The Competition Act, 2002[1]

(Competition Act, 2002)

[Act 12 of 2003 as amended by Act 9 of 2023 and updated as of 20th September 2024]

[13th January, 2003]

CONTENTS

Competition Act, 2002

[Act 12 of 2003] [*13th January, 2003*]

An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

► **Object**.—The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. The advantages of perfect competition are threefold: allocative efficiency; productive efficiency; and dynamic efficiency. These factors by and large have been accepted all over the world as the guiding principles for effective implementation of competition law, *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744.

► **Applicability**.—Provisions of Act are attracted only when agreement is entered into between parties concerned after grant of licence. When application for licence is still pending Competition Act will have no application, *P.G. Narayanan* v. *Union of India*, 2005 SCC OnLine Mad 379.

Mixed disputed questions of fact and law under the Monopolies and Restrictive Trade Practices Act, or the Competition Act, 2002 are not to be gone into in detail in the discretionary writ jurisdiction, *Tamil Nadu Co-operative Milk Producers' Federation Ltd.* v. *Triad Trading Services Ltd.*, 2010 SCC OnLine Mad 3128.

Statement of Objects and Reasons.—In the pursuit of globalisation, India has responded by opening up its economy, removing controls and resorting to liberalisation. The natural corollary of this is that the Indian market should be geared to face competition from within the country and outside. The Monopolies and Restrictive Trade Practices Act, 1969 has become obsolete in certain respects in the light of international economic developments relating more particularly to competition laws and there is a need to shift our focus from curbing monopolies to promoting competition.

2. The Central Government constituted a High Level Committee on Competition Policy and Law. The Committee submitted its report on the 22nd May, 2000 to the Central Government. The Central Government consulted all concerned including the trade and industry associations and the general public. The Central Government after considering the suggestions of the trade and industry and the general public decided to enact a law on Competition.

3. The Competition Bill, 2001 seeks to ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in markets within India and, for this purpose, provides for the establishment of a quasi-judicial body to be called the Competition Commission of India (hereinafter referred to as CCI) which shall also undertake competition advocacy for creating awareness and imparting training on competition issues.

4. The Bill also aims at curbing negative aspects of competition through the medium of CCI. CCI will have a Principal Bench and Additional Benches and will also have one or more Mergers Benches. It will look into violations of the Act, a task which could be undertaken by the Commission based on its own knowledge or information or complaints received and references made by the Central Government, the State Governments or statutory authorities. The Commission can pass orders for granting interim relief or any other appropriate relief and compensation or an order imposing penalties, etc. An appeal from the orders of the Commission shall lie to the Supreme Court. The Central Government will also have powers to issue directions to the Commission on policy matters after considering its suggestions as well as the power to supersede the Commission if such a situation is

warranted.

5. The Bill also provides for investigation by the Director-General for the Commission. The Director-General would be able to act only if so directed by the Commission but will not have any suo moto powers for initiating investigations.

6. The Bill confers power upon the CCI to levy penalty for contravention of its orders, failure to comply with its directions, making of false statements or omission to furnish material information, etc. The CCI can levy upon an enterprise a penalty of not more than ten per cent of its average turn-over for the last three financial years. It can also order division of dominant enterprises. It will also have power to order demerger in the case of mergers and amalgamations that adversely affect competition.

7. The Bill also seeks to create a fund to be called the Competition Fund. The grants given by the Central Government, costs realised by the Commission and application fees charged will be credited into this Fund. The pay and allowances and the other expenses of the Commission will also be borne out of this Fund. The Bill provides for empowering the Comptroller and Auditor-General of India to audit the accounts of the Commission. The Central Government will be required to lay the annual accounts of the Commission, as audited by the Comptroller and Auditor-General and also the annual report of the Commission before both the Houses of Parliament.

8. The Bill aims at repealing the Monopolies and Restrictive Trade Practices Act, 1969 and the dissolution of the Monopolies and Restrictive Trade Practices Commission. The Bill provides that the cases pending before the Monopolies and Restrictive Trade Practices Commission will be transferred to the CCI except those relating to unfair trade practices which are proposed to be transferred to the relevant for a established under the Cosnsumer Protection Act, 1986.

9. The Bill seeks to achieve the above objectives.

Statement of Objects and Reasons of Amendment Act 39 of 2007.—The Competition Act was enacted in 2002 keeping in view the economic developments that have resulted in opening up of the Indian economy, removal of controls and consequent economic liberalisation which required that the Indian market be geared to face competition from within the country and outside. The Competition Act, 2002 provided for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

2. The Competition Commission of India (CCI) was established on

the 14th October, 2003 but could not be made functional due to filing of a writ petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court delivered its judgment on the 20th January, 2005. While disposing of the writ petition, the Hon'ble Supreme Court observed that "if an expert body is to be created as submitted on behalf of the Union of India consistent with what is said to be the international practice, it might be appropriate for the respondents to consider the creation of two separate bodies, one with expertise that is advisory and regulatory and the other adjudicatory. This followed up by an appellate body as contemplated by the proposed amendment, can go a long way, in meeting the challenge sought to be raised in this writ petition based on the doctrine of separation of powers recognised by the Constitution. Any way, it is for those who are concerned with the process of amendment to consider that aspect. It cannot be gainsaid that the Commission as now contemplated, has a number of adjudicatory functions as well". The Hon'ble Supreme Court left open all questions regarding the validity of the Competition Act, 2002 including Rule 3 of the Competition Commission of India (Selection of Chairperson and Other Members of the Commission) Rules, 2003.

3. The Competition (Amendment) Bill, 2006, inter alia, seeks to make the following amendments to the Competition Act so as to address various legal issues and to make the CCI fully operational on a sustainable basis, namely—

(*a*) to provide that CCI would be an expert body which will function as a market regulator for preventing anti-competitive practices in the country and it would also have advisory and advocacy functions in its role as a regulator;

(*b*) to omit the provisions relating to adjudication of disputes between two or more parties by the CCI and to provide for investigation through the Director General in case there exist a prima facie case relating to anti-competitive agreements or abuse of dominant position under the Competition Act, 2002 and conferring power upon the CCI to pass orders on completion of an inquiry and impose monetary penalties and in doing so the CCI would work as a collegium and its decisions would be based on simple majority;

(*c*) to provide for establishment of the Competition Appellate Tribunal (CAT), which shall be a three-member quasi-judicial body headed by a person who is or has been a retired Judge of the Supreme Court or the Chief Justice of a High Court and selection of the Chairperson and other Members of CAT to be made by a Selection Committee headed by the Chief Justice of the Supreme Court of India or his nominee, and having Secretaries of Ministries of Company Affairs and Law as its members;

(*d*) to provide for hearing and disposing of appeals by the CAT against any direction issued or decision made or order passed by the CCI;

(*e*) to provide for adjudication by CAT of claims on compensation and passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Competition Act, 2002;

(*f*) to provide for implementation of the orders of the CAT as a decree of a civil court;

(*g*) to provide for filing of appeal against the orders of the CAT to the Supreme Court;

(*h*) to confer powers to sectoral regulators to make suo motu reference to CCI on competition issues, in addition to the present provision of making reference, when such request is made by any party in a dispute before it.

4. The Bill also aims at continuation of the Monopolies and Restrictive Trade Practices Commission (MRTPC) till two years after constitution of CCI, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969 after which it would stand dissolved. The Bill also provides that MRTPC would not entertain any new cases after the CCI is duly constituted. Cases still remaining pending after this two year period, would be transferred to CAT or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases.

5. The Bill seeks to achieve the above objectives.

Statement of Objects and Reasons of Amendment Act 39 of 2009.—The Competition Act, 2002 was enacted in 2002 keeping in view the economic developments that resulted in opening up of the Indian economy, removal of controls and consequent economic liberalisation which required that the Indian economy be enabled to allow competition in the market from within the country and outside. It was subsequently amended in 2007. The Competition Act, 2002, inter alia, provides for the following, namely—

(A) establishment of the Competition Commission of India, which shall be an expert body and would function as a market regulator for preventing and regulating anti-competitive practices in the country in accordance with the provisions of the Act and it would also have advisory and advocacy functions in its role as a regulator which can also impose a penalty in certain cases specified in the Act;

(B) establishment of the Competition Appellate Tribunal, which shall be a three member quasi-judicial body headed by a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission and to adjudicate claims on compensation and for passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Act.

2. Sub-section (1) of Section 66 of the Act provides for repeal of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) and dissolution of the Monopolies and Restrictive Trade Practices Commission (MRTPC) established thereunder. However, the MRTPC was allowed to continue under the said sub-section to exercise jurisdiction and powers under the repealed Act for a period of two years from the date of the commencement of this Act in respect of all cases or proceedings filed before the commencement of this Act.

3. Sub-section (3) of Section 66 of the Act, inter alia, provides that all cases pertaining to monopolistic trade practices or restrictive trade practices and sub-section (5) of Section 66 of the Act provides that all cases pertaining to unfair trade practices referred to in clause (*x*) of sub-section (1) of Section 36-A of the MRTP Act, pending before the MRTPC shall, after the expiry of two years referred to in sub-section (1) of Section 66 stand transferred to the Appellate Tribunal, and, be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act.

