E Commerce-Salient Features

Naavi

Components of E Commerce

Business

- Electronic Presence
- Strategies for Products and Services
- Logistics

Technology

- Platform
- Communication Channel

Law

- ITA 2000
- Consumer Protection
- Taxation

Definition of E Commerce

- Definition of E Commerce can be wide
  - Primarily it relates to buying and selling or Exchange of Goods or Services on an electronic network ..for valuable consideration
    - Network Can be on Internet or a Wide area network or even a LAN..can work on a Computer, Mobile or a Kiosk or a Vending machine
  - Involves
    - presentation of goods/services to a prospective buyer, enabling browsing through catalogues, know pricing and other product related information such as specifications, warranties etc
    - Place order
    - Pay money/Consideration
    - Deliver Products
    - Includes pre-sale advertising and post sale service

Activity Flow

Understanding the Prospective Customer Behaviour involves collection of Personal Data and Profiling of customer

Advertisement and Marketing

Shop front
Products display
Pre sales interaction
Exchange of Money

Product or Service Delivery

Customer Service

Involves Being Lawful, Managing Security, Payment Gateway, Taxation, Consumer Protection Rules, Grievance redressal and Privacy issues

Growing importance

- “Products” can be “Services”,
  - E Commerce is not all Amazon, Flipkart and Snap deal and includes
    - E Banking
    - Uber and Ola
    - E Education and E Governance
    - OLX, Quikr,99acres.com,
    - all mobile apps including PayTm, UPI,BHIM, Bitcoin
    - E Communication such as Social Media, WhatsApp etc
    - Smart Cities, IOT, Smart Power network, Driver less cars/Metro
      - are all E Commerce components

How Do we categorize

B2B

B2C,

C2C,

G2C,

G2B etc

- It is omnipresent and omni-potent

Legal Issues in E Commerce

- Lawfulness of Business
- E-Presence-Hosting, Domain Name, E Mail, Mobile App etc
- Contractual Communication
- Payment settlement
- IPR issues
- Tax Issues
- Consumer Protection Issues

Lawful Business

A business which is not prohibited in law, is ethical and is good for the society

- “Catch me if you can” attitude is unacceptable

Should we include creation of tools to commit crimes or hide detection of crimes as lawful business?

- Prank pay apps, False Bank apps, Extortion apps
- Voice changing apps
- Video morphing apps
- Crime as a Service
- Malware creation, distribution
- Phishing call centers
- Unlicensed Loan Apps…etc
- Data Extractor software ?

E Presence

Legal Issues

Place of Interaction

Physical

-Store may be physical but back-end transactions may still be virtual

Virtual

-May need physical logistic support for physical goods

Hybrid

- A Mix of physical and virtual activities

E Presence on Website

- Essence of E Presence is the Website
  - Place where the product catalogue is visible
  - Place where decision to buy occurs
  - Place where money is exchanged
  - Identity which is marketed as a brand
  - Place from which the customer interaction in the entire life cycle takes place
  - Place where virtual grievance redressal takes place
  - Domain Name is also a cause of Phishing frauds

Domain Name..The first identifier of E Commerce?

- A mapping of a name to an IP address of the host maintained under the supervision of ICANN/CcTLD agencies through "Registrars"
  - To avoid duplication and easy reach of Websites
- A Brand that recognizes the service behind the name
  - Has a trademark like value

Conflicts

- First Cum First Served registration in conflict with trademark rights
  - Trademark right is geographic and classification dependent
- Multiple TLDs in fundamentally in conflict
- Sunrise period registration insufficient
- Name with or without TLD is a debatable issue
  - Tes.co and Tesco
- Technical Issues may cause problems in de-duplication

Challenge in Domain names

- Dependency on the Registrar
  - Net4India issue
  - NCLT went ahead and declared Net4India insolvent and disabled operations of over 70000 customers who had domain names, hosted websites, e-mail services etc
    - Without understanding the asset called “Domain Name”
    - Union Bank of India dumped an available asset worth $5 lakhs in the domain name of corpbank.com to the dustbin
- There is a need for “”Bringing the value of domain name into the books of account”..
  - Recognized by PDPSI (Personal Data Protection Standard of India, a framework for data security)
- With the proliferation of registered domain names, name Related disputes are unavoidable and we need to learn to co-exist
    - Check lookalikes.in
      - First Challenge in setting up an E Commerce business
      - (Check naavi.com or navi.co disputes with naavi.org)

Patent Disputes in E Commerce

- Amazon one click started a trend in objecting to the use of technology and claiming innovation rights on simple processes.
- Since then “Patent Infringement” has become the biggest risk to E Commerce Business
- IBM won $83 million because Groupon used IBM’s patented e-commerce technology without authorization (Settled for $57 million)
- Allegation was that Groupon used 4 patented items in its daily deals site.
- IBM claimed Groupon infringed on four patents, two from the late 1990s, one from 2006 and another from 2009.
- Earlier IBM has litigated against Amazon, Google, FaceBook etc on patent issues.
    - In 2017 IBM generated about $1.2 billion in revenue from its licensing activities. IBM invests annually about $5 billion for R&D to develop patents and over 60000 patents are credited to it.
    - Most companies buy a “Portfolio license” since they are afraid that they may be violating atleast one patent.

