

## PROFITEERING IN THE TIMES OF CORONAVIRUS: DEMAND AND SUPPLY OF ESSENTIAL COMMODITIES

The outbreak of COVID -19 which has been declared a 'pandemic' by the World Health Organization has led to global [socio-economic disruption](#), cancellation of events, lock-downs across major cities of the world and widespread fear of supply shortages which has spurred [panic-buying](#) among consumers.

The first reported cases in India were students in Kerala who had just returned from China and tested positive for COVID-19. Overnight, the demand for hand sanitizers and N-95/Surgical masks skyrocketed, quickly leading to them being out of stock or sold at exorbitant prices.

The unprecedented demand also led to instances of sale and manufacture of fake hand sanitizers by companies and individuals who, given the situation, found that this could be a lucrative business opportunity.<sup>1</sup>

### Measures against Profiteering

Following reports of unavailability of masks and sanitizers, and in an effort to curb the black-marketing and profiteering by shops and chemists, the Government has taken the following steps:

- The Ministry of Consumer Affairs, Food and Public Distribution (**Ministry**), passed the Essential Commodities Order, 2020<sup>2</sup> and included masks (surgical and N-95 masks) and hand sanitizers in the Schedule to the Essential Commodities Act, 1955 (**EC Act**).
- On 21<sup>st</sup> March 2020, the Ministry passed a price fixation order capping the maximum retail prices of masks (3 ply mask – INR 10 apiece and 2 ply mask – INR 8 apiece) and hand sanitizers (INR 100 for a 200 ml bottle).<sup>3</sup>
- By a circular dated 19<sup>th</sup> March 2020, state government agencies were directed to grant necessary permissions/licenses to industries engaged in the manufacture of sanitizers for the storage of ethyl alcohol (a key ingredient) without any quota restrictions and to ensure that ethyl alcohol is provided to such industries at reasonable prices.<sup>4</sup>
- Further, the Ministry of Health and Public Welfare invoked the Disaster Management Act, 2005 and directed the National Pharmaceutical Pricing Authority (**NPPA**) to regulate the prices of surgical masks, hand sanitizers and gloves and ensure that the same are not sold at a price higher than the MRP.<sup>5</sup>

As for other commodities, local administration is cracking down heavily on traders who are hoarding essential commodities and seeking to profit by selling them at higher prices.<sup>6</sup>

In fact, as recently as April 1, 2020, the Supreme Court entertained and issued notice in a Writ Petition filed (by way of a Public Interest Litigation) against the profiteering and black-marketing of masks, hand sanitizers and personal protection equipment.

<sup>1</sup> <https://www.ndtv.com/gurgaon-news/at-least-5-000-fake-hand-sanitizers-seized-in-gurugram-2194386>  
<https://timesofindia.indiatimes.com/videos/city/bengaluru/fake-hand-sanitizers-worth-rs-56-lakh-seized-in-bengaluru/vedioshow/74736532.cms>

<sup>2</sup> <https://consumeraffairs.nic.in/sites/default/files/file-uploads/essential-commodities-order/1087.pdf>

<sup>3</sup> <https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Notification21mar2020.pdf>

<sup>4</sup> <https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Sanitizer%20-%20Letter.pdf>

<sup>5</sup> <https://pib.gov.in/newsite/PrintRelease.aspx?relid=200240>

<sup>6</sup> <https://www.outlookindia.com/newscroll/three-vegetable-wholesalers-booked-under-essential-commodities-act-dm/1776595>

## Legislative Mandate

The EC Act enables the Central/State Government in the circumstances prescribed therein – including in times of extra-ordinary demand, to regulate the sale, production and distribution of an essential commodity. An essential commodity is defined as a commodity specified in the Schedule.

Over the years, several commodities have been treated as essential commodities including drugs, pulses, sugar, edible oils and certain crops like sugarcane etc. For instance, in 2014, the Government amended the EC Act to curb the hoarding and soaring prices of onions and potatoes.<sup>7</sup>

A person booked under the EC Act can be awarded imprisonment of up to seven years or fine or both. Further, under the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 - another special legislation – one can be detained for a maximum period of six months.

## Challenges

The Government's effort to ensure effective supply of masks and sanitizers at reasonable prices and the decision to cap their retail prices, albeit a utilitarian one, may hurt and come under criticism from concerned retailers, manufacturers and distributors.