4. Sub-section (4) of Section 66 of the Act, inter alia, provides that all cases pertaining to unfair trade practices other than those referred to in clause (*x*) of sub-section (1) of Section 36-A of the MRTP Act before the MRTPC shall, on or before the expiry of two years stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 and the National Commission shall dispose of such cases as if they were cases filed under that Act.

5. Section 66 of the Act was brought in force on the 1st September, 2009. The post of Chairperson of the MRTPC was vacant on the said date and there were only two Members in the said Commission out of five Members. Both Members in the said Commission demitted their office on the day of the 14th September, 2009 and on the day of the 1st October, 2009 respectively on completion of their tenure. Efforts were made to fill up the posts but were of no avail. The MRTPC became non-functional and a gap was created for the disposal of the cases pending with the Commission. On the other hand, the Competition Appellate Tribunal established under the Competition Act, 2002 was not having adequate workload.

6. As both the Houses of Parliament were not in session and the President was satisfied that the circumstances existed which rendered

it necessary for her to take immediate action, the Competition (Amendment) Ordinance, 2009 was promulgated on the 14th October, 2009 so as to transfer immediately the cases pending with the Monopolies and Restrictive Trade Practices Commission to the Competition Appellate Tribunal and National Commission from the date of issue of the Ordinance.

7. Since the National Commission expressed its inability to accept the transfer of cases and also the investigations or proceedings as many of the cases were not covered by the definition of 'consumer' under the Consumer Protection Act, 1986 and due to lack of investigating machinery with them, certain further amendments are proposed to Section 66 of the Act which, inter alia, contains that—

(*i*) all the cases relating to unfair trade practices pending before the National Commission on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President, shall, on and from that date, stand transferred to the Appellate Tribunal and be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed;

(*ii*) all investigations or proceedings, relating to unfair trade practices pending before the National Commission, on or before the date on which the Competition (Amendment) Bill 2009, receives the assent of the President shall, on and from that date, stand transferred to the Appellate Tribunal and the Appellate Tribunal may conduct or order for conduct of such investigation in the manner as it deems fit.

8. The Bill seeks to replace the aforesaid Ordinance with the above amendments.

Statement of Objects and Reasons of Amendment Act 9 of 2023.—The Competition Act, 2002 (hereinafter referred to as the said Act) was enacted in the year 2002, to provide for establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants, in India, and for matters connected therewith or incidental thereto.

2. There has been a significant growth of Indian markets and a paradigm shift in the way businesses operate in the last decade. In view of the economic development, emergence of various business models and the experience gained out of the functioning of the Commission, the Government of India constituted Competition Law Review Committee, to examine and suggest the modifications in the said Act. After review of the recommendations proposed by the Committee, public consultations and with a view to provide regulatory

certainty and trust-based business environment, it is considered imperative to amend the said Act.

3. The Competition (Amendment) Bill, 2022, *inter alia*, provides for the following, namely:—

(*a*) changes in certain definitions like "enterprise", "relevant product market", "Group", "Control", etc., to provide clarity;

(*b*) broadening the scope of anti-competitive agreements and inclusion of a party facilitating an anti-competitive horizontal agreement under such agreements;

(*c*) provisions for reduction of time-limit for approval of combinations from two hundred and ten days to one hundred and fifty days and forming a *prima facie* opinion by the Commission within twenty days for expeditious approval of combinations;

(*d*) provisions for "value of transaction" as another criteria for notifying combinations to the Commission;

(*e*) limitation period of three years for filing information on anti-competitive agreements and abuse of dominant position before the Commission;

(*f*) appointment of the Director General by the Commission with the prior approval of the Central Government;

(*g*) introduction of Settlement and Commitment framework to reduce litigations;

(*h*) incentivising parties in an ongoing cartel investigation in terms of lesser penalty to disclose information regarding other cartels;

(*i*) substitution of a provision which provides for penalty up to rupees one crore or imprisonment up to three years or both in case of contravention of any order of the National Company Law Appellate Tribunal with provision for contempt;

(*j*) issuance of guidelines including on penalties to be imposed by the Commission.

4. The Bill seeks to achieve the above objectives.

Chapter I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Competition Act, 2002.

(2) It extends to the whole of India except the State of Jammu and Kashmir[*].

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

"Section 1 enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "acquisition" means, directly or indirectly, acquiring or agreeing to acquire—

(*i*) shares, voting rights or assets of any enterprise; or

(*ii*) control over management or control over assets of any enterprise;

"Clause (a) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

(*b*) "agreement" includes any arrangement or understanding or action in concert,—

(*i*) whether or not, such arrangement, understanding or action is formal or in writing; or

(*ii*) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

"Clause (b) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

[2][(*ba*) "Appellate Tribunal" means the National Company Law Appellate Tribunal referred to in sub-section (1) of Section 53-A;]

(*c*) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;

"Clause (c) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

(*d*) "Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of Section 8;

"Clause (d) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

(*e*) "Commission" means the Competition Commission of India established under sub-section (1) of Section 7;

"Clause (e) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

[3][(*ea*) "commitment" means the commitment referred to in Section 48-B;]

(*f*) "consumer" means any person who—

(*i*) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;

(*ii*) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

"Clause (f) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

► **Consumer**.—Consumer is the one who purchases goods for private use or consumption, *Mogan Stanley Mutual Fund* v. *Kartick Das*, (1994) 4 SCC 225.

Consumer includes also the beneficiary for whose benefit the services are hired or availed of, *R.P.F. Commr.* v. *Shiv Kumar Joshi*, (2000) 1 SCC 98.

(*g*) "Director General" means the Director General appointed under sub-section (1) of Section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;

"Clause (g) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

(*h*) "enterprise" means [4][a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space;].

"Clause (h) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt., 24-9-2003."

Explanation.—For the purposes of this clause,—

(*a*) "activity" includes profession or occupation;

(*b*) "article" includes a new article and "service" includes a new service;

(*c*) "unit" or "division", in relation to an enterprise, includes—

(*i*) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;

(*ii*) any branch or office established for the provision of any service;

► **Expression "enterprise"**.—No notification has been issued by the Government under Section 54 to grant exemption to any activity of the Railways. Providing transport for goods and people is not a sovereign function. Such activity is covered by the definition of 'enterprise', *Union of India* v. *Competition Commission of India*, 2012 SCC OnLine Del 1114.

(*i*) "goods" means goods as defined in the Sale of Goods Act, 1930 (8 of 1930) and includes—

(A) products manufactured, processed or mined;

(B) debentures, stocks and shares after allotment;

(C) in relation to goods supplied, distributed or controlled in India, goods imported into India;

"Clause (i) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

(*j*) "Member" means a Member of the Commission appointed under sub-section (1) of Section 8 and includes the Chairperson;

"Clause (j) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

(*k*) "notification" means a notification published in the Official Gazette;

"Clause (k) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

[5][(*ka*) "party" includes a consumer or an enterprise or a person or an information provider, or a consumer association or a trade association, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise or a person against whom any inquiry or proceeding is instituted; and any enterprise or person impleaded by the Commission to join the proceedings;]

(*l*) "person" includes—

(*i*) an individual;

(*ii*) a Hindu undivided family;

(*iii*) a company;

(*iv*) a firm;

(*v*) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(*vi*) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in [6] [clause (45) of Section 2 of the Companies Act, 2013] ([7][18 of 2013]);

(*vii*) any body corporate incorporated by or under the laws of a country outside India;

(*viii*) a cooperative society registered under any law relating to cooperative societies;

(*ix*) a local authority;

(*x*) every artificial juridical person, not falling within any of the preceding sub-clauses;

"Clause (l) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

(*m*) "practice" includes any practice relating to the carrying on of any trade by a person or an enterprise;

"Clause (m) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

(*n*) "prescribed" means prescribed by rules made under this Act;

"Clause (n) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

(*o*) "price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing;

► **Price**.—Money consideration for resale is 'price', *Gopalkrishna Pillai* v. *K.M. Mani*, (1984) 2 SCC 83.

[8][(*p*) "public financial institution" means public financial institution as defined in clause (72) of Section 2 of the Companies Act, 2013 (18 of 2013) and includes a State Financial Corporation, State Industrial Corporation or State Investment Corporation;]

(*q*) "regulations" means the regulations made by the Commission under Section 64;

(*r*) "relevant market" means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

(*s*) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

[9][(*t*) "relevant product market" means a market comprising of all those products or services—

(*i*) which are regarded as inter-changeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use; or

(*ii*) the production or supply of, which are regarded as interchangeable or substitutable by the supplier, by reason of the ease of switching production between such products and services and marketing them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices;]

(*u*) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

[10][(*ua*) "settlement" means the settlement referred to in Section 48-A;]

"Clause (o) to (u) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715(E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

► **Service**.—The word 'service' has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory, etc. The concept of service thus is very wide. How it should be understood and what it means depends on the context in which it has been used in an enactment, *Lucknow Development Authority* v. *M.K. Gupta*, (1994) 1 SCC 243.