Copyright Disputes

Software and Content

French *LVMH v. eBay* case, (EU)

- luxury perfume companies sued eBay after noticing that thousands of goods infringing on their rights and/or sold in violation of their selective distribution networks were offered on eBay's website.
- supreme court affirmed the appellate court decision that had found eBay liable for abstention and negligence resulting in the violation of the plaintiffs' exclusive rights as a result of eBay's failure to set up effective and appropriate means to curtail infringement

Tiffany v. eBay case, (US)

- counterfeit pieces of silver "Tiffany" jewelry sold on eBay.
- Tiffany expected eBay to take preventive filtering measures to avoid infringement, eBay insisted that its legal liability was limited to taking down content that it was expressly notified
  - Tiffany claim Dismissed by the Court

Intermediary Guidelines

Notified on February 25, 2021 and amended on October 2022 and 6th April 2023

Classification and safeharbor

- Businesses on Internet will be classified as
  - Intermediaries,
  - Social Media Intermediaries and
  - Significant Social Media Intermediaries
  - Online Gaming Intermediaries
    - There are “Due Diligence” requirements suggested under law
- A safe harbour facility is made available to intermediaries fo;;owing “Due Diligence” that they will not be held liable for their Intermediary activities on account of any infringement of law by their users.

Classification and safeharbor

- Intermediary is defined under ITA 2000/8 under Sec 2(w) and 79(2)
- "Intermediary" with respect to **any particular electronic records,** means
- any person who on behalf of another person
- receives, stores or transmits that record or provides any service with respect to that record
  - and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes.
- Section 79 protection requires that the intermediary does not-
    - (i) initiate the transmission,
    - (ii) select the receiver of the transmission, and
    - (iii) select or modify the information contained in the transmission

Due Diligence

[Click Here for the Notification]

- **Prominently publish Privacy Policy, User Agreement and Rules and regulations**
- **Inform not to publish the following 10 types of information**
  a) Information belong to another person
  b) Defamatory, Obscene, Pornographic, Paedophilic, Invasive of privacy inclusive of bodily privacy, insulting or harassing on the basis of gender, libellous, racially or ethnically objectionable, relating or encouraging money laundering or gambling or otherwise inconsistent with or contrary to laws in force
  c) Is harmful to child.
  d) Infringes any patent, trademark, copyright or other proprietary rights

Due Diligence

[Click Here for the Notification]

- **Prominently publish Privacy Policy, User Agreement and Rules and regulations**
- **Inform not to publish the following 10 types of information**
- (e)deceives or misleads the addressee about the origin of the message or
  - knowingly and intentionally communicates any misinformation or information which is patently false and untrue or
  - misleading in nature or is identified as fake or false by the fact check unit
  - at the Press Information Bureau of the Ministry of Information and Broadcasting or other agency authorised by the Central Government for fact checking or, in respect of any business of the Central Government, by its department in which such business is transacted under the rules of business made under clause (3) of article 77 of the Constitution]

Due Diligence

- Inform not to publish the following 10 types of information

  g) impersonates another person;

  h) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting other nation;

  i) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource;

  j) is patently false and untrue, and is written or published in any form, with the intent to mislead or harass a person, entity or agency for financial gain or to cause any injury to any person;

Due Diligence

- Inform not to publish the following 10 types of information

  (k)is in the nature of an online game that is not in conformity with any law for the time being in force in India, including any such law relating to gambling or betting or the age at which an individual is competent to enter into a contract;

  (l) violates any law for the time being in force

Due Diligence

- Inform users at least once a year
  - The rules and regulations, Privacy Policy and user agreement or any changes there in
  - In case of non compliance with rules etc, the account may be terminated or content removed

Specific Guidelines for certain Intermediaries

- Cyber Café
- Matrimonial Websites
- Online Banking
- Online Share trading
- Online Education
- Online Gaming
  - Due Diligence could differ depending on the type of activity
- The effort is to prevent weaponization of information for crimes against individuals as well as the nation and at the same
- **If E Commerce Activity is related to any of these types of business, then these guidelines need to be complied with to hold the protection under Section 79**

Incident reporting and grievances

- The intermediary shall **report cyber security incidents** and share related information with the Indian Computer Emergency Response Team in accordance with the policies and procedures as mentioned in the Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013. (Within 6 hours)
- Prominently publish
  - the name of the Grievance Officer and his contact details
  - Mechanism by which a victim may make complaint
  - both on the website and mobile app.
- Shall acknowledge within 24 hours
- Dispose off within 15 days

Payment Gateway

- An agent
- Verifies the identity of the card holder
- Receives the confirmation from the payment Bank
- Confirms the payment in real time
- Transfers the money to the receiving party

Contractual Communication

Basis: ITA 2000/2008

Legal aspects of e-contracts

- Contract Formation
- Offer and Acceptance in Electronic form
- Authentication
- Click Wrap Contracts/Shrink Wrap contracts

Legal Recognition

- ITA 2000/8
  - Recognition of an Electronic Document
    - Section 4 read with Section 1(4)
  - Recognition of “Signing”
    - Section 5 read with Section 3 or 3A
  - Confirmation under Section 10A

Nature of the e-contracts

- Written contracts where either the offer or the acceptance or both are in electronic form
- Shrink-Wrap Contracts
  - Terms are accepted without the knowledge of details
- Website contracts are Click-Wrap contracts
  - Terms are deemed as accepted and understood by a click of a button on the web page

Section 10A Validity of contracts formed through electronic means

- Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record,
- such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

