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Protection Of Consumer Rights In The Digital Era

In technological parlance, "online shopping" is a prevalent mechanism for purchasing products and for availing of various services through the Internet. Online shopping and use of online services have become increasingly prevalent, due to convenience and often, lower prices and discounts offered. There are numerous advantages and conveniences provided by online service providers. However, there are certain disadvantages that are tagged along with the same, which inter alia include the perils of inaccurate or deficiency in goods / services provided to the consumers. In the event a deficiency in service arises, the issue of jurisdiction for the purpose of referring and resolving disputes/complaints is a crucial issue to be addressed on behalf of consumers using the online services through the internet.

CONCEPT OF JURISDICTION

In India, the Consumer Protection Act, 1986 ("**Act**") is one of the important legislation enacted by the Parliament, in order to safeguard and enforce the rights of 'consumers'. The Act provides for provisions relating to jurisdiction, which primarily encapsulates pecuniary jurisdiction and territorial jurisdiction. A complaint, inter alia, can be filed before the District Forum, State Commission and/or National Commission as per their respective pecuniary jurisdiction. The Act also provides that that in case of any complaint before the District Forum and State Commission, the same can also be filed within the local limits of whose jurisdiction the opposite party or any of the opposite

parties actually and voluntarily resides or carries on business or has a branch office or personally works for gain or the place where the cause of action arises, wholly or in part ^[1]. However, nothing in the said Act specifically refers to e-commerce consumers.

Another widely used legislation is the Civil Procedure Code ("CPC") which governs the functioning and procedures relating to a civil court. A civil court has inherent jurisdiction to try all types of civil disputes unless its jurisdiction is barred expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority ^[2]. Subject to the laws of limitation, every suit shall be instituted in a court within the local limits of whose jurisdiction the defendant(s) resides or cause of action, wholly or in part arises. ^[3]

Simply stated, the expression 'jurisdiction', would inter alia mean the power conferred by statute upon a court or authority to look into and decide on matters, depending on (i) the place where the issue / dispute has arisen; or(ii) depending on the location of the place of business; or (iii)pecuniary jurisdiction i.e. based on the value of the goods or services and compensation, if any, claimed in the complaint.

COMPETENT FORUM

One of the most important barrier faced by a consumer whilst having his grievance redressed, and which also forms the basis of any legal recourse to be adopted by the consumer, is to choose the correct forum which has the 'jurisdiction' to hear and try the matter at hand. Unless the complaint of an online consumer is filed before a competent forum, the complaint is prima facie liable to be rejected on ground that the forum has no jurisdiction to try, hear and decide on the matter.

The Meghalaya State Commissionvide its ruling dated 7 December 2013, passed in Consumer Appeal No. 7 of 2007 ^[4] has taken a liberal view on the aspect of jurisdiction, thereby, strengthening the recourse available to the new age 'online consumers' for the purpose of having their grievance addressed before a Competent Forum. The said order has dealt in depth with the aspect of determining jurisdiction, considering various landmark rulings of the Courts of India in respect of the issue of jurisdiction and by referring to international conventions with respect thereto.

FACTUAL MATRIX

The complainant in the matter had purchased two airline tickets for himself and his wife through an online website, from his office at Shillong in Meghalaya, for a trip from Delhi to Jaipur. When the

Complainant and his wife alighted at Jaipur, their baggage was not traceable and a report to that effect was registered by them with the airport authorities after much deliberation. The luggage was later traced at Guwahati on two different dates. The Complainant requested the airlines to deliver the baggage to him in Shillong, which request was refused. Aggrieved by the deficiency in service, the Complainant lodged a complaint before the Shillong District Forum. The airlines in the said complaint challenged the jurisdiction of the Shillong District Forum to adjudicate the dispute for a travel on the Delhi-Jaipur sector. The District Forum overruled the objections raised by the airline's in respect of its territorial jurisdiction and concluded that it had jurisdiction to try and decide the complaint and that there was a deficiency in service on part of the airlines.