► **Any**.—The word 'any' means 'one or some or all.' In Black's Law Dictionary it is explained thus, "word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute", *Lucknow Development Authority* v. *M.K. Gupta*, (1994) 1 SCC 243.

► **Potential**.—The word 'potential' is again very wide. In Oxford Dictionary it is defined as 'capable of coming into being, possibility'. In Black's Law Dictionary it is defined as 'existing in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future instalments or payments on a contract or engagement already made.' In other words, service which is not only extended to actual users but those who are capable of using it are covered in the definition, *Lucknow Development Authority* v. *M.K. Gupta*, (1994) 1 SCC 243.

(*v*) "shares" means shares in the share capital of a company carrying voting rights and includes—

(*i*) any security which entitles the holder to receive shares with voting rights;

(*ii*) stock except where a distinction between stock and share is expressed or implied;

(*w*) "statutory authority" means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;

(*x*) "trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;

(*y*) "turnover" includes values of sale of goods or services;

(*z*) words and expressions used but not defined in this Act and defined in [11][the Companies Act, 2013] ([12][18 of 2013]) shall have the same meanings respectively assigned to them in that Act.

► **Agreement**.—The definition of "agreement" under Section 2(b) is not exhaustive, and any arrangement or understanding or even action in concert is termed as "agreement". Further, such arrangement or understanding may be formal or informal or oral and it is not necessary that the same be reduced in writing or it be intended to be enforceable by legal proceedings, *CCI* v. *Coordination Committee of Artistes & Technicians of W.B. Film &Television*, (2017) 5 SCC 17.

► **Interpretation of Statute**.—Judicial interpretation of words and expressions of one statute can be a guide for the interpretation of same words and expressions in the other statute, *Jagatram Ahuja* v. *CGT*, (2000) 8 SCC 249.

Chapter II

PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATIONS

Prohibition of agreements

3. Anti-competitive agreements.—(1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(*a*) directly or indirectly determines purchase or sale prices;

(*b*) limits or controls production, supply, markets, technical development, investment or provision of services;

(*c*) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(*d*) directly or indirectly results in bid rigging or collusive bidding,

shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services:

[13][Provided further that an enterprise or association of enterprises or a person or association of persons though not engaged in identical or similar trade shall also be presumed to be part of the agreement under this sub-section if it participates or intends to participate in the furtherance of such agreement.]

Explanation.—For the purposes of this sub-section "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

(4) [14][Any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons] at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

(*a*) tie-in arrangement;

(*b*) exclusive [15][dealing] agreement;

(*c*) exclusive distribution agreement;

(*d*) refusal to deal;

(*e*) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India:

[16][Provided that nothing contained in this sub-section shall apply to an agreement entered into between an enterprise and an end consumer.]

Explanation.—For the purposes of this sub-section,—

[17][(*a*) "tie-in arrangement" includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services;]

[18][(*b*) "exclusive dealing agreement" includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;]

(*c*) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods [19][or services] or allocate any area or market for the disposal or sale of the goods [20][or services];

(*d*) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods [21][or services] are sold or from whom goods [22][or services] are bought;

(*e*) "resale price maintenance" [23][includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction] that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;

(5) Nothing contained in this section shall restrict—

(*i*) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under—

(*a*) the Copyright Act, 1957 (14 of 1957);

(*b*) the Patents Act, 1970 (39 of 1970);

(*c*) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);

(*d*) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);

(*e*) the Designs Act, 2000 (16 of 2000);

(*f*) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

[24][(*g*) any other law for the time being in force relating to the protection of other intellectual property rights.]

(*ii*) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

"Section 3 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

► **Interpretation/Construction**.—The term "process for bidding" used in the Explanation to Section 3(3) would cover every stage starting from notice inviting tender till the award of the contract and would also include all the intermediate stages such as pre-bid clarification and bid notifications, *Excel Crop Care Ltd.* v. *CCI*, (2017) 8 SCC 47.

An "agreement", referred to in Section 3 of the Act must relate to an economic activity. Prohibition on the exhibition of dubbed serial on television prevented the competing parties in pursuing their commercial activities. Further, protection in the name of the language went against the interest of the competition, depriving the consumers of exercising their choice, *CCI* v. *Coordination Committee of Artistes & Technicians of W.B. Film & Television*, (2017) 5 SCC 17.

► **Anti-competitive agreements, what are**.—A lease deed between the claimant and the defendant according to which the claimant had to buy most of his beer at list price from a specified supplier with the result that he was unable to compete with "free" public houses in the area who were able to buy beer at lower, discounted prices, fall under the category of tie-in agreements and hence void, *Crehan* v. *Inntrepreneur Pub Co(CPC) (Office of Fair Trading Intervening)*, [2007] 1 A.C. 333: [2006] 3 WLR 148: [2006] ICR 1344.

Claims for damages brought by consumers against firms that took part in horizontal agreements in restraint of competition. There was a sufficient degree of probability that the agreement could have an influence, direct or indirect and actual or potential, on the sale of the insurance policies and so it is an anti-competitive agreement, *Manfredi* v. *Lloyd Adriatico Assicurazioni Spa*, [2007] Bus LR 188.

The plaintiff, a producer of luxury cosmetic goods, operated with the European Community a closed selective distribution network whose members were not permitted to sell or obtain the plaintiff's products outside the network. The plaintiff contracted with the defendant, who was not a part of the distribution network, for distribution of the plaintiff's products in Russia, Ukraine and Slovenia. The contracts provided that the product were to be marketed only in those countries, and on the subsequent discovery of certain of the products in the member states of the Community, the plaintiff terminated the contracts and brought an action for damages. It was held that in similar circumstances the supplier would be liable for entering into anti-competitive agreements, *Yves Saint Laurent Parfums S.A.* v. *Javico International A.G.*, [1999] QB 477: [1998] 3 WLR 1200.

Contract involving an agreement which restricts or distorts competition and causes loss to one party by restriction of such competition is anti-competitive agreement. The aggrieved party in the above circumstances can claim damages from the opposite party for the loss suffered, *Courage Ltd* v. *Crehan*, [2002] QB 507: [2001] 3 WLR 1646: [2002] ICR 457.

The Express Bus Agencies Association were found to be engaged in the fixing prices of express bus tickets sold in Singapore for destinations in Malaysia and in the fixing of the fuel and insurance charge. Price fixing was found to be anti-competitive in nature as it restricted and distorted competition appreciably and thus was termed as anti-competitive, hence illegal in the said case, *Re Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand*, [2009] SGCCS 2.

A business entity cannot justify restraining trade between itself and an independently owned entity merely on the ground that it helped launch that entity, by providing expert advice or seed capital. *Re Qantas Airways and Orangestar Investment Holdings*, [2007] SGCCS 2.

► **Undeclared participation**.—Mere undeclared participation in a cartel is not an offence. A person should not be punished under a law which is not sufficiently clear and certain to enable him to know what conduct is forbidden before he does it, and no one should be punished for an act which is not clearly ascertainable punishable when it was done, *Norris* v. *Government of the United States of America*, [2008] 2 WLR 673.

► **Recovery of fine**.—Claimant is entitled to recover the fine from the employees and directors who caused it to engage in anti-competitive agreements. Such a claim is not barred by public policy or by the principle of *ex turpi* causanon oritur actio because Safeway is liable only as a result of the acts of its employees and directors, *Safeway Stores Ltd* v. *Twigger*, [2010] Bus LR 974.

► **Cartel formation**.—Consumers/public should not bear unwarranted higher electricity generation costs due to malpractices in award of government tender and formation of cartel, *B.S.N. Joshi & Sons Ltd.* v. *Ajoy Mehta*, (2009) 3 SCC 458.

► **Collusive bidding**.—Internationally, "collusive bidding" is not understood as being different from "bid rigging". Applying the principle of purposive interpretation, even if Section 3(3) Explanation did not contain the expression "collusive bidding" specifically, while interpreting Clause (d), it can be inferred that "collusive bidding" relates to the process of bidding as well. Further, the two expressions are to be interpreted using the principle of noscitur a sociis i.e. when two or more words which are susceptible to analogous meanings are coupled together, the words can take colour from each other, *Excel Crop Care Ltd.* v. *CCI*, (2017) 8 SCC 47.

► **Proof of collusive bidding**.—In relation to tenders prior to 2009, it could not be said that there was any violation of law, however, prior practice threw light on the formation of cartel by the appellants. Even though appellants could not be punished for tenders prior to Section 3 coming into effect, they were important in finding out the mens rea of the appellants i.e. arriving at an agreement to enter into collusive bidding, *Excel Crop Care Ltd.* v. *CCI*, (2017) 8 SCC 47.

