

New Consumer Protection Law – Caveat Emptor to Caveat Venditor

The Consumer Protection Act, 2019 ('CPA 2019') received Presidential assent on August 9, 2019. After a substantial delay, vide various notifications between July 15, 2020 and July 24, 2020, the provisions of the CPA 2019, including the provisions relating to product liability, unfair trade practice, unfair contracts, misleading advertisement, establishment of Central Consumer Protection Authority, provisions relating to e-commerce and procedural changes with regard to consumer redressal have been notified by the Ministry of Consumers Affairs, Food and Public Distribution ('Ministry of Consumer Affairs'). Thus, the said provisions have now come into effect.

There has been a paradigm shift from the erstwhile Consumer Protection Act, 1986 ('CPA 1986') to CPA 2019. This Client Alert provides an insight into some of the important provisions of the CPA 2019.

Introduction of a separate chapter relating to product liability

Although product liability was addressed in the CPA 1986, the scope and extent of the same was limited. In CPA 2019, a separate chapter, Chapter VI, titled 'product liability', has been inserted and the scope of product related liabilities has been significantly widened. Further, any harm caused due to a defective product is also considered for the purposes of ascertaining product liability.

Under the CPA 2019, 'product liability action' is defined as "a complaint filed by a person before a District Commission or State Commission or National Commission, as the case may be, for claiming compensation for

the harm caused to him¹". The 'harm' in relation to product liability has also been defined, and includes the following:

- "(i) damage to any property, other than the product itself;
- (ii) personal injury, illness or death;
- (iii) mental agony or emotional distress attendant to personal injury or illness or damage to property; or
- (iv) any loss of consortium or services or other loss²...."

Product related liabilities have been fixed on the product manufacturer, as well as the product seller and the product service provider. Circumstances when the aforesaid persons can be held responsible and liable have been specified.

Accordingly, the product manufacturer would be liable *inter alia* under the following circumstances³:

- a. manufacturing defect or defect in design or deviation from manufacturing specifications; or
- b. the product does not conform to the express warranty; or
- c. the manufacturer fails to provide adequate instructions for usage of the product.

The CPA 2019 does not make any distinction between domestic and foreign manufacturers. Hence, foreign manufacturers are also liable under this law, and consumers may institute complaints against them before the appropriate forum. However, enforcement of orders against foreign manufacturers will be a challenge.

¹ Section 2(35) of the CPA, 2019

² Section 2(22) of the CPA, 2019

³ Section 84 of the CPA, 2019

The product seller may also be held liable *inter alia* under the following circumstances⁴:

- a. the product seller has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
- b. has altered or modified the product, and such alteration or modification was the substantial factor in causing the harm; or
- c. has made an express warranty of a product independent of any express warranty made by the manufacturer; or
- d. the product has been sold by the product seller and the identity of the product manufacturer of such product 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 Indian law, or the order, if any, passed, or to be passed, cannot be enforced against him.

Further, the product service provider⁵ would *inter alia* be held liable when the service provided was faulty or imperfect or deficient, or there was an act of omission or commission or negligence, or there was a conscious withholding any information, or the service did not conform to the express warranty or the terms and conditions, amongst other factors.

Inclusion of a comprehensive chapter in the CPA 2019 dealing with product liability coupled with the clearly spelt out definitions will provide more grounds to consumers to file consumer complaints, thereby imputing more obligations and liability on the product manufacturer, product seller and product service provider.

Expansion of definition of 'unfair trade practice' in CPA 2019

The scope and definition of 'unfair trade practice'⁶ under the CPA 2019 has been

considerably expanded. The new inclusions are as follows:

- i. *failure or non-issuance of a bill or a cash memo;*
- ii. *refusal to take back or withdraw defective goods or withdrawal or discontinuance of deficient services or refusal to refund the consideration amount paid within the period as stipulated in the bill or cash memo or receipt or in the absence of such stipulation, refusal to withdraw or refund goods or services within thirty (30) days; and*
- iii. *disclosure of consumer's personal information to any other person unless such disclosure is made in accordance with the provisions of any law for the time being in force or in public interest.*

The aforementioned inclusions are in addition to the six types of 'unfair trade practices' previously covered under the CPA 1986. The inclusions of the two new types of 'unfair trade practice' mentioned above in points (i) and (ii) are significant as the same 'presuppose' the existence of a defective product or deficient service. Further, the addition of point (iii) above may have implications for companies with respect to additional compliance in respect of protecting the data of consumers, which is in line with the proposed data protection regime in India.

Introduction of definition of 'unfair contracts' in the CPA 2019

The CPA 2019 has added a definition of 'unfair contract'⁷, which broadens the grounds available to consumers to file complaints and allows them to challenge contracts which are unfair, unilateral and unreasonable. Under the CPA 2019, an 'unfair contract' has been defined to include contracts between a manufacturer or trader or service provider and a consumer, whereby the terms of the

⁴ Section 86 of the CPA, 2019

⁵ Section 85 of the CPA, 2019

⁶ Section 2(47) of the CPA 2019

⁷ Section 2(46) of the CPA, 2019

contract have a substantial impact on the consumer's rights.

The impact of inclusion this definition can be seen on e-commerce platforms and also on banks and financial institutions, where consumers are made to agree to standard terms for availing services, with little or no scope for negotiation. Additionally, the CPA 2019 has given wide powers to the State and National Commission to declare any terms of a contract as null and void which are unfair to any consumer as per the definition of 'unfair contract' under the CPA 2019.

Therefore, entities such as banks and financial institutions and e-commerce platforms may need to review their present terms and conditions to ensure that they do not fall under the definition of 'unfair contract'.

