

BROAD ANALYSIS OF CONSUMER PROTECTION (E-COMMERCE) RULES, 2020¹

1. Introduction

Who doesn't like shopping? And especially when its window shopping. Earlier people had to go out for window shopping but now digitalisation has made it very easy. Now our window is our electronic gadget, we can sit at home and do window shopping from online shops all over the world just by opening different e commerce platforms. Right from eighteen years old to eighty years old, everyone can buy whatever products they want through e commerce platforms.

Due to this vast increase in usage of e commerce platforms, government felt the need to introduce comprehensive rules and regulations to regulate activities of e commerce entities and protect interests of consumers and Consumer Protection (E-Commerce) Rules, 2020 were released on 23rd July 2020 (hereinafter referred to as "Rules")

2. Applicability of (E-Commerce) Rules, 2020²

Currently Rules are applicable to two models namely e-commerce entity³ and inventory e-commerce entity⁴. Basically, these Rules apply to all goods and services bought or 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. These Rules have been passed to remedy all forms of unfair trade practices across all models of e-commerce.

Exception - However, Rules do not apply to any activity of a natural person carried out in a personal or individual capacity not being part of any professional or commercial activity undertaken on a regular or systematic basis. Here Rules have made exception to

¹ The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

² Consumer Protection (E-Commerce) Rules, 2020

³ "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.

⁴ "inventory e-commerce entity" 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.

its application but this exception needs to be analysed appropriately in light of the extensive duties imposed on e-commerce entities.

Let us understand this exception by taking example.

1. **First scenario** – Mr. X is an employee of ABC online e commerce entity and promotes ABC's products by wearing his entity's cap, t shirt with messages and punchlines etc. Here since Mr. X is promoting ABC entity's product as an employee and he is getting commercial gains against such promotion. Therefore, Mr. X's activity cannot be excluded by this exception and such activities adopted by e-commerce entities shall be governed by the Rules.
2. **Second scenario** – Mr. X is promoting ABC's product on his personal social media platform as he has a good experience of this product, and he wishes to share his experience with everyone. In this scenario, Mr. X's activity is in personal capacity, and he is not getting commercial gains out of it, therefore this can be an example of the above exception. However, if he carries on this activity regularly or gets an indirect benefit out of an engagement then the Rules should apply to this activity as well.

Bombay High Court recently analysed the role of influencer through the judgement *Abhijeet Bhansali vs Marico Limited*⁵. The Single judge bench had granted an injunction against a specific video uploaded by the Appellant on the grounds that the Appellant was a social media influencer and that contents of the video were disparaging and misleading. However, the Division Bench permitted the Appellant to upload the video with certain modifications.

Thereafter, on 27 May 2021, Advertising Standards Council of India (ASCI) released the final 'Guidelines For Influencer Advertising In Digital Media' (Guidelines).

⁵ INTERIM APPLICATION NO. 1 OF 2020 in COMMERCIAL APPEAL (L) NO. 31 OF 2020

3. Duties and Responsibilities of e-commerce entity and inventory e-commerce entity

The whole and sole purpose of these Rules is to prevent unfair trade practices. Rules provided few Dos and Don'ts in the form of Duties and Responsibilities which entities must adhere to.

Following duties, liabilities and responsibilities are identified as common for both e-commerce entity and inventory e-commerce entity –

- A) **Providing Information to consumers:** Both the entities are required to provide information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redressal mechanism, customer care helpline number, notices, breakup price for the good or service, ticket/complaint number etc. in a clear and accessible and prominent manner on its platform.
- B) **No falsification:** No entity should falsely represent itself as a consumer and post reviews.
- C) **Consistent Advertisements:** Entity required to ensure that the advertisements of goods or services are consistent with the actual characteristics of such goods or services.
- D) **Refund for defective or spurious Goods:** No entity should refuse to take back goods or discontinue services or refuse to refund consideration, if such goods or services are defective, deficient or spurious, or not of the characteristics or features as advertised or as agreed to, or there is a delayed delivery.

Few important Duties on e-commerce entity –

A) E-commerce entity shall provide the following information in its platform:

- Legal name
- Principal geographic address of its headquarters and all branches
- Name and details of its website
- Contact details- email, fax, landline and mobile numbers of customer care including grievance officer.

B) Appointment of Grievance officer: The details of the officer have to be displayed and Rules make it mandatory that the Grievance Officer shall acknowledge the receipt of

consumer complaint within 48 (Forty-eight) hours and redress the complaint within 1 (one) Month from the date of receipt of the complaint.

- C) **Effect all payments** : Payments are to be effected towards accepted refund requests of the consumers as stipulated by RBI or any other competent authority under any law, within reasonable time. There is no timeline mentioned.
- D) **Maintaining Records of Sellers who have offered infringing products** : Rules impose a vague responsibility by stating that e commerce entities should make **reasonable efforts** to maintain a record of information allowing identification of sellers who have repeatedly offered goods or services that have previously been removed or access to which has previously been disabled under the intellectual property laws. Considering the seriousness of infringing products being on sale, would it not be advisable to keep the obligation mandatory instead of it being subject to reasonable efforts.

Restrictions

E-commerce entity shall not:

- impose cancellation charges on consumers cancelling after confirming purchase unless similar charges are also borne by e-commerce entity, if they cancel the purchase order unilaterally for any reason.
- manipulate the price of goods or services to gain unreasonable profit by imposing unjustified price.
- adopt any unfair trade practice, whether in the course of business on its platform or otherwise.

4. Jurisdiction

Usually, foreign entities use jurisdiction clauses for their home jurisdiction and the applicability of Indian laws may be excluded. However, the unique feature of these Rules is, it also applies to an e-commerce entity which is not established in India, but systematically offers goods or services to consumers in India. This gives relief to the consumers in India who wish to purchase products from international websites or applications. Although above provision has been made in the Rules, generally foreign entities subject their platform usage to rules of their home jurisdiction and the applicability of these Rules will have to be seen.

5. Conclusion

Benefits - The Rules are not burdensome to the entities but on the contrary, there is clarity now. Earlier there were no actions specified as prohibited, therefore there was a scope for confusion. However due to the introduction of the Rules e commerce entities have clear dos and don'ts. The entities should create proper standard operational procedure SOP to adhere to the Rules and avoid noncompliance.

Lacuna – Rules also have some lacunas e.g., Rules do not bifurcate between different levels of entities and determination of prices of products as per their business's size, growth etc., manipulation of prices is prohibited, however clarity with respect to what is exact manipulation of prices is missing, Rules are silent on the jurisdiction point and further clarity on these aspects could help.

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