► **Enterprise/Association of enterprises barred from entering into anti-competitive agreements**.—Determination of enterprise/association of enterprises barred from entering into such agreements i.e. those falling within the ambit of S. 3, must be by functional approach rather than the form of entities. The expression "enterprise" may refer to any entity, regardless of its legal status or the way in which it was financed and may include natural as well as legal persons. Any entity, regardless of its form, constitutes an "enterprise" within the meaning of S. 3 of the Act when it engages in economic activity. Economic activity is central to the concept of Competition Law. Hence, "enterprise/association of enterprises" must be found to be functionally involved in economic activity in relevant market, regardless of its form. The ntities claiming to be trade unions and acting solely in their capacity as trade unions would be beyond the purview of the Act, *CCI* v. *Coordination Committee of Artistes& Technicians of W.B. Film & Television*, (2017) 5 SCC 17.

► **Relevant market**.—The purpose of defining "relevant market" is to assess, with identifying in a systematic way, the competitive constraints that undertakings face when operating in a market. Further, relevant product market comprises all those products which are considered interchangeable or substitutable by buyers because of the products' characteristics, prices and intended use and the relevant geographic market comprises all those regions or areas where buyers would be able or willing to find substitutes for the products in question, *CCI* v. *Coordination Committee of Artistes & Technicians of W.B. Film & Television*, (2017) 5 SCC 17.

► **Parallel pricing**.—Parallelism is not applicable in bid cases, *Excel Crop Care Ltd.* v. *CCI*, (2017) 8 SCC 47.

► **Jurisdiction of CCI vis-à-vis lottery business**.—Enquiry by CCI into bid rigging, collusive bidding, and cartelisation in the tender process for appointment of selling agents and distributors for lotteries, is permissible, *CCI* v. *State of Mizoram*, (2022) 7 SCC 73.

Prohibition of abuse of dominant position

4. Abuse of dominant position.—[25][(1) No enterprise or group shall abuse its dominant position.]

(2) There shall be an abuse of dominant position [26][under sub-section (1), if an enterprise or a group]—

(*a*) directly or indirectly, imposes unfair or discriminatory—

(*i*) condition in purchase or sale of goods or service; or

(*ii*) price in purchase or sale (including predatory price) of goods or service.

Explanation.—For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (*i*) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (*ii*) shall not include such [27][condition or price] which may be adopted to meet the competition; or

(*b*) limits or restricts—

(*i*) production of goods or provision of services or market therefor; or

(*ii*) technical or scientific development relating to goods or services to the prejudice of consumers; or

(*c*) indulges in practice or practices resulting in denial of market access [28][in any manner]; or

(*d*) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(*e*) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.—For the purposes of this section, the expression—

(*a*) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—

(*i*) operate independently of competitive forces prevailing in the relevant market; or (*ii*) affect its competitors or consumers or the relevant market in its favour;

(*b*) "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

[29][(*c*) "group" shall have the same meaning as assigned to it in clause (*b*) of the Explanation to Section 5.]

"Section 4 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

► **Abuse of dominant position**.—So far as bulk butter was concerned the defendants had a dominant position in England and Wales, which was a substantial part of the common market, and that it was at least arguable that by limiting their sales of bulk butter to 4 out of 20 distributors and by refusing to supply butter to the plaintiffs they had been guilty of an abuse of that dominant position, *Garden Cottage Foods Ltd.* v. *Milk Marketing Board*, [1982] QB 1114: [1982] 3 WLR 514.

Dominant trader in United Kingdom map market planning to market own digital images from "one-stop-shop" website used market power to gain competitive advantage in related market which was held to be abuse of dominant position and hence illegal, *Getmapping plc* v. *Ordance Survey*, [2003] ICR 1.

SISTIC used its dominant position in the market as it used to restrict even promoters' choice of ticketing service provides and thus afforded the ability to charge ticket buyers higher prices. Such an agreement was held to be an exclusive agreement which restricted fair competition in the market, *Re Abuse of a Dominant Position by SISTIC com Pte Ltd*, [2010] SGCCS 3.

Abuse of dominant position by cable operators' group by unlawful premature termination of agreement with broadcaster of a TV channel resulting in denial to broadcaster of market access, violative of Section 4(2)(*c*). Words "in any manner" in Section 4(2)(*c*) of wide import and should be given natural meaning. Once dominant position of the group made out on facts, question whether broadcaster is in competition with the group irrelevant for purpose of application of Section 4(2)(*c*), *CCI* v. *Fast Way Transmission (P) Ltd.*, (2018) 4 SCC 316.

► **Anti-competitive practices**.—Enron Coal Services Ltd (ECSL) alleged that they were victims of anti-competitive practices in relation to coal haulage on certain rail routes. English Welsh & Scottish Railway Ltd abused its dominant position in the market for coal haulage as it, without objective justification, engaged into selective and discriminatory pricing practices which placed ECSL at a competitive disadvantage. ECSL's claim was allowed, *Enron Coal Services Ltd (in liquidation)* v. *English Welsh & Scottish Railway Ltd*, [2010] Bus LR 28.

The issue involved was over unfair pricing and margin squeeze abuses as well as the assessment of costs and the amount of any payment in respect of costs.

The Water Services Regulation Authority had abused its dominant position by imposing unfair prices and thus such impositions were held to be anti-competitive, *Albion Water Ltd* v. *Water Services Regulation Authority (formerly Director General of Water Wervices)*, [2008] Bus LR 1655.

► **Knowledge of error**.—Company unwittingly published false statements in travel brochure. On the discovery of error, the company took immediate steps to inform customers of the error. Since the company was unaware at the time of publication that the statement was false and since, upon discovering the error, they had immediately taken all steps as could reasonably be expected of them to prevent the statement being read by the complainant, there was no evidence upon which an omission could be proved, *Wings Ltd.* v. *Ellis*, [1984] 1 WLR 731.

► **Infringement of copyright**.—The defendant company infringed the copyright of the plaintiff and counterclaimed. In its counter-claim, defendant alleged that the ownership and subsistence of copyright in the compilations, data and artistic works in plaintiff's directories are at dispute. The defendant in the above case had abused its dominant position in the market which restricted fair trade for the plaintiff and thus the defendant's arguments that plaintiff company has no standing to bring a complain under the Competition Act is clearly nullified, *Global Yellow Pages Ltd* v. *Promedia Directories Pte Ltd*, [2010] SGHC 97.

► **Differential treatment**.—Increase in effectiveness of public sector enterprises (PSEs) cannot be done on a uniform policy without examination as to whether such protection is necessary for a particular PSE. It has to be examined individually as to whether any differential treatment is called for, *Caterpillar India (P) Ltd.* v. *Western Coal Fields Ltd.*, (2007) 11 SCC 32.

► **Predatory pricing**.—In this case, appellant Uber, was making losses in respect of every trip, it was held that the same does not make any economic sense other than pointing to Uber's intent to eliminate competition in market. Further, based on the information on record, held, it would be very difficult to say that there is no prima facie case under Section 26(1) as to infringement of Section 4. Further, if in fact, a loss is made for trips made, Expln. (a)(ii) to Section 4 would prima facie be attracted since this would certainly affect appellant's competitors in appellant's favour or relevant market in its favour. Furthermore, insofar as "abuse" of dominant position is concerned, under Section 4(2)(a), so long as this dominant position, whether directly or indirectly, imposes an unfair price in purchase or sale including predatory price of services, abuse of dominant position also gets attracted, *Uber (India) Systems (P) Ltd.* v. *CCI*, (2019) 8 SCC 697.

► **Applicability**.—All PSUs/Government companies, come within purview of the Competition Act, *Coal India Ltd.* v. *CCI*, (2023) 10 SCC 345

► **Alternative forum/remedies**.—Existence of alternative forum/remedies is not a bar to applicability of Competition Act, *Coal India Ltd.* v. *CCI*, (2023) 10 SCC 345

Regulation of combinations

5. Combination.—The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—

(*a*) any acquisition where—

(*i*) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—

(A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

[30][(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or;]

(*ii*) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

[31][(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]

(*b*) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

(*i*) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

[32][(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or

turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(*ii*) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

[33][(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]

(*c*) any merger or amalgamation in which—

(*i*) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

[34][(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(*ii*) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

[35][(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in [36][India; or]]

[37][(*d*) value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds rupees two thousand crore:

Provided that the enterprise which is being acquired, taken control of, merged or amalgamated has such substantial business operations in India as may be specified by regulations.]

[38][(*e*) notwithstanding anything contained in clause (*a*) or clause (*b*) or clause (*c*), where either the value of assets or turnover of the enterprise being acquired, taken control of, merged or amalgamated in India is not more than such value as may be prescribed, such acquisition, control, merger or amalgamation, shall not constitute a combination under Section 5.]