In the past too, the Central Government, exercising its powers under the EC Act has passed various orders fixing the retail and ceiling prices of essential commodities. Upon challenge, the Supreme Court has upheld these price control orders such as the Cotton Textile (Control) Order, 1948<sup>8</sup>, the Drug (Prices Control) Order, 1979<sup>9</sup>, the Drug (Prices Control) Order, 1995<sup>10</sup> holding that such orders are issued in the interest of the consumer – which must be accorded highest consideration and with the objective of securing equitable distribution of essential commodities.

However, the price control measures implemented in the sale of drugs opened the Indian pharmaceutical market to sub-standard and spurious drugs, frivolous patent applications and a heavy migration of manufacturers to non-essential drugs.

Therefore, it is imperative the Government, whilst noble in its attempt to fix prices, must bear in mind all consequences. Price control mechanisms, although enforced with the objective of maintaining supply at fair prices, often back-fire and lead to further supply shortages which in turn results in steep prices.

In the present situation, alongside capping the prices of sanitizers, the Government has also ensured that raw materials for its manufacture, like ethyl alcohol, are readily available to manufacturing units at reasonable prices. But there is no fail-proof formula for price fixation, and it must be appreciated that the Government does not have an easy task at hand.

## Measures to ensure availability of essential goods

While the Government is making all attempts to prevent hoarding by distributors, a different kind of hoarding has reared its ugly head – hoarding by consumers who took to stocking essential supplies in quantities large enough to last a war. The announcement of the three-week nationwide lockdown on March 24, 2020 only furthered this hysteria.

<sup>7</sup> <http://fcamin.nic.in/WriteReadData/userfiles/file/1685.pdf>

<sup>8</sup> Shree Meenakshi Oil Mills Ltd. v. Union of India 1974 (1) SCC 478

<sup>9</sup> Union of India Ltd. & Anr. v. Cynamide India Ltd. & Anr. 1987 2 SCC 720

<sup>10</sup> Union of India & Ors. v. Cipla Ltd. & Anr. C.A. No. 329 of 2005 & Ors.

Following this panic and frenzy and to ensure uninterrupted supply of essential goods, the Government came up with guidelines exempting the following from the lockdown:

- Shops/establishments providing such essential goods such as food, groceries etc.<sup>11</sup>. District authorities were advised to encourage home-delivery and exempted e-commerce retailers engaged in the delivery of essentials, medications etc.
- All facilities in the supply chain of essential goods whether involved in manufacturing, wholesale or retail of such goods<sup>12</sup>
- Suppliers of essential goods, including restaurants supplying home delivery of cooked food items

However, in some parts, the inter-state movement of goods has come to a halt after the announcement of the lockdown resulting in a clogged supply-chain and delayed deliveries. Such seemingly temporary hiccups can set back distribution by days, thus, disrupting supplies.

Further, the guidelines have not adopted a uniform definition for **essential goods**; for e.g., one part of the guidelines includes food in the indicative list of essential goods. However, another which specifies the industries relating to such essentials goods that would remain open does not include the term **food**. This has created confusion in the implementation of the guidelines and in the classification of what goods can be supplied and what industries can continue to remain operational.

### Way Forward

Some progress is being made by the Government who is trying to overcome hurdles such as disruption in the supply of essential goods by issuing clarifications and guidelines on a regular basis.

As a further measure, local Governments can liaison with Resident Welfare Associations/Self-Help Groups to address local shortages and ensure distribution of supplies to households with minimal intermediary costs.

In the meantime, uncertainty looms large in the mind of a consumer who finds himself conflicted – self-preservation or greater good. In times such as this, one must remember: *“on the conduct of one, depends the fate of all.”*

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**Note : This article is one amongst a series Business Continuity articles which ELP has instituted in light of COVID-19. Through these articles we hope to address legal and regulatory issues which will have an impact for doing business in and with India. To read our other articles please [click here](#).**

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<sup>11</sup> <https://mha.gov.in/sites/default/files/Guidelines.pdf>;

<https://mha.gov.in/sites/default/files/MHA%20order%20with%20addendum%20to%20Guidelines%20Dated%2024.3.2020.pdf>

<sup>12</sup> <https://www.livelaw.in/top-stories/delivery-of-essential-goods-through-e-commerce-will-remain-operational-centre-issues-fresh-guidelines-154387>