Section 11: Attribution of Electronic Records

- An electronic record shall be attributed to the originator
  - (a)if it was sent by the originator himself;
  - (b)by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
  - (c)by an information system programmed by or on behalf of the originator to operate automatically.
- Covers use of any AI algorithm

Consumer Rights

- E Service is also a service under Consumer Act
  - E Consumer of an e-retailer such as Flipkart has the same rights as that of the consumer who avails the service in the physical world
  - The evidence however is electronic and has to be captured and presented in accordance with Section 65B of IEA

Crimes affecting E Commerce

- All offences under IPC related to buying and selling or contracts as well as crimes under ITA 2000/8 may affect E Commerce
  - Cheating, Forgery
  - Impersonation, Unauthorized access, Denial of service etc
    - Check Section 43, 43A, 65, 66,66C,66D,67C,72A etc
  - Intermediary liabilities under Section 79 and/or 85 including for Data Protection, Information Security, Data Preservation etc

DPDPB 2022 issues

- Data Protection Act applies to E Commerce entities also
- Requires compliance of various issues
- Is an extension of ITA 2000
  - Section 43A in respect of personal data
  - Data Breach notification for non personal data is currently part of ITA 2000 and could also be part of DPDPB 2022
- Penalties for non compliance high and may apply without a data breach also.
- Registration, appointment of DPO, mandatory audit etc are key aspects of DPA 2021

Digital India Act

- Government is contemplating a replacement of ITA 2000 with a new Act called Digital India Act.
- If so, it will replace the current provisions of the ITA 2000 with the laws for the new generation.
    - May contain specific laws related to Meta Verse, AI, Blockchain etc
    - May re-classify Intermediaries and their due diligence responsibilities

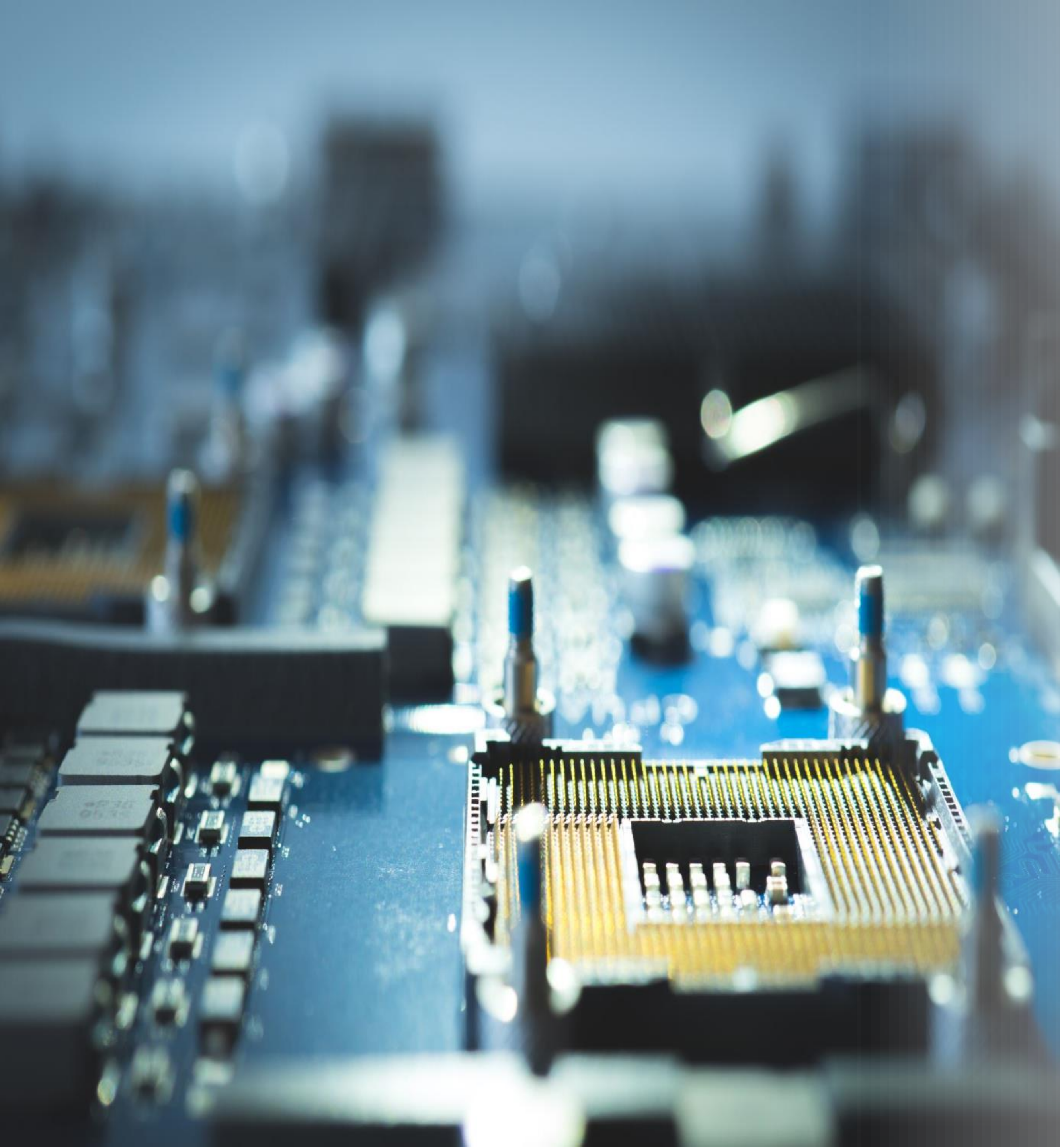
E Commerce business issues

- Marketing own goods and services
- Marketing as an “Intermediary”
  - With inventory
  - Purely as a message exchange platform
- Need outsourced assistance
  - Payment gateway
  - Logistics
  - Identifying and onboarding suppliers

