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## **KARNATAKA HIGH COURT ON LIABILITY OF INTERMEDIARY UNDER IT ACT**

### **1. Brief Facts & Decision:**

- a. Criminal proceedings were initiated against Snapdeal Private Limited (“**Snapdeal**”) and its directors before the lower court for sale of a Sildenafil Citrate product<sup>1</sup> by its vendor/seller on Snapdeal’s online portal [www.snapdeal.com](http://www.snapdeal.com), allegedly in violation of the Drugs and Cosmetics Act, 1940 (“**DCA**”).<sup>2</sup>
- b. Snapdeal contended that it is an intermediary<sup>3</sup> as defined in the Information Technology Act, 2000 (“**IT Act**”). It only provides for an online marketplace for sellers and buyers and has no role in sale of the products *per se*. Further, in the present case, Snapdeal had warned the seller not to sell the said product on its website.
- c. Based on the above contention and after hearing the arguments advanced by both the parties, Karnataka High Court (“**HC**”) on 7<sup>th</sup> January 2021, quashed the criminal proceedings.<sup>4</sup>

### **2. Decision and Reasoning by HC:**

- a. An intermediary or its directors/officers would not be liable for any action or inaction on part of a vendor/seller making use of the facilities provided by the intermediary in terms of a website or a marketplace.
- b. It is the vendor/seller registered with Snapdeal, who are the sellers of products on Snapdeal’s platform and are responsible to the purchaser/customer.
- c. HC found that due diligence was exercised by Snapdeal in accordance with and in compliance of IT Act and Information Technology (Intermediaries Guidelines) Rules, 2011 (“**Intermediaries Rules**”) to ensure that the vendors/sellers who register on its website conduct themselves in accordance with and in compliance with the applicable laws.<sup>5</sup>
- d. HC held: “*When Snapdeal/Accused no. 2 Company is exempted from any liability under Section 79 of the Information Technology Act, 2000, no violation can ever be attributed or made out against the directors or officers of*

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<sup>1</sup> Suhagra-100 tablets of Adept Biocare.

<sup>2</sup> C.C. No. 156 of 2020 filed before the court of Principal Senior Civil Judge and CJM, Mysuru.

<sup>3</sup> Section 2(w) “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.”

<sup>4</sup> Criminal Petition Nos. 4676 and 4712 of 2020 filed to quash the proceedings before the abovementioned court. ([https://images.assettype.com/barandbench/2021-01/2b129e35-1060-450d-9b95-048ff3e7167f/Snapdeal v State of Karnataka.pdf](https://images.assettype.com/barandbench/2021-01/2b129e35-1060-450d-9b95-048ff3e7167f/Snapdeal_v_State_of_Karnataka.pdf))

<sup>5</sup> Due Diligence as prescribed under Section 79(2)(c) of the IT Act.

*the intermediary, as the same would be only vicarious, and such proceedings as initiated against them would be unjust and bad in law.*<sup>6</sup>

- e. The only liability of the intermediary under the IT Act is to take down third-party content upon receipt of either a court order or a notice by an appropriate government and not otherwise.<sup>7</sup>
- f. Therefore, Snapdeal in the capacity of an intermediary, would not be responsible and/or liable for sale of a product not complying with the requirements of DCA.
- g. Also, there was significant delay in lodging the complaint in this case.

### CONCLUSION

The HC has made the position clear for e-commerce companies, their directors, and officers in respect of prosecution for sale of products by its vendors/sellers on their websites or mobile applications, that may not comply with applicable laws. But it would be advisable for the e-commerce companies to ensure compliance with the requirements stipulated under the IT Act, Intermediaries Rules.

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<sup>6</sup> Paragraph 12.13 of the judgment.

<sup>7</sup> Section 79(3)(b) of the IT Act.