[39][*Explanation*.—For the purposes of this section,—

(*a*) "control" means the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions by—

(*i*) one or more enterprises, either jointly or singly, over another enterprise or group; or

(*ii*) one or more groups, either jointly or singly, over another group or enterprise;

(*b*) "group" means two or more enterprises where one enterprise is directly or indirectly, in a position to—

(*i*) exercise twenty-six per cent. or such other higher percentage as may be prescribed, of the voting rights in the other enterprise; or

(*ii*) appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or

(*iii*) control the management or affairs of the other enterprise;

(*c*) "turnover" means the turnover certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (2) or sub-section (4) of Section 6 and such turnover in India shall be determined by excluding intra-group sales, indirect taxes, trade discounts and all amounts generated through assets or business from customers outside India, as certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (2) or sub-section (4) of Section 6;

(*d*) "value of transaction" includes every valuable consideration, whether direct or indirect, or deferred for any acquisition, merger or amalgamation;

(*e*) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed combination falls and if such financial statement has not yet become due to be filed with the Registrar under the Companies Act, 2013 (18 of 2013) then as per the statutory auditor's report made on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (2) or sub-section (4) of Section 6, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights under the laws provided in sub-section (5) of Section 3;

(*f*) where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, the value of assets or turnover or value of transaction as may be applicable, of the said portion or division or business or attributable to it, shall be the relevant assets or turnover or relevant value of transaction for the purpose of applicability of the thresholds under Section 5.]

"Section 5 enforced w.e.f. 1-6-2011 *vide* Noti. No. S.O. 479(E), dt. 4-3-2011 as corrected by Noti. No. S.O. 1229(E), dt. 30-5-2011."

► **Nature of transaction**.—Structuring of transactions should not be to avoid mandatory provisions of the Act, *CCI* v. *Thomas Cook (India) Ltd.*, (2018) 6 SCC 549.

► **Exemption**.—Transaction which formed part of a single composite combination, would not qualify for exemption in its independent and individual capacity under notification (No. SO 482-E dt. 4-3-2011) issued under Section 54 (*a*), *CCI* v. *Thomas Cook (India) Ltd.*, (2018) 6 SCC 549.

6. Regulation of combinations.—(1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, [40][shall] give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, [41][after any of the following, but before consummation of the combination]—

(*a*) approval of the proposal relating to merger or amalgamation, referred to in clause (*c*) [42][and clause (*d*)] of Section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

(*b*) execution of any agreement or other document for acquisition referred to in clause (*a*) [43][and clause (*d*)] of Section 5 or acquiring of control referred to in clause (*b*) of that section.

[44][*Explanation*.—For the purposes of this sub-section, "other document" means any document, by whatever name called, conveying an agreement or decision to acquire control, shares, voting rights or assets or if the acquisition is without the consent of the enterprise being acquired, any document executed by the acquiring enterprise, by whatever name called, conveying a decision to acquire control, shares or voting rights or where a public announcement has been made in accordance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) for acquisition of shares, voting rights or control such public document.]

[45][(2-A) No combination shall come into effect until [46][one hundred and fifty days] have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under Section 31, whichever is earlier.]

(3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in [47][Sections 29, 29-A, 30 and 31].

[48][(4) Notwithstanding anything contained in sub-sections (2-A) and (3) and Section 43-A, if a combination fulfils such criteria as may be prescribed and is not otherwise exempted under this Act from the requirement to give notice to the Commission under sub-section (2), then notice for such combination may be given to the Commission in such form and on payment of such fee as may be specified by regulations, disclosing the details of the proposed combination and thereupon a separate notice under sub-section (2) shall not be required to be given for such combination.]

[49][(5) Upon filing of a notice under sub-section (4) and acknowledgement thereof by the Commission, the proposed combination shall be deemed to have been approved by the Commission under sub-section (1) of Section 31 and no other approval shall be required under sub-section (2) or sub-section (2-A).

(6) If within the period referred to in sub-section (1) of Section 20,

the Commission finds that the combination notified under sub-section (4) does not fulfil the requirements specified under that sub-section or the information or declarations provided are materially incorrect or incomplete, the approval under sub-section (5) shall be void ab initio and the Commission may pass such order as it may deem fit:

Provided that no such order shall be passed unless the parties to the combination have been given an opportunity of being heard.

(7) Notwithstanding anything contained in this section and Section 43-A, upon fulfilment of such criteria as may be prescribed, certain categories of combinations shall be exempted from the requirement to comply with sub-sections (2), (2-A) and (4).

(8) Notwithstanding anything contained in sub-sections (4), (5), (6) and (7)—

(*i*) the rules and regulations made under this Act on the matters referred to in these sub-sections as they stood immediately before the commencement of the Competition (Amendment) Act, 2023 and in force at such commencement, shall continue to be in force, till such time as the rules or regulations, as the case may be, made under this Act; and

(*ii*) any order passed or any fee imposed or combination consummated or resolution passed or direction given or instrument executed or issued or thing done under or in pursuance of any rules and regulations made under this Act shall, if in force at the commencement of the Competition (Amendment) Act, 2023, continue to be in force, and shall have effect as if such order passed or such fee imposed or such combination consummated or such resolution passed or such direction given or such instrument executed or issued or done under or in pursuance of this Act.

(9) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign portfolio investor, bank or Category I alternative investment fund, pursuant to any covenant of a loan agreement or investment agreement.

Explanation.—For the purposes of this section, the expression—

(*a*) "Category I alternative investment fund" has the same meaning as assigned to it under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*b*) "foreign portfolio investor" has the same meaning as assigned to it under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 made under the

Securities and Exchange Board of India Act, 1992 (15 of 1992).]

"Section 6 enforced w.e.f. 1-6-2011 *vide* Noti. No. S.O. 479(E), dt. 4-3-2011 as corrected by Noti. No. S.O. 1229(E), dt. 30-5-2011."

► **Penalty for non-compliance with Section 6(2)**.—The proposal to enter into combination was required to be notified to the Commission and the legislative mandate was that the notification had to be made before entering into the combination. Further, the intent being that the Commission has an opportunity to assess whether the proposed combination would cause an appreciable adverse effect on competition and in case combination was to be notified ex post facto for approval, it would defeat the very intendment of the provisions of the Act, *SCM Solifert Ltd.* v. *CCI*, (2018) 6 SCC 631.

[50][6-A. Open offers, etc.—Nothing contained in sub-section (2-A) of section 6 and section 43-A shall prevent the implementation of an open offer or an acquisition of shares or securities convertible into other securities from various sellers, through a series of transactions on a regulated stock exchange from coming into effect, if—

(*a*) the notice of the acquisition is filed with the Commission within such time and in such manner as may be specified by regulations; and

(*b*) the acquirer does not exercise any ownership or beneficial rights or interest in such shares or convertible securities including voting rights and receipt of dividends or any other distributions, except as may be specified by regulations, till the Commission approves such acquisition in accordance with the provisions of sub-section (2-A) of section 6 of the Act.

Explanation.—For the purposes of this section, "open offer" means an open offer made in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).]

Chapter III

COMPETITION COMMISSION OF INDIA

7. Establishment of Commission.—(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".

(2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.

(4) The Commission may establish offices at other places in India.

"Section 7 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

[51][8. Composition of Commission.—(1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.

(2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, [52][technology,] public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.

(3) The Chairperson and other Members shall be whole-time Members.]

► **Appointment of mensem**.—It cannot be gainsaid that the Commission as now contemplated has a number of adjudicatory functions as well. If the Commission is to be constituted as an expert body consistent with international practice, it might be appropriate to consider the creation of two separate bodies, one with expertise that is advisory and regulatory and the other adjudicatory. This followed up by an appellate body would go a long way, *Brahm Dutt* v. *Union of India*, (2005) 2 SCC 431.

[53][9. Selection Committee for Chairperson and Members of Commission.—(1) The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

(*a*) the Chief Justice of India or his nominee Chairperson;

(*b*) the Secretary in the Ministry of Corporate Affairs Member;

(*c*) the Secretary in the Ministry of Law and Justice Member;

(*d*) two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, [54][technology,] public affairs or competition matters including competition law and policy Members.

(2) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.]

10. Term of office of Chairperson and other Members.—(1) The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

[55][Provided that the Chairperson or other Members shall not hold office as such after he has attained the age of sixty-five years.]

(2) A vacancy caused by the resignation or removal of the Chairperson or any other Member under Section 11 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of Sections 8 and 9.

(3) The Chairperson and every other Member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, manner and before such authority, as may be prescribed.

(4) In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior most Member shall act as the Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(5) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions.

"Section 10 enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

11. Resignation, removal and suspension of Chairperson and other Members.—(1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) Notwithstanding anything contained in sub-section (1) the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,—

(*a*) is, or at any time has been, adjudged as an insolvent; or

(*b*) has engaged at any time, during his term of office, in any paid employment; or

(*c*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*d*) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(*e*) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(*f*) has become physically or mentally incapable of acting as a Member.

(3) Notwithstanding anything contained in sub-section (2), no Member shall be removed from his office on the ground specified in clause (*d*) or clause (*e*) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

"Section 11 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

[56][12. Restriction on employment of Chairperson and other Members.—(1) The Chairperson and other Members shall, for a period of two years from the date on which they cease to hold office, not accept any employment in or advise as a consultant, retainer or in any other capacity whatsoever, or be connected with the management or administration of—

(*a*) any enterprise which is or has been a party to a proceeding before the Commission under this Act; or

(*b*) any person who appears or has appeared before the Commission under Section 35.

(2) Notwithstanding anything contained in Section 35, the Chairperson or any other Member after retirement or otherwise ceasing to be in service for any reason shall not represent for any person or enterprise before the Commission:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013).]