E Commerce Models

- Inventory based model
  - means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.
    - No FDI
- Marketplace based model
  - means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.
    - Upto 100% FDI permitted

Technology Aspects of E Commerce



Technology of E- Commerce

- Website hosting with E catalogue, Cart, Invoicing, Security etc
- Mobile Apps with integration to communication devices and wearables
- Digital marketing and Data Protection
- Payment Gateway, E Wallets and Currency management
- Supply Chain and Logistics management
- CRM integration and use of Chatbots
- Online dispute resolution with or without AI
- Voice Search, Reverse Auction, Comparative recommendations

Emerging Technologies

MetaVerse, Virtual, Augmented and Mixed Reality for better shopping experience

Smart Contracts on Blockchain

Product configuration and Customization online

Gamification of online shopping to introduce fun in shopping

Intelligent and Consumer friendly chatbots

Automation of needs identification with smart IoTs

E Commerce Rules 2020

Notification G SR 462(e) dated 23rd July 2020

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:
    - Provided that these rules shall not apply to any activity of a natural person carried out in a personal capacity not being part of any professional or commercial activity undertaken on a regular or systematic basis.

Key Definitions

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

Duties of E Commerce entities

- (1) An e-commerce entity shall:
  - be a company incorporated under the Companies Act, or
  - a foreign company covered under clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) or
  - an office, branch or agency outside India owned or controlled by a person resident in India as provided in sub-clause (iii) of clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999); and
- 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.

Duties of E Commerce entities

- Every e-commerce entity shall provide the following information..
  - legal name of the e-commerce entity;
  - principal geographic address of its headquarters and all branches;
  - name and details of its website; and
  - contact details like e-mail address, fax, landline and mobile numbers of customer care as well as of grievance officer.
- No e-commerce entity shall adopt any unfair trade practice, whether in the course of business on its platform or otherwise.

Duties of E Commerce entities

- Every e-commerce entity shall 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
- Every e-commerce entity shall ensure that the grievance officer referred to in sub-rule (4) acknowledges the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint.

Duties of E Commerce entities.

- Where an e-commerce entity offers imported goods or services for sale, it shall 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.
- Every e-commerce entity shall endeavour on a best effort basis to become a partner in the convergence process of the National Consumer Helpline of the Central Government
- No e-commerce entity shall impose cancellation charges on consumers cancelling after confirming purchase unless similar charges are also borne by the e-commerce entity, if they cancel the purchase order unilaterally for any reason

Duties of E Commerce entities

- Every e-commerce entity shall 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, and no such entity shall record such consent automatically, including in the form of pre-ticked checkboxes.
- Every e-commerce entity shall effect all payments towards accepted refund requests of the consumers as prescribed by the Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time, or as prescribed under applicable laws.
- No e-commerce entity shall–
  - (a) manipulate the price of the goods or services offered on its platform in such a manner as to gain unreasonable profit by imposing on consumers any unjustified price having regard to the prevailing market conditions, the essential nature of the good or service, any extraordinary circumstances under which the good or service is offered, and any other relevant consideration in determining whether the price charged is justified;
  - (b) discriminate between consumers of the same class or make any arbitrary classification of consumers affecting their rights under the Act.

Liabilities of marketplace e-commerce entities

- (1) A marketplace e-commerce entity which seeks to avail the exemption from liability under sub-section (1) of section 79 of the Information Technology Act, 2000 (21 of 2000) shall comply with sub-sections (2) and (3) of that section, including the provisions of the Information Technology (Intermediary Guidelines) Rules, 2011.

Liabilities of marketplace e-commerce entities

- Every marketplace e-commerce entity shall require sellers through an undertaking to ensure that descriptions, images, and other content pertaining to goods or services on their platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such good or service.
- Every marketplace e-commerce entity shall provide the following information in a clear and accessible manner, displayed prominently to its users at the appropriate place on its platform:
  - (a) details about 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 necessary for enabling consumers to make informed decisions at the prepurchase stage:
    - Provided that a marketplace e-commerce entity shall, on a request in writing made by a consumer after the purchase of any goods or services on its platform by such consumer, provide him with information regarding the seller from which such consumer has made such purchase, including the principal geographic address of its headquarters and all branches, name and details of its website, its email address and any other information necessary for communication with the seller for effective dispute resolution;

Liabilities

- a ticket number for each complaint lodged through which the consumer can track the status of the complaint;
- information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redressal mechanism, and any other similar information which may be required by consumers to make informed decisions;
- information on available payment methods, the security of those payment methods, any fees or charges payable by users, the procedure to cancel regular payments under those methods, charge-back options, if any, and the contact information of the relevant payment service provider;
- all information provided to it by sellers under the rules
- an explanation of the main parameters which, individually or collectively, are most significant in determining the ranking of goods or sellers on its platform and the relative importance of those main parameters through an easily and publicly available description drafted in plain and intelligible language.

