and any other detail necessary to be brought before the service provider. However, as this action is not essential, the consumer could directly approach the consumer court too. The advantage of sending a legal notice prior is the chance of effective settlement in timely manner of both the consumer and service provider, as the complaint might get resolved prior to availing statutory remedies which is a very lengthy process. However, if the service provider disregards the notice, the complainant has the right to file a legal complaint.

IV. CONCLUSION

The CPA, 2019 is a welcome legislation to deal with the complexities arising out of transactions in the digital market which the CPA, 1986 failed to deal with. The benevolent and beneficial legislation intends to protect the rights of the consumers not only from defect in the goods or deficiency in services, but also from misleading facts, advertisements and from unfair trade practices. The expansion of the ambit of this legislation to both national and foreign e-commerce entities has made its applicability extra-territorial in nature by making it an obligation for any e-commerce entity who wishes to offer goods and services to the consumers in India to comply with the provisions of the CPA, 2019 and the E-Commerce Rules framed in that regard. The mandatory requirement on the part of an E-Commerce entity to appoint a Nodal officer to deal with the consumer complaints, can help reduce the burden on the Consumer Disputes Redressal Agencies as most of the complaints can be now resolved in the bud by the Nodal officers. However, it does not prohibit any consumer from approaching the Courts without approaching the Nodal officer. Since

the Nodal officer will act as a mediator between the consumer and the e-commerce entity, it is pertinent that the position shall be occupied by a person who possesses the requisite skills and qualifications to resolve disputes. However, the E-Commerce Rules have failed to provide the qualifications which a Nodal officer has to possess. Also, in case if an E-Commerce entity fails to comply with any of the Rules, can the Nodal officer be held vicariously liable? The E-Commerce Rules are silent with respect to such a situation. Thus, the liability of the Nodal officer needs to be clearly stated. Additionally, the dispute with respect to jurisdiction in cross-border e-trade certainly poses as an impediment in providing speedy justice to the consumers. The awareness amongst the consumers about the provisions of the Act as well as the Rules will help in proper implementation of the Act. Since the E-Commerce Rules are novel to both the consumers as well the E-Commerce entities, we need to wait and watch whether the e-commerce entities have made the necessary changes to carry on their business in India in a consumer-friendly manner. The e-commerce entities also need to comply with the requirements under certain other legislations as mentioned. It can be concluded that the E-Commerce entities will be booked for violation of the provisions under the CPA, 2019 and for failing to comply with the E-Commerce Rules framed by the Central Government. However, the success of the Act will depend upon overcoming the hurdles faced during the enforceability of the Rules, also the awareness and vigilance amongst the consumers about their rights and due procedures established to protect them in the digital market in India.