"Section 12 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

[57][13. Administrative powers of Chairperson.—The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission:

Provided that the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit, to any other Member or officer of the Commission.]

14. Salary and allowances and other terms and conditions of services

of Chairperson and other Members.—(1) The salary, and the other terms and conditions of service, of the Chairperson and other Members, including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed.

(2) The salary, allowances and other terms and conditions of service of the Chairperson or a Member shall not be varied to his disadvantage after appointment.

"Section 14 enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

15. Vacancy, etc., not to invalidate proceedings of Commission.—No act or proceeding of the Commission shall be invalid merely by reason of—

(*a*) any vacancy in, or any defect in the Constitution of, the Commission; or

(*b*) any defect in the appointment of a person acting as a Chairperson or as a Member; or

(*c*) any irregularity in the procedure of the Commission not affecting the merits of the case.

"Section 15 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

16. Appointment of Director General, etc.—[58][(1) The [59][Commission may, with the prior approval of the Central Government], appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

(1-A) The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.]

(2) Every Additional, Joint, Deputy and Assistant Directors General or [60][such officers or other employees,] shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.

(3) The salary, allowances and other terms and conditions of service of the Director General and Additional, Joint, Deputy and Assistant Directors General [61][such officers or other employees,] shall be such as may be prescribed.

(4) The Director General, and Additional, Joint, Deputy and Assistant Directors General or [62][such officers or other employees,] shall be

appointed from amongst persons of integrity and outstanding ability and who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

"Section 16 enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

[63][17. **Appointment of Secretary, experts, professionals and officers and other employees of Commission**.—(1) The Commission may appoint a Secretary and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

(2) The salaries and allowances payable to, and other terms and conditions of service of, the Secretary and officers and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed.

(3) The Commission may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act.]

Chapter IV

DUTIES, POWERS AND FUNCTIONS OF COMMISSION

[64][18. **Duties and functions of Commission**.—Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India:

Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country:

Provided further that, the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with any statutory authority or department of Government.]

"Section 18 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

19. Inquiry into certain agreements and dominant position of enterprise.—(1) The Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of Section 3 or sub-section (1) of Section 4 either on its own motion or on—

(*a*) [65][receipt of any information, in such manner and] accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

(*b*) a reference made to it by the Central Government or a State Government or a statutory authority:

[66][Provided that the Commission shall not entertain an information or a reference unless it is filed within three years from the date on which the cause of action has arisen:

Provided further that an information or a reference may be entertained after the period specified in the first proviso if the Commission is satisfied that there had been sufficient cause for not filing the information or the reference within such period after recording its reasons for condoning such delay.]

(2) Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).

(3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under Section 3, have due regard to all or any of the following factors, namely:—

(*a*) creation of barriers to new entrants in the market;

(*b*) driving existing competitors out of the market;

(*c*) foreclosure of competition [67][* * *];

(*d*) [68][benefits or harm] to consumers;

(*e*) improvements in production or distribution of goods or provision of services; or

(*f*) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under Section 4, have due regard to all or any of the following factors, namely:—

(*a*) market share of the enterprise;

(*b*) size and resources of the enterprise;

(*c*) size and importance of the competitors;

(*d*) economic power of the enterprise including commercial advantages over competitors;

(*e*) vertical integration of the enterprises or sale or service network of such enterprises;

(*f*) dependence of consumers on the enterprise;

(*g*) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;

(*h*) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;

(*i*) countervailing buying power;

(*j*) market structure and size of market;

(*k*) social obligations and social costs;

(*l*) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have appreciable adverse effect on competition;

(*m*) any other factor which the Commission may consider relevant for the inquiry.

(5) For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market" and "relevant product market".

(6) The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:—

(*a*) regulatory trade barriers;

(*b*) local specification requirements;

(*c*) national procurement policies;

(*d*) adequate distribution facilities;

(*e*) transport costs;

(*f*) language;

(*g*) consumer preferences;

(*h*) need for secure or regular supplies or rapid after sales services.

[69][(*i*) characteristics of goods or nature of services;]

[70][(*j*) costs associated with switching supply or demand to other areas.]

(7) The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:—

(*a*) physical characteristics or end-use of goods [71][or the nature of services];

(*b*) price of goods or service;

(*c*) consumer preferences;

(*d*) exclusion of in house production;

(*e*) existence of specialised producers;

(*f*) classification of industrial products.

[72][(*g*) costs associated with switching demand or supply to other goods or services;]

[73][(*h*) categories of customers.]

"Section 19 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

► **Jurisdictions of CCI**.—Purpose of CCI is to eliminate such practices which are having adverse effect on the competition, to promote and sustain competition and to protect the interest of the consumers and ensure freedom of trade, carried on by other participants, in India. Further, Section 27 empowers CCI to pass certain kinds of orders, stipulated in the said provision, after inquiry into the agreements for abuse of dominant position and also it is within the exclusive domain of CCI to find out as to whether a particular agreement will have appreciable adverse effect on competition within the relevant market in India.Unless TRAI finds fault with the Incumbent Dominant Operators (IDOs) on the jurisdictional aspects, the matter cannot be taken further even if CCI has the jurisdiction to deal with the complaints/information filed before it. , *CCI* v. *Bharti Airtel Ltd.*, (2019) 2 SCC 521.

Competition Act will be applicable to State monopolies, Government Companies and PSUs. Hence, Coal India Ltd. and its subsidiaries are covered under the Competition Act, and the CCI has authority to act against them for abuse of dominant position, *Coal India Ltd.* v. *Competition Commission of India*, 2023 SCC OnLine SC 740.

► **Locus standi to give information to CCI for CCI to initiate proceedings**.—Contrasting the definition of "consumer" from "person", held, the definition of "person" in Section 2(1) of the Competition Act, is an inclusive one and is extremely wide and includes individuals of all kinds and every artificial juridical person. Further, consequent upon the substitution of the expression "receipt of a complaint" with the expression "receipt of any information in such manner and" in Section 19(1) of the Competition Act, held, whereas a complaint could be filed only from a person who was aggrieved by a particular action, information may be received from any person, obviously whether such person is or is not personally affected and this is for the reason that the proceedings under the Competition Act are proceedings in rem which affect the public interest, *Samir Agrawal* v. *CCI (Cab Aggregators Case)*, (2021) 3 SCC 136.

20. Inquiry into combination by Commission.—(1) The Commission may, upon its own knowledge or information relating to acquisition referred to in clause (*a*) of Section 5 or acquiring of control referred to in clause (*b*) of Section 5 or merger or amalgamation referred in [74][clause (*c*) of Section 5 or acquisition of any control, shares, voting

right or assets of an enterprise, merger or amalgamation referred to in clause (*d*) of that section], inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India:

Provided that the Commission shall not initiate any inquiry under this sub-section after the expiry of one year from the date on which such combination has taken effect.

(2) The Commission shall, on receipt of a notice under sub-section (2) of Section 6 [75][* * *] inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.

(3) Notwithstanding anything contained in Section 5, the Central Government shall on the expiry of a period of two years from the date of commencement of this Act and thereafter every two years, in consultation with the Commission, [76][enhance or reduce by notification, or keep at the same level, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, or such factors that in its opinion are relevant in this matter, the value of assets or the value of turnover or value of transaction], for the purposes of that section.

(4) For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:—

(*a*) actual and potential level of competition through imports in the market;

(*b*) extent of barriers to entry into the market;

(*c*) level of [77][concentration] in the market;

(*d*) degree of countervailing power in the market;

(*e*) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;

(*f*) extent of effective competition likely to sustain in a market;

(*g*) extent to which substitutes are available or are likely to be available in the market;

(*h*) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;

(*i*) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;

(*j*) nature and extent of vertical integration in the market;

(*k*) possibility of a failing business;

(*l*) nature and extent of innovation;

(*m*) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;

(*n*) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

"Section 20 enforced w.e.f. 1-6-2011 *vide* Noti. No. S.O. 479 (E), dt. 4-3-2011 as corrected by Noti. No. S.O. 1229(E), dt. 30-5-2011."

21. Reference by statutory authority.—(1) Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission:

[78][Provided that any statutory authority, may, suo motu, make a reference to the Commission on any issue that involves any provision of this Act or is related to promoting the objectives of this Act, as the case may be.]

[79][(2) On receipt of a reference under sub-section (1), the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.]

"Section 21 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

[80][21-A. Reference by Commission.—(1) Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of [81][an Act] whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority:

[82][Provided that the Commission, may, suo motu, make a reference to a statutory authority on any issue that involves provisions of an Act whose implementation is entrusted to that statutory authority.]

(2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefor on the issues referred to in the said opinion.]

[83][22. Meetings of Commission.—(1) The Commission shall meet at

such times and such places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by regulations.

(2) The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, [84][* * *]:

Provided that the quorum for such meeting shall be three Members.]