Liabilities

- Every marketplace e-commerce entity shall include in its terms and conditions generally governing its relationship with sellers on its platform, a description of any differentiated treatment which it gives or might give between goods or services or sellers of the same category.
- Every marketplace e-commerce entity shall take reasonable efforts to maintain a record of relevant information allowing for the identification of all sellers who have repeatedly offered goods or services that have previously been removed or access to which has previously been disabled under the Copyright Act, 1957 (14 of 1957), the Trade Marks Act, 1999 (47 of 1999) or the Information Technology Act, 2000 (21 of 2000):
    - Provided that no such e-commerce entity shall be required to terminate the access of such seller to its platform pursuant to this sub-rule but may do so on a voluntary basis.

Duties of Sellers on marketplace

- No seller offering goods or services through a marketplace e-commerce entity shall adopt any unfair trade practice whether in the course of the offer on the e-commerce entity's platform or otherwise.
- No such seller shall falsely represent itself as a consumer and post reviews about goods or services or misrepresent the quality or the features of any goods or services.
- No seller offering goods or services through a marketplace e-commerce entity shall refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if paid,
  - if such goods or services are defective, deficient or spurious, or if the goods or services are not of the characteristics or features as advertised or as agreed to, or if such goods or services are delivered late from the stated delivery schedule: Provided that in the case of late delivery, this sub-rule shall not be applied if such late delivery was due to force majeure.

Duties of Sellers on marketplace

- Any seller offering goods or services through a marketplace e-commerce entity shall:
  - have a prior written contract with the respective e-commerce entity in order to undertake or solicit such sale or offer;
  - appoint a grievance officer for consumer grievance redressal and ensure that the grievance officer acknowledges the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint;
  - ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.
  - provide to the e-commerce entity its legal name, principal geographic address of its headquarters and all branches, the name and details of its website, its e-mail address, customer care contact details such as fax, landline, and mobile numbers and where applicable, its GSTIN and PAN details.

Duties of the Seller on market place

- Any seller offering goods or services through a marketplace e-commerce entity shall:
- (a) have a prior written contract with the respective e-commerce entity in order to undertake or solicit such sale or offer;
- (b) appoint a grievance officer for consumer grievance redressal and ensure that the grievance officer acknowledges the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint;
- (c) ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.
- (d) provide to the e-commerce entity its legal name, principal geographic address of its headquarters and all branches, the name and details of its website, its e-mail address, customer care contact details such as fax, landline, and mobile numbers and where applicable, its GSTIN and PAN details.

Duties of the Seller on market place

- Any seller offering goods or services through a marketplace e-commerce entity shall provide the following information to the e-commerce entity to be displayed on its platform or website:
  - (a) all contractual information required to be disclosed by law;
  - (b) total price in single figure of any good or service, along with the breakup price for the good or service, showing all the compulsory and voluntary charges such as delivery charges, postage and handling charges, conveyance charges and the applicable tax, as applicable;
  - (c) all mandatory notices and information provided by applicable laws, and the expiry date of the good being offered for sale, where applicable;
  - (d) all relevant details about the goods and services offered for sale by the seller including country of origin which are necessary for enabling the consumer to make an informed decision at the prepurchase stage;
  - (e) the name and contact numbers, and designation of the grievance officer for consumer grievance redressal or for reporting any other matter;
  - (f) name and details of importer, and guarantees related to the authenticity or genuineness of the imported products;
  - (g) accurate information related to terms of exchange, returns, and refund including information related to costs of return shipping in a clear and accessible manner;
  - (h) relevant details related to delivery and shipment of such goods or services; and
  - (i) any relevant guarantees or warranties applicable to such goods or services.

Duties and Liabilities of inventory e-commerce entities

- Every inventory e-commerce entity shall provide the following information in a clear and accessible manner, displayed prominently to its users:
  - (a) accurate information related to return, refund, exchange, warranty and guarantee, delivery and shipment, cost of return shipping, mode of payments, grievance redressal mechanism, and any other similar information which may be required by consumers to make informed decisions;
  - (b) all mandatory notices and information required by applicable laws;
  - (c) information on available payment methods, the security of those payment methods, the procedure to cancel regular payments under those methods, any fees or charges payable by users, charge back options, if any, and the contact information of the relevant payment service provider;
  - (d) all contractual information required to be disclosed by law;
  - (e) total price in single figure of any good or service along with the breakup price for the good or service, showing all the compulsory and voluntary charges, such as delivery charges, postage and handling charges, conveyance charges and the applicable tax; and
  - (f) a ticket number for each complaint lodged, through which the consumer can track the status of their complaint.