Aggrieved, the airlines appealed before the Meghalaya State Commission. Their primary contention as to jurisdiction was that the complaint could only be filed at Delhi, Jaipur or at most Guwahati (where the baggage was traced) and not at Shillong, where the complainant merely booked the tickets over the internet. The Meghalaya State Commission held that since the complainant, being a resident of Shillong, booked the air tickets over the internet from his residence at Shillong, the amount for air fare was debited from the complainant's bank account at Shillong and that the airline dispatched the air tickets by email, which was received by the complainant at Shillong, the District Forum at Shillong has territorial jurisdiction to try the matter.

IMPACT OF THE RULING

- The present ruling by the Meghalaya State Commission seeks to grant territorial jurisdiction in contractual matters, over consumer complaints, besides other places, at any place where any of the following causes of action arises viz. (i) where a contract is made; or (ii) where acceptance of a contract is communicated; or (iii) where a contract is performed or is to be performed; or (iv) where money under the contract is either payable or paid; or (v) where repudiation of a contract is received. The ruling recognizes Section 11(2) of the Consumer Protection Act i.e. provisions dealing with the jurisdiction of a district forum being akin to Section 20 of the CPC i.e. relating to suits to be instituted where the defendant resides or the cause of action arises.
- The Forum has gone a step ahead and expanded the interpretation of the term jurisdiction, to now include the 'place of residence', in addition to the 'place of business', which proves beneficial for orders placed by students, housewives etc., not having an office as their 'place of business'.
- Therefore, a consumer making purchases online can now also

file a complaint at the place where he / she have concluded the transaction. By this ruling much needed relief has been given to consumers with respect to the jurisdiction of the competent forum in which they can file for redressal of their grievances.

In order to understand the law relating to the territorial jurisdiction in contractual matters, the Meghalaya State Commission has relied upon the ratio given in ABC Laminart Pvt. Ltd. v/s. A.P. Agencies, Salem^[5] and has thus observed that Section 11(2) of the Act being akin to Section 20 of the CPC, the law relating to territorial jurisdiction would apply with full force to the Consumer Fora.

Further, in the case of M/s. Swastik Gases Pvt. Ltd. v/s. Indian Oil Corporation Ltd.^[6], the Hon'ble Supreme Court dealt with the aspect relating to jurisdiction clause in agreement, whereby parties to a contract may confer exclusive jurisdiction on one of the many courts having jurisdiction to try a particular matter.

CONCLUSION

Although transactions over the internet have increased the efficiency in transactions and accessibility for consumers, many pit falls still exist, that have not yet been satisfactorily dealt with. While growth in the e-commerce industry is sweeping across the country, there appears to be inadequate supervision and laws dealing with quality control over the products of companies and the services rendered by them.

In the above ruling it has been observed that the laws with respect to consumer protection have been enacted more than a quarter of a century ago, the same was not entirely geared towards protecting the consumer rights in the digital era. The need for the legislators to step in and clear the ambiguity with respect to territorial jurisdiction in complaints arising from online transactions is required. While specifically deciding on the issue of jurisdiction, the Meghalaya State Commission has held that the aspect has been dealt with at length, not only to adjudicate the present appeal, but also to lay the path in case of similar issues arising in future, foreseeing and believing in the likelihood of the same. The above ruling is subject to any appeal filed by the aggrieved party before the National Commission. However, prima facie, the period for filing an appeal from the above order has lapsed and no appeal appears to have been filed before the National Commission.

The Meghalaya State Commission has taken a path-breaking stand deviating from the age-old interpretation given to the term 'jurisdiction', keeping in mind the difficulties faced by the consumers using the e-commerce services. This not only gives much needed relief to the consumers making online purchases and utilising the services but

also strengthens the position of the consumers making them truly, the 'Kings' of the market.

- By Anshuman Jagtap (Associate Partner) & Abhay Devadhar (Associate)

Editor: Trupti Daphtary

[\[1\] Sections 11 and 17 of the Act](#)

[\[2\] Section 9 of CPC](#)

[\[3\] Section 20 of CPC](#)

[\[4\]](#)

<http://164.100.72.12/ncdrcprep/judgement/300131223132046193dailyorder12013-11-16.html>

[\[5\] AIR 1989 SC 1239: \(1989\) 2 SCC 163](#)

[\[6\] Civil Appeal no.5086 of 2013](#)

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