THE CONSUMER PROTECTION

(E-COMMERCE) RULES, 2020

AN ANALYSIS OF RELATED-PARTY PROVISIONS

A look at the provisions pertaining to "related parties" and "associated enterprises" in the Rules which are arguably the most contentious among the provisions of the Rules

As the e-commerce market booms and grows, the regulations governing e-commerce become particularly relevant. Apart from the draft e-commerce policy issued by the government, the Ministry of Consumer Affairs has now notified its draft amendments to the Consumer Protection (E-Commerce) Rules, 2020 ("Rules") and has sought comments from all stakeholders on the same.

This article analyzes the provisions pertaining to "related parties" and "associated enterprises" in the Rules which are arguably the most contentious among the provisions of the Rules.

An "e-commerce entity" is defined[1] as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, including any entity engaged by such person for the purpose of fulfillment of orders placed by a user on its platform and any "related party" as defined under Section 2(76) of the Companies Act, 2013 ("Companies Act"), but does not include a seller offering goods or services for sale on a marketplace e-commerce entity.

The proposed Rules[2] provide that every marketplace e-commerce entity is required to ensure the following:

(a) that it does not use any information collected through its platform for the unfair advantage of its related parties and associated enterprises.

b) that none of its related parties and associated enterprises are enlisted as sellers for sale to consumers directly.

(c) that nothing is done by related parties or associated enterprises which the e-commerce entity cannot do itself.

The definition of "related parties":

Under the Companies Act, "related party" with reference to a company is defined as:
(i) a director or his relative; (ii) key managerial personnel or his their relatives; (iii) a firm, in which a director, manager or his relative is a partner; (iv)

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1 Rule 3(b)
2 Rule 6.

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a private company in which a director or manager [or his relative] is a member or director; (v) a public company in which a director or manager is a director [and holds] along with his relatives, more than two per cent of its paid-up share capital; (vi) anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advise. directions or instructions of a director or manager; (vii) any person on whose advise, directions or instructions a director or manager is accustomed to act; (viii) anybody corporate which is- (A) a holding, subsidiary or an associate company of such company; (B) a subsidiary of a holding company to which it is also a subsidiary; or(C) an investing company or the venturer of the company; ("the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate); (ix) such other person as may be prescribed.

Definition of "associated enterprises":

The Rules[3] provide that two enterprises shall be "associates enterprise" if – (a) enterprises are related to each other through a common chain of directors or managing partners; (b) enterprises are related to each other through a common chain of shareholders, where such shareholders hold not less than 5 per cent of the shareholding in the related enterprises; (c) enterprises having 10 per cent or more common ultimate beneficial ownership; (d) where one enterprise can exercise a right to veto any decision, appoint one or more director(s) or in any other manner influence other entity's decision-making on any matter either through its shareholding or through an agreement including a shareholders' agreement; (e) where one enterprise holds, directly or indirectly, shares carrying the voting power in the related entities; (f) where any person or enterprise holds, directly or indirectly, shares carrying the voting power in the related entities; (g) there exists between the enterprises, any relationship of mutual interest, as may be prescribed.

Analysis:

(i) The proposed definition of "e-commerce entity" includes "any person who owns, operates or manages digital or electronic

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3 *Explanation (ii) to Rule 6*

> **The objective of the Rules appears to be to rein in e-commerce entities that allegedly use related party structures to arguably circumvent prevailing FDI regulations.**

facility or platform for electronic commerce". Thus, an e-commerce entity includes not only platforms selling goods such as Amazon and Flipkart but also includes other platforms providing online services such as food delivery, travel booking, on-demand home services, etc. Consequently, the proposed Rules would apply to all entities selling online goods or providing online services.

(ii) Additionally, the inclusion of "related party" in the definition of e-commerce entity is so broad that the Rules would apply to the logistics entities also, who merely provide services to the e-commerce entitiesto fulfill the orders placed by a user of the platform.

(iii) Further, the Rules also provide a wide definition of the term "associated enterprises". Accordingly, once the Rules come into effect, the e-commerce entity, its related parties and the marketplace associated entities will have to ensure compliance with the cumbersome obligations provided under the Rules. The compliances stipulated in the Rules are onerous and the e-commerce entities that violate these Rules would be liable for consequences provided under the Consumer Protection Act, 2019.

(iv) There are multiple sets of regulations governing the e-commerce sector. Firstly, there is the FDI Policy, then the Draft National e-commerce Policy and now the Rules. There seems to be an overlap of all these regulations which has resulted in a considerable amount of regulatory uncertainty.

The objective of the Rules appears to be to rein in e-commerce entities that allegedly use related party structures to arguably circumvent prevailing FDI regulations. However, the Rules are so ambiguous and cumbersome, that they may lead to over-regulation and uncertainty of regulations of a sector that has tremendous potential both in terms of business and in terms of employment generation.

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