Duties and Liabilities of inventory e-commerce entities

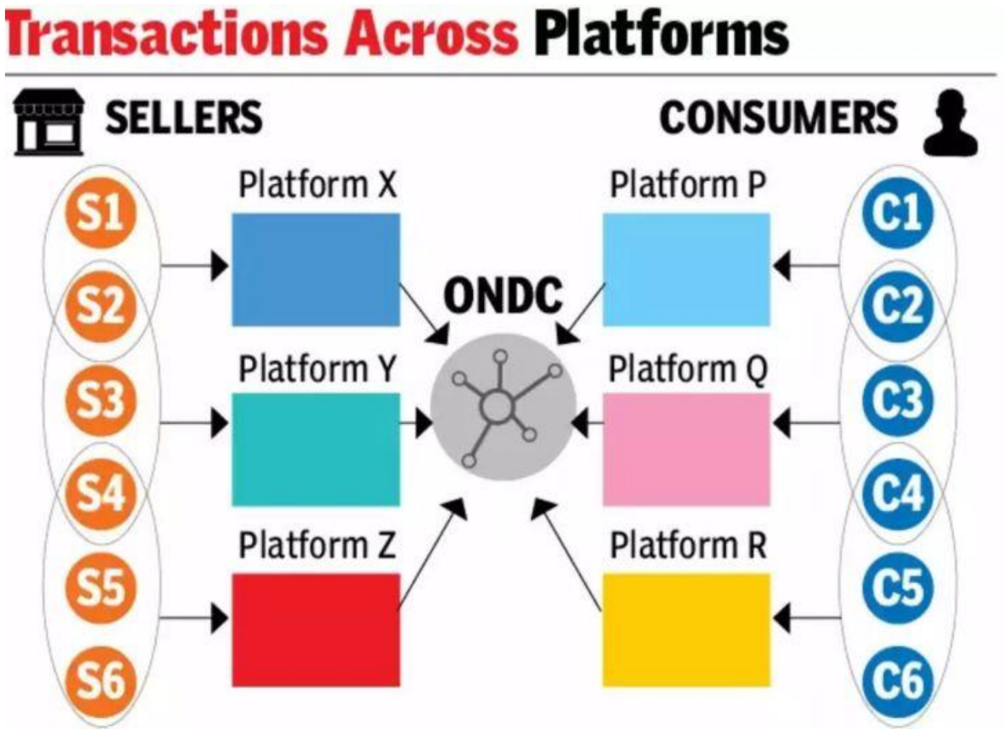
- No inventory e-commerce entity shall falsely represent itself as a consumer and post reviews about goods and services or misrepresent the quality or the features of any goods or services.
- Every inventory e-commerce entity shall ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services;
- No inventory e-commerce entity shall refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if paid, if such goods or services are defective, deficient spurious, or if the goods or services are not of the characteristics or features as advertised or as agreed to, or if such goods or services are delivered late from the stated delivery schedule: Provided that in the case of late delivery, this sub rule shall not apply if such late delivery was due to force majeure.
- Any inventory e-commerce entity which explicitly or implicitly vouches for the authenticity of the goods or services sold by it, or guarantees that such goods or services are authentic, shall bear appropriate liability in any action related to the authenticity of such good or service.

Contravention of rules

- The provisions of the Consumer Protection Act, 2019 (35 of 2019) shall apply for any violation of the provisions of these rules

ONDC platform

- Open Network for Digital Commerce
    - An initiative by the Government (The department for the promotion of industry and internal trade (DPIIT) in the ministry of commerce and industry) to provide a platform for sellers to host their e-Commerce activities
    - Could develop into a consortium of "Platform of Platforms"
    - ONDC seeks to be the UPI of E Retailing and just as UPI has disrupted the Digital payments domain, ONDC may move suppliers away from Amazon/Flipkart



Investment issues
E Commerce

Two Routes of FDI Investment

Automatic Route

- No prior approval from Government required

Government Route

- Requires prior approval from Government

FDI in E- Commerce

- 100% equity for market based e commerce through Automatic route for B2B e commerce (Not in B2C)
  - Digital & electronic network will include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles etc

FDI in E Commerce

- 100% equity for market based e commerce through Automatic route for B2B e commerce (Not in B2C)
- Inventory of a vendor will be deemed to be controlled by e-commerce marketplace entity if more than 25% of purchases of such vendor are from the marketplace entity or its group companies.
- An entity having equity participation by e-commerce marketplace entity or its group companies, or having control on its inventory by e-commerce marketplace entity or its group companies, will not be permitted to sell its products on the platform run by such marketplace entity.
- E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field

Retailing- Single and Multi brand

Single Brand Product Retail Trading

- FDI Cap 100%
    - Entry Route:
        - Automatic

Multi Brand Product Retail Trading

- 51% FDI Cap
- Through Government route only

E Commerce-Sale of Services

- Subject to the conditions of FDI policy on services sector and applicable laws/regulations, security and other conditionalities,
    - sale of services through e-commerce will be under automatic route.

Tax regime for e-commerce in India

The income of Indian residents running e-commerce operations is taxed in India at the applicable tax rates;

- therefore, there is no requirement for specific provisions for them.

However, there has always been a dispute on the taxability aspect of non-residents carrying out such transactions in India.

Tax regime for e-commerce in India

- The basis for the dispute is that India has traditionally adopted a source-based taxation regime for non-residents in the country, depending on physical presence in the form of a fixed place of business or a dependent agent in the source country, i.e., India.
  - with e-commerce the need for a physical presence virtually ceases, which creates problems in the enforcement of tax laws

Income in the hands of Non Residents

- Individuals are divided into
  - **Residents**
    - Global Income is taxable
  - **Non Residents**
    - Only income received in India is taxable…subject to exemptions for different investment options
  - **Residents but not ordinarily residents**
    - Income arising out of India is taxable and Income arising out of business controlled in India is taxable

Taxation Status- Individuals

- Individuals are divided into
  - **Residents**
    - Stays more than 182 days in the previous year
    - More than 60 days in the year + more than 365 days in preceding 4 years
  - **Non Residents**
    - All those who are not Residents or belong to the special category of RNOR
  - **Residents but not ordinarily residents (RNOR)**
    - Non Resident in 9 out of 10 previous years
    - Been in India for a period of 729 days or less during the seven previous years preceding that year,

Taxation Status- Companies

- An Indian Company is always treated as a resident
  - Any other company would be resident if its “Place of Effective Management” is in India
- Usually, foreign companies get tax concession under Double Taxation Avoidance Treaties and they pay taxes in their home countries.
  - But if they have Permanent Establishments in India, they should pay taxes for the income they have created in India.
- Thus PE makes a Indian income of a foreign company taxable in India.