Introduction of separate definition of 'misleading advertisement'

The CPA 2019 has expressly defined the term 'misleading advertisement'⁸ in relation to any product or service as follows:

- i. falsely describing the product or service; or
- ii. giving false guarantee, or a guarantee that is likely to mislead consumers regarding the nature, substance, quantity or quality of such product or service; or
- iii. conveying an express or implied representation which would constitute an unfair trade practice; or
- iv. deliberately concealing important information.

Thus, similar to the CPA 1986 wherein misleading facts/information were part of 'unfair trade practice', in the CPA 2019, a misleading advertisement falling under the definition provided above would be considered to be an 'unfair trade practice'.

⁸ Section 2(28) of the CPA, 2019

The Central Consumer Protection Authority (elaborated below), in cases of misleading advertisement, may impose a penalty of up to INR 1,000,000 on the manufacturer or the endorser or the service provider for a first-time offence, and for any subsequent offence, a penalty up to INR 5,000,000 may be imposed. Additionally, the manufacturer or the service provider, in addition to a fine, may also be subject to imprisonment up to a term of two (2) years for the first-time offence, and for any subsequent offence, the manufacturer or the service provider may be imprisoned for a term up to five (5) years.

Establishment of the Central Consumer Protection Authority

The Central Government, with effect from July 24, 2020, has established a new authority, namely the Central Consumer Protection Authority ('CCPA'), under the CPA 2019 as a body corporate having its headquarters in New Delhi. The CCPA would be the central authority which shall, amongst other duties/functions, protect, promote the rights of consumer as a class, prevent unfair trade practices, and ensure that no false or misleading advertisement is made or published. The CCPA has been given powers to inquire into or cause an inquiry or investigation to be made into any violation of the law, either *suo motu* or on a complaint received or on the directions from the Central Government. Further, the powers accorded to the CCPA also include *inter alia* the following:

- a. file complaints before the commissions at district, state and national level;
- b. intervene in any proceeding of commissions at district, state and national level; and
- c. review matters and recommend remedial measures.

Therefore, the CCPA has wide powers and shall act as a national level regulator to

regulate the marketplace to protect the interest of consumers.

Specific provision preventing unfair trade practices in e-commerce

On July 23, 2020, the central government has also notified the Consumer Protection (E-Commerce) Rules, 2020 ('E-Commerce Rules') to deal with instances of unfair trade practice in the e-commerce business. The E-Commerce Rules address the surge in complaints against e-commerce entities, and the lack of proper procedures for resolution of such consumer grievances. With the notification of the relevant sections and rules made thereunder, action *qua* e-commerce entities can be initiated, and such entities may be penalised for any unfair trade practice that they undertake. The E-Commerce Rules expressly define '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*'.

Another significant addition in the said rules is that 'e-commerce entity' shall not only include a company or a foreign company, but also an office, branch or agency outside India owned or controlled by a person resident in India as per the provisions of the Foreign Exchange Management Act, 1999.

The E-Commerce Rules have imposed duties on e-commerce entities to not present false information about goods or services, and display details of the sellers offering goods and services, 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, and any other information deemed necessary which would enable the consumer to make an informed decision. Further, it imputes duties on sellers as well, and provides that sellers must not refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration

if such goods or services are defective, deficient or spurious, etc.

Salient procedural changes made under the CPA 2019

The CPA 2019 envisages various procedural changes aiming to ease and speed up the process of filing consumer complaints, and attempts to resolve disputes early by increasing the pecuniary jurisdiction of the commissions and introducing mediation cells.

Some of the major procedural changes are as follows:

- i. The pecuniary jurisdiction of the consumer commissions has been enhanced as follows:

S. No.	Consumer Commission	Pecuniary Jurisdiction
1.	District Commission	Up to INR 10,000,000
2.	State Commission	INR 10,000,000 to 100,000,000
3.	National Commission	Above INR 100,000,000

- ii. Consumers can also file a case where they reside, besides instituting the case where the opposite party works for gain or ordinarily resides or carries on its business.
- iii. The limitation period for filing of appeals to the State Commission has been increased from thirty (30) to forty (45) days.
- iv. The party intending to appeal against an order would need to deposit 50% of the amount ordered by the District/State Commission before filing the appeal to State/National Commission respectively. Similarly, for an appeal to the Supreme Court against an order, the opposite party would need to deposit 50% of the amount ordered by the National Commission before filing the appeal.

- v. An appeal to the National Commission can only be made when there is a substantial question of law involved in the matter.
- vi. The CPA 2019 has also increased the quantum of punishment that a commission can award in a dispute. The punishment for manufacturing for sale or storing, selling or distributing or importing products containing an adulterant or spurious goods have been substantially increased. In addition to the fine which may be imposed, the responsible party may also be imprisoned.
- vii. The CPA 2019 provides for establishment of mediation cells at the district, state and national level, which would be attached to the respective commissions.

Conclusion

The CPA 2019 has made several significant changes to the consumer protection

landscape as compared to the erstwhile CPA 1986. The changes aim to change consumer litigation in India and make it at par with the procedures followed in other jurisdictions by providing more power to consumers and focusing on the concept of 'caveat venditor' i.e. 'seller beware', instead of emphasising on the concept of 'caveat emptor' i.e. 'buyer beware'.

The CPA 2019 protects consumers by casting responsibilities on manufacturers, sellers, and service providers.

Revamping of the consumer laws in India has ramifications for sellers, manufacturers and service providers, which would prompt them to be more cautious than ever before, thereby ensuring greater compliance and responsibility. However, the actual implementation of the notified provisions would be tested in the coming times before the authorities concerned.

About Chadha & Co.

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