23. Distribution of business of Commission amongst Benches.—[85][* * *].

24. Procedure for deciding a case where Members of a Bench differ in opinion.—[86][* * *]

25. Jurisdiction of Bench.—[87][* * *]

[88][26. Procedure for inquiry under Section 19.—(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under Section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:

Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under Section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

[89][(2-A) The Commission may not inquire into agreement referred to in Section 3 or conduct of an enterprise or group under Section 4, if the same or substantially the same facts and issues raised in the information received under Section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order.]

(3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

[90][(3-A) If, after consideration of the report of the Director General referred to in sub-section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.]

[91][(3-B) The Director General shall, on receipt of direction under sub-section (3-A), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.]

(4) The Commission may forward a copy of the report referred to in [92][sub-sections (3) and (3-B)] to the parties concerned:

Provided that in case the investigation is caused to be made based on a reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in [93][sub-sections (3) and (3-B)] to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in [94][sub-sections (3) and (3-B)] recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in [95][sub-sections (3) and (3-B)] recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.]

[96][(9) Upon completion of the investigation or inquiry under sub-section (7) or sub-section (8), as the case may be, the Commission may pass an order closing the matter or pass an order under Section

27, and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be:

Provided that before passing such order, the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified by regulations and give a reasonable opportunity of being heard to the parties concerned.]

► **Nature and Scope**.—Order passed under Section 26(2) is final order whereas order passed under Section 26(1) is not so, *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744.

Section 26(1) excludes principles of natural justice and Relevant Regulations also support this view. Moreover, function of Commission under Section 26(1) is administrative and not adjudicatory, *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744.

► **Nature of Commission's function**.—Formation of opinion as to prima facie existence of case under Section 26(1) must be substantiated by recording minimum reasons while all other orders and decisions under Section 26 which are not directions simpliciter but determine rights of parties should be well reasoned. Moreover, Commission should write appropriate reasons on every issue while passing an order under Sections 27 and 28, *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744.

► **Jurisdiction of CCI/DG to enquire**.—The entire purpose of investigation is to cover all necessary facts and evidence in order to see as to whether there are any anti-competitive practices adopted by the persons complained against. Further, while carrying out this investigation, if other facts also get revealed and are brought to light, revealing that the "persons" or "enterprises" had entered into an agreement that was prohibited by Section 3 which had appreciable adverse effect on the competition, the DG would be well within his powers to include those as well in his report, *Excel Crop Care Ltd.* v. *CCI*, (2017) 8 SCC 47.

27. Orders by Commission after inquiry into agreements or abuse of dominant position.—Where after inquiry the Commission finds that any agreement referred to in Section 3 or action of an enterprise in a dominant position, is in contravention of Section 3 or Section 4, as the case may be, it may pass all or any of the following orders, namely:—

(*a*) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

[97][(*b*) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover or income, as the case may be, for the last three preceding

financial years, upon each of such person or enterprise which is a party to such agreement or has abused its dominant position:

Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover or income, as the case may be, for each year of the continuance of such agreement, whichever is higher.

Explanation 1.—For the purposes of this clause, the expression "turnover" or "income", as the case may be, shall be determined in such manner as may be specified by regulations.

Explanation 2.—For the purposes of this clause, "turnover" means global turnover derived from all the products and services by a person or an enterprise.]

(*c*) [98][* * *]

(*d*) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(*e*) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

(*f*) [99][* * *]

(*g*) pass such other [100][order or issue such directions] as it may deem fit:

[101][Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to Section 3 or Section 4 of the Act is a member of a group as defined in clause (*b*) of the Explanation to Section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.]

"Section 27 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

► **Exercise of power by Commission**.—The powers conferred by the legislature upon the Commission under Sections 27(*d*) and 31(3) are of wide magnitude and of serious ramifications. These powers of the Commission, read with the said provisions, certainly require issuance of certain directions in order to achieve the object of the Act and to ensure its proper implementation. Order 39 Rules 3 and 3-A CPC also have similar provisions, *Competition Commission of*

India v. *SAIL*, (2010) 10 SCC 744.

Commission can exercise said power only by a reasoned order after: (*i*) applying its mind to existence of prima facie case and issuance of direction to Director General for conducting investigation under Section 26(1), and (*ii*) recording its due satisfaction as well as its view that it deemed necessary not to give notice to the other side, and (*iii*) recording that material on record indicated likelihood of irreparable and irretrievable damage or adverse effect on competition in market. Moreover, in such cases post-decisional notice returnable within very short period must be given to the other side. Further, said power has to be exercised sparingly and under compelling and exceptional circumstances, *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744.

► **Quantum of penalty**.—Two-step calculation for determination of quantum of penalty, is to firstly determine relevant turnover, and secondly, to determine appropriate percentage of penalty based on aggravating and mitigating circumstances, *Excel Crop Care Ltd.* v. *CCI*, (2017) 8 SCC 47.

► **"Relevant turnover" or "total turnover"**.—The concept of total turnover may bring out very inequitable results. When the agreement leading to contravention of Section 3 involves one product, there seems to be no justification for including other products of an enterprise for the purpose of imposing penalty. More so when total turnover of an enterprise may involve activities besides production and sale of products, like rendering of services, etc. Even as per the doctrine of "proportionality" court should lean in favour of "relevant turnover". Penal provision contained in Section 27 of the Act serves this purpose as it is aimed at achieving the objective of punishing the offender and acts as deterrent to others and such a purpose can adequately be served by taking into consideration the relevant turnover, *Excel Crop Care Ltd.* v. *CCI*, (2017) 8 SCC 47.

28. Division of enterprise enjoying dominant position.—(1) The [102] [Commission] may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.

(2) In particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely:—

(*a*) the transfer or vesting of property, rights, liabilities or obligations;

(*b*) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;

(*c*) the creation, allotment, surrender or cancellation of any shares, stocks or securities;

(*d*) [103][* * *]

(*e*) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;

(*f*) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;

(*g*) any other matter which may be necessary to give effect to the division of the enterprise.

(3) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser.

"Section 28 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

29. Procedure for investigation of combinations.—(1) Where the Commission is of the [104][prima facie] opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond [105][within fifteen days] of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

[106][(1-A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.]

[107][(1-B) The Commission shall, within thirty days of receipt of notice under sub-section (2) of Section 6, form its *prima facie* opinion referred to in sub-section (1).]

(2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, [108][within seven days] from the date of receipt of the response of the parties to the combination [109][or the receipt of the report from Director General called under sub-section (1-A), whichever is later], direct the parties to the said combination to publish details of the combination [110][within seven days] of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

(3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his

written objections, if any, before the Commission [111][within ten days] from the date on which the details of the combination were published under sub-section (2).

(4) The Commission may, [112][within seven days] from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.

(5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) [113][within ten days] from the expiry of the period specified in sub-section (4).

[114][(6) After receipt of all information, the Commission shall proceed to deal with the case in accordance with the provisions contained in Section 29-A or Section 31, as the case may be.]

[115][(7) Notwithstanding anything contained in this section, the Commission may accept appropriate modifications offered by the parties to the combination or *suo motu* propose modifications, as the case may be, before forming a *prima facie* opinion under sub-section (1).]

"Section 29 enforced w.e.f. 1-6-2011 *vide* Noti. No. S.O. 479 (E), dt. 4-3-2011 as corrected by Noti. No. S.O. 1229(E), dt. 30-5-2011."

[116][29-A. Issue of statement of objections by Commission and proposal of modifications.—(1) Upon completion of the process under Section 29, where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall issue a statement of objections to the parties identifying such appreciable adverse effect on competition and direct the parties to explain within twenty-five days of receipt of the statement of objections, why such combination should be allowed to take effect.

(2) Where the parties to the combination consider that such appreciable adverse effect on competition can be eliminated by suitable modification to such combination, they may submit an offer of appropriate modification to the combination along with their explanation to the statement of objections issued under sub-section (1) in such manner as may be specified by regulations.

(3) If the Commission does not accept the modification submitted by the parties under sub-section (2) it shall, within seven days from the date of receipt of the proposed modifications under that sub-section, communicate to the parties as to why the modification is not sufficient to eliminate the appreciable adverse effect on competition and call upon the parties to furnish, within twelve days of the receipt of the said

communication, revised modification, if any, to eliminate the appreciable adverse effects on competition:

Provided that the Commission shall evaluate such proposal for modification within twelve days from receipt of such proposal:

Provided further that the Commission may *suo motu* propose appropriate modifications to the combination which may be considered by the parties to the combination.]

[117][30. Procedure in case of notice under sub-section (2) of Section 6.—Where any person or enterprise has given a notice under sub-section (2) of Section 6, the Commission shall examine such notice and form its prima facie opinion as provided in sub-section (1) of Section 29 and proceed as per provisions contained in that section.]

31. Orders of Commission on [118][* * *] combinations.—(1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination [119][* * *] in respect of which a notice has been given under sub-section (2) of Section 6:

[120][Provided that if the Commission does not form a *prima facie* opinion as provided under sub-section (1-B) of Section 29, the combination shall be deemed to have been approved and no separate order shall be required to be passed.]

(2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

[121][(3) Where the Commission is of the opinion that any appreciable adverse effect on competition that the combination has, or is likely to have, can be eliminated by modification proposed by the parties or the Commission, as the case may be, under sub-section (7) of Section 29 or sub-section (2) or sub-section (3) of Section 29-A, it may approve the combination subject to such modifications as it thinks fit.]