Issues in NR taxation

- Issues around the taxability of income and the corresponding litigation are primarily on account of the following reasons:
    - **Characterization of income in the hands of the non-resident**
        - Certain types of income such as royalty and fees for technical services deemed to accrue or arise in India are taxable in India, but business profits in the absence of a permanent establishment (PE) are not.
    - **Issues surrounding PE**
        - On the PE front, there have been issues around whether a website in India constitutes a PE for a non-resident and whether certain activities performed by an agent in India constitute a dependent agent PE.

Permanent Establishment

- A Permanent Establishment in India is a fixed place of business, wholly or partly carried out by a foreign enterprise operating in India.
- Such fixed place of business can be a branch office, a place of management, a factory, a warehouse, a workshop etc.
- However the definition of permanent establishment differs in each tax treaty.

Permanent Establishment

- The PE concept marks the dividing line for businesses between
  - merely trading with a country and trading in that country;
  - if an enterprise has a PE, its presence in a country is sufficiently substantial than when it is trading in a country
  - In E Commerce, the Jurisdictional laws may have an impact unless otherwise specifically clarified in the tax laws

Equalization Levy

- EL 1.0
  - Imposed under the Finance Act 2016
  - is a tax leviable on consideration received by a non-resident for specified services such as online advertising or provision of digital space for online advertisement or any other service for purpose of online advertising.
  - a person resident in India or a non-resident having a permanent establishment in India shall deduct EL at 6% on the consideration paid to non-resident towards specified services (India has entered into a settlement with USA to keep the levy at 2%)
  - to be deducted if the aggregate amount of consideration for such specified services by a non-resident person exceeds Rs 1 lakh and the payment is to carry out business or profession….to be remitted before the 7th of the following month

EL 2.0 under The Finance Act 2020

- expanded the scope of the EL to include all non-resident e-commerce operators providing ‘e-commerce supply or services.
- with effect from 01 April 2020, a non-resident e-commerce operator is liable to pay Equalization Levy at the rate of 2% on the consideration received/receivable from e-commerce supply or services.
- Services already covered under EL 1.0 such as online advertisement, provision of digital space for online advertising, or related services are not subject to EL 2.0
- The threshold limit attracting equalization 2.0 is Rs 2 Crores. The EL 2.0 shall be levied only if the aggregate amount of consideration for such specified services received in a previous year exceeds Rs. 2 crores.
- The non-resident e-commerce operator is liable for deposit the EL amount to the Government treasury & comply with the statutory requirements viz. the filing of EL return, etc. The onus of compliance cast on the non-resident e-commerce operator

EL 2.0 under The Finance Act 2020

- Equalization Levy 2.0 applies to the following specified E-Commerce supplies or services
  - Online sale of goods owned by the e-commerce operator; or
  - Online provision of services provided by the e-commerce; or
  - Online sale of goods or provision of services or both,
  - facilitated by the e-commerce operator; or Any combination of the above-mentioned activities

EL 2.0 under the Finance Act 2021

- The Finance Act 2021 vide insertion of clause (CB) of section 164 of Finance Act 2016, increased the scope of E-Commerce supply substantially for Equalization Levy purposes.
- It is clarified that e-commerce supply shall include one or more following activities undertaken online-
    - (a)acceptance of offer for sale
    - (b) placing of purchase order
    - (c) acceptance of purchase order
    - (d) payment of consideration
    - (e) supply of goods or provision of services, partly or wholly.
- The clarification vide Finance Act 2021 has expanding the scope of Equalization Levy and the equalization levy can now be levied on payment portals, takeaway sales, and other predominantly off-line businesses that require physical presence but allow online booking like travel, theatre experiences, or hotel stays.

EL 2.0...Finance Act 2021

- Consideration received or receivable from e-commerce supply shall include
  - (a) consideration for the sale of goods irrespective of whether the e-commerce operator owns the goods
  - (b) consideration for the provision of services whether service is provided or facilitated by the e-commerce operator.
- Now, e-commerce operators are to calculate equalization levy as a percentage of the entire consideration for supply collected by them, as opposed to the commission accruing to them. It could also be argued that the levy would apply even where e-commerce operators do not charge a commission

EL 2.0...Finance Act 2021

- Compliance
  - Compliance burden of collecting and depositing EL 2.0 before due dates, furnishing statements, etc have been cast on non-resident E-commerce operator
  - EL does not form a part of the Income-tax Act, 1961, tax credit may not be allowed under the tax treaty for the EL paid in the source country and therefore it results in an additional cost to the business
  - Due date of furnishing Equalisation Levy Statement (Form-1) is on or before 30th June of Financial Year ended (unless the date is extended).

Royalties and Technical Fees

- According to the amended section 163 of the Finance Act, 2016, consideration received or receivable for specified services shall not include the considerations, which are taxable as royalty or fees for technical services in India and is covered under Income Tax Act
  - Non-residents are only taxed on their income that is sourced from India. Income in the nature of royalty or FTS is considered to have arisen in India and is therefore taxable in the hands of non-residents in India.
- Finance Act 2023 increased the tax rate from 10% to 20%. Can chose to be taxed as per provisions of any tax treaty if it exists between India and the country of residence of the tax payer

Equalization Levy

- For EL, there is no need to determine Permanent Establishment or any other nexus to India.
  - because a non-resident earns **revenue from India** he is liable to Equalization Levy.
- Revenue is the source.
  - When in excess of the threshold, it is the nexus adequate for India's tax jurisdiction.
- Chapter VIII of Finance Act under which EL is introduced does not become part of the Income-tax law.
  - Like STT, it will remain a separate tax.
  - Hence Double Tax Avoidance Agreements are not applicable to EL.

