

Highlights of the Consumer Protection Bill 2018

Shah Usman and Manas Shukla

Globalisation, increase in trade, emergence of new modes of dealings and supplies and e-commerce have created new options and opportunities for consumers. However, the same have also made the consumers vulnerable to new forms of unfair trade and unethical business practices. This necessitated the need to amend the existing framework for the protection of rights and interests of consumers. The Consumer Protection Bill 2018 was introduced in the Lok Sabha on 5 January 2018 and seeks to replace the existing Consumer Protection Act 1986.

Key Highlights of the Bill

- I. **Regulator-** The existing framework does not provide for a Regulator. The Consumer Protection Bill 2018 provides for establishment of a Regulator called as the Central Consumer Protection Authority (hereinafter referred to as “CCPA”), which will be an executive agency to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class. A complaint relating to violation of consumer rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers as a class, may be forwarded either in writing or in electronic mode, to the CCPA.

Where the CCPA is satisfied on the basis of an investigation that there is evidence to show violation of consumer rights or unfair trade practice by a person, it may pass such order as may be necessary, including: (a) recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe; (b) reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and (c) discontinuation of practices which are unfair and prejudicial to consumers’ interest. In addition to the above, CCPA has the power to issue directions and penalties against false or misleading advertisements.

An appeal from the orders of the CCPA shall lie to the National Company Disputes Redressal Commission (hereinafter referred to as “National Commission”) within a period of thirty days from the date of receipt of such order.

- II. **Product liability-** The existing framework has no provision with regard to product liability. The Consumer Protection Bill 2018 extensively deals

with the same. Product liability as defined under the Bill means the responsibility of the product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto. A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

Liability of the product manufacturer

The product manufacturer shall be liable in a product liability action if the product contains a manufacturing defect, is defective in design, deviates from the manufacturing specifications or express warranty, or does not contain adequate instructions for 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 the product service provider

A product service provider shall be liable in a product liability action, if the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance; or there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or the service provider did not issue adequate instructions or warnings to prevent any harm; or the service did not conform to express warranty or the terms and conditions of the contract.

Liability of the product seller

In addition to the above, the Bill also provides for the liability of a product seller who is not a product manufacturer in certain circumstances, where:

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

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

- III. **Unfair Contracts** - There is no provision for unfair contracts under the present framework. The Consumer Protection Bill 2018 defines “unfair contract” to mean a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer. The Bill identifies six types of unfair contracts, including contracts: requiring manifestly excessive security deposits; or imposing any disproportionate penalty on the consumer, for the breach of contract; or refusing to accept early repayment of debts on payment of applicable penalty; or entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

Any complaint against unfair contracts can be filed with the State Commission or the National Commission.

- IV. **Unfair Trade Practices** - In addition to the unfair trade practices already laid down under the present framework, there are three more types of practices which are added to the existing list to expand the scope of unfair trade practices. These practices are as follows:

(a) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;

(b) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days; and

(c) 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.

- V. **Mediation**- The Bill provides exclusive provisions for reference of a dispute to Mediation as an Alternative Dispute Redressal Mechanism and provides for settling up of a Consumer Mediation Cell. If there is any element of a settlement between the parties, the District, State or

the National commission may direct the parties to give a written consent to have their dispute settled by mediation.

VI. **E- Commerce-** Under the present framework there is no provision with regard to transaction done through e-commerce. However, the new bill covers within its ambit buying or selling of goods or services including digital products over digital or electronic network.

VII. **Enhancement of the pecuniary jurisdiction** – Considering the current market trends, the Bill proposes to enhance the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies. Presently the pecuniary jurisdiction of the District Forum is twenty lakh rupees and one crore rupees for the State Commission. Under the new framework:

(a) The District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees.

(b) The State Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore.

(c) The pecuniary jurisdiction of the National Commission will be for value of goods and services exceeding ten crore rupees.

VIII. **Territorial jurisdiction**

The Bill has made changes to the territorial jurisdiction of the Dispute Redressal Agencies and includes the place of residence or business of the complainant, in addition to that of the opposite party and the place of occurrence of the cause of action.

Conclusion

The Consumer Protection Bill 2018 has introduced many provisions as stated above to keep up with the emerging market trends and further aims to simplify the consumer dispute adjudication process by including provisions for electronic filing and provisions for hearing or examination through video conferencing. Once passed, the Bill will certainly be a step forward towards protecting the rights and interests of consumers.