Equalization Levy

- Millions of home consumers and small business consumers utilise internet services like Google, Face Book, WhatsApp, Twitter etc.
  - Most of us do not make any payment to the service provider.
  - Hence we are not liable to deduct any tax at source. (No payment, No tax.)

Equalization levy

- Equalisation levy,
  - is aimed at levelling the play field between e-commerce players of domestic and foreign origin.
  - e-commerce companies are expected to benefit from it.
- It may change the schematics of online advertisement if the advertisement service is provided by an NRI company ..eg :Google, FaceBook
  - It is not a tax on service but a tax on the business for online advertisements.

E Commerce and GST

Types of GST

- CGST
  - Central share of the tax on Goods and Services
- SGST/UGST
  - Share of the State or Union Territory when the sales is within the State
- Integrated GST
  - Where there is inter state movement of Goods
    - collected by the Central Government from the buying State expected to be later distributed to States

Mechanism of GST

- Every trader will have a unique registration
  - Certain categories are exempted
    - Based on commodities, Turnover and Type of activity
- Every invoice is entered into the system by the seller of the goods in the returns
  - monthly and quarterly
- Every supply is entered into the system by the seller and every receipt is entered into the system by the receiver of goods in the respective returns which are matched and reconciled

Mechanism of GST

- Tax is collected in the invoice and directly distributed to the State or the Center
- Input Tax Credit is available in certain cases
- Composition Scheme is available in certain cases
- Reverse Charge is required in certain cases
- Anti Profiteering action will be initiated where necessary
  - The System is completely dependent on the IT infrastructure

Exemption

- Agriculturists
- Threshold turnover..Rs 40 lakhs for goods and Rs 20 lakhs for services (Rs 10 lakhs for specified category-hilly states-North eastern states)
- Specified goods
- Refer: https://tax2win.in/guide/gst-exemption

E Commerce and GST

- GST is a system of taxation relevant to all business
  - E Commerce is naturally impacted
- E Commerce is also an essential ingredient of every business today
  - There is no business without E Business
  - Hence GST is an integral part of E-Commerce

Composition Scheme

- A taxpayer whose turnover is below Rs 1.5 crores lakhs can opt in for Composition Scheme.
  - flat 2% on TO for manufacturing, 5% for restaurant services, 1% for traders
- **Businesses which supply goods through an e-commerce operator cannot opt for Composition Scheme**
- No Input Tax Credit can be claimed by a dealer opting for composition scheme
- The taxpayer can only make intra-state supply (sell in the same state) i.e. no inter-state supply of goods

Supplies from multiple States

- It should be noted that GST in India is State-centric.
- Hence, a person making supplies from different States needs to take separate registration in each State.
- Further, the person may take more than one registration within a State if the person has multiple business verticals.
- A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of GST.
- Hence, a supply between these entities constitutes supply under GST.

Imports and Exports

- Under GST, exports are treated as 'zero-rated supplies'.
- If GST is paid at any point of supply against exports from India, a trader may either export without the payment of IGST under bond or letter of undertaking, or may pay the IGST and claim refund later.
- In both cases, an exporter must provide details of GST invoices in the shipping bill.

Imports and Exports

- Imports under GST are treated as inter-state supply.
  - Since GST is a destination-based tax, IGST will be levied in the state where the imported goods are consumed and imported services are received
- IGST can be paid using input tax credit of central goods and services tax (CGST), state goods and services tax (SGST), and IGST. Input tax credit is the credit that dealers can avail for taxes paid on their purchases, at the time of paying final tax on their sales.
- In case of CGST and SGST, no cross utilization of input tax credit is allowed. This means that input tax credit of CGST can only be utilized for CGST and IGST, and input tax credit of SGST can only be utilized to pay for SGST and IGST.

Imports and Exports

- Under GST, the import of service is taxable if –
  - The supplier of service is located outside India;
  - The recipient of service is located in India;
  - The place of supply of service is in India; and
  - The supplier of service and the recipient of service are not merely establishments of a distinct person.

Reverse Charge Mechanism

- Generally, the supplier of goods or services is liable to pay GST.
- However, in specified cases like **imports and other notified supplies**, the liability may be cast on the recipient under the reverse charge mechanism.
- Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.
- There are two type of reverse charge scenarios provided in law
  - **Supply from an Unregistered Supplier**
  - **Supply of specific goods or services**

Input Tax

- Registered Suppliers must charge GST on supplies at the prevailing rate.
  - This GST that is charged and collected is known as output tax .
- The GST that incurred on business purchases and expenses (including import of goods) is known as input tax .

Input Tax-not available

- If goods and services are acquired for personal use.
- If one has paid tax in GST composition scheme for goods and services received.
- In case an immovable property is built apart from plant and machinery using the goods and services and this immovable property is not transferred.
- In the case where employees have used the goods and services for personal purposes.
- When the cost of capital goods depreciation is claimed, then Input Tax Credit cannot be claimed.

Thank you

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