[122][(4) Where a combination is approved by the Commission under sub-section (3), the parties to the combination shall carry out such modification within such period as may be specified by the Commission.]

[123][(5) Where—

(*a*) the Commission has directed under sub-section (2) that the combination shall not take effect; or

(*b*) the parties to the combination, fail to carry out the modification within such period as may be specified by the Commission under sub-section (4); or

(*c*) the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition which cannot be eliminated by suitable modification to such combination,

then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that such combination shall not be given effect to, or be declared void, or frame a scheme to be implemented by the parties to address the appreciable adverse effect on competition, as the case may be.]

[124][(6) If no order is passed or direction issued by the Commission in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), as the case may be, within a period of one hundred and fifty days from the date of notice given to the Commission under sub-section (2) of Section 6, the combination shall be deemed to have been approved by the Commission.]

(7) [125][* * *]

(8) [126][* * *]

(9) [127][* * *]

(10) [128][* * *]

(11) [129][* * *]

(12) [130][* * *]

(13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in Section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.

(14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

"Section 31 enforced w.e.f. 1-6-2011 *vide* Noti. No. S.O. 479 (E), dt. 4-3-2011 as corrected by Noti. No. S.O. 1229(E), dt. 30-5-2011."

32. Acts taking place outside India but having an effect on competition in India.—The Commission shall, notwithstanding that,—

(*a*) an agreement referred to in Section 3 has been entered into outside India; or

(*b*) any party to such agreement is outside India; or

(*c*) any enterprise abusing the dominant position is outside India; or

(*d*) a combination has taken place outside India; or

(*e*) any party to combination is outside India; or (*f*) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

have power to inquire [131][in accordance with the provisions contained in Sections 19, 20, 26, [132][29, 29-A and 30] of the Act] into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India [133][and pass such orders as it may deem fit in accordance with the provisions of this Act].

"Section 32 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

[134][33. Power to issue interim orders.—Where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of Section 3 or sub-section (1) of Section 4 or Section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.]

► **Interpretation/Construction**.—The word "inquiry" occurring in Section 33 has not been defined in the Act, however, Regulation 18(2) of the Competition Commission of India (General) Regulations, 2009 explains what is "inquiry". Therefore, the law shall presume that an "inquiry" is commenced when the Commission, in exercise of its powers under Section 26(1) of the Act, issues a direction to the Director General. Once the regulations have explained "inquiry" it will not be permissible to give meaning to this expression contrary to the statutory explanation, *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744.

► **Satisfaction and opinion of Commission**.—Once the inquiry has begun, then alone the Commission is expected to exercise its powers vested under Section 33 of the Act. The satisfaction required to be recorded under Section 33 has to be understood differently from what is required while expressing a prima facie view in terms of Section 26(1) of the Act. The former is a definite expression of the satisfaction recorded by the Commission upon due application of mind while the latter is a tentative view at that stage, *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744.

34. Power to award compensation (Omitted).—[135][* * *]

35. Appearance before Commission.—[136][(1)] [137][A party] or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case

before the Commission.

Explanation.—For the purposes of this section,—

(*a*) "chartered accountant" means a chartered accountant as defined in clause (*b*) of sub-section (1) of Section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of Section 6 of that Act;

(*b*) "company secretary" means a company secretary as defined in clause (*c*) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of Section 6 of that Act;

(*c*) "cost accountant" means a cost accountant as defined in clause (*b*) of sub-section (1) of Section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of Section 6 of that Act;

(*d*) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

[138][(2) Without prejudice to sub-section (1), a party may call upon experts from the fields of economics, commerce, international trade or from any other discipline to provide an expert opinion in connection with any matter related to a case.]

"Section 35 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

[139][36. Power of Commission to regulate its own procedure.—(1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

(2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavit;

(*d*) issuing commissions for the examination of witnesses or documents;

(*e*) requisitioning, subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such record or document from any office.

(3) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry by it.

(4) The Commission may direct any person—

(*a*) to produce before the Director General or the Secretary or an officer authorised by it, such books or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;

(*b*) to furnish to the Director General or the Secretary or any other officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person as may be required for the purposes of this Act.]

37. Review of orders of Commission.—[140][* * *]

38. Rectification of orders.—(1) With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.

(2) Subject to the other provisions of this Act, the Commission may make—

(*a*) an amendment under sub-section (1) of its own motion;

(*b*) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

Explanation.—For the removal of doubts, it is hereby declared that the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

"Section 38 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

[141][39. Execution of orders of Commission imposing monetary penalty.—(1) If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty in such manner as may be specified by the regulations.

(2) In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income Tax Act, 1961 (43 of 1961), it may make a reference to this effect to the concerned income tax authority under that Act for recovery of the penalty as tax due

under the said Act.

(3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income Tax Act, 1961 (43 of 1961) and the provisions contained in Sections 221 to 227, 228-A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made thereunder shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income tax and sums imposed by way of penalty, fine and interest under the Income Tax Act, 1961 and to the Commission instead of the Assessing Officer.

Explanation 1.—Any reference to sub-section (2) or sub-section (6) of Section 220 of the Income Tax Act, 1961 (43 of 1961), in the said provisions of that Act or the rules made thereunder shall be construed as references to Sections 43 to 45 of this Act.

Explanation 2.—The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income Tax Act, 1961 (43 of 1961) shall be deemed to be the Tax Recovery Commissioner and the Tax Recovery Officer for the purposes of recovery of sums imposed by way of penalty under this Act and reference made by the Commission under sub-section (2) would amount to drawing of a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act.

Explanation 3.—Any reference to appeal in Chapter XVII-D and the Second Schedule to the Income Tax Act, 1961 (43 of 1961), shall be construed as a reference to appeal before the Competition Appellate Tribunal under Section 53-B of this Act.]

40. Appeal.—[142][* * *].

Chapter V

DUTIES OF DIRECTOR GENERAL

41. Director General to investigate contraventions.—(1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder.

(2) The Director General shall have all the powers as are conferred upon the Commission under sub-section (2) of Section 36.

[143][(3) Without prejudice to sub-section (2), it shall be the duty of all officers, other employees and agents of a party which are under investigation—

(*a*) to preserve and to produce all information, books, papers, other documents and records of, or relating to, the party which are in their custody or power to the Director General or any person authorised by it in this behalf; and (*b*) to give all assistance in connection with the investigation to the Director General.]

[144][(4) The Director General may require any person other than a party referred to in sub-section (3) to furnish such information or produce such books, papers, other documents or records before it or any person authorised by it in this behalf if furnishing of such information or the production of such books, papers, other documents or records is relevant or necessary for the purposes of its investigation.

(5) The Director General may keep in his custody any information, books, papers, other documents or records produced under sub-section (3) or sub-section (4) for a period of one hundred and eighty days and thereafter shall return the same to the person by whom or on whose behalf the information, books, papers, other documents or records were produced:

Provided that the information, books, papers, other documents or records may be called for by the Director General if they are needed again for a further period of one hundred and eighty days by an order in writing:

Provided further that the certified copies of the information, books, papers, other documents or records, as may be applicable, produced before the Director General may be provided to the party or person on whose behalf the information, books, papers, other documents or records are produced at their own cost.

(6) The Director General may examine on oath—

(*a*) any of the officers and other employees and agents of the party being investigated; and

(*b*) with the previous approval of the Commission, any other person,

in relation to the affairs of the party being investigated and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

(7) The examination under sub-section (6) shall be recorded in writing and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against it.

(8) Where in the course of investigation, the Director General has reasonable grounds to believe that information, books, papers, other documents or records of, or relating to, any party or person, may be destroyed, mutilated, altered, falsified or secreted, the Director General may make an application to the Chief Metropolitan Magistrate, Delhi for an order for seizure of such information, books, papers, other documents or records.

(9) The Director General may make requisition of the services of any

police officer or any officer of the Central Government to assist him for all or any of the purposes specified in sub-section (10) and it shall be the duty of every such officer to comply with such requisition.

(10) The Chief Metropolitan Magistrate, Delhi may, after considering the application and hearing from the Director General, by order, authorise the Director General—

(*a*) to enter, with such assistance, as may be required, the place or places where such information, books, papers, other documents or records are kept;

(*b*) to search that place or places in the manner specified in the order; and

(*c*) to seize information, books, papers, other documents or records as it considers necessary for the purpose of the investigation:

Provided that certified copies of the seized information, books, papers, other documents or records, as the case may be, may be provided to the party or person from whose place or places such documents have been seized at its cost.

(11) The Director General shall keep in his custody such information, books, papers, other documents or records seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the party or person from whose custody or power they were seized and inform the Chief Metropolitan Magistrate, of such return:

Provided that the Director General may, before returning such information, books, papers, other documents or records take copies of, or extracts thereof or place identification marks on them or any part thereof.

(12) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974, relating to search or seizure made under that Code.]

[145][*Explanation*.—For the purposes of this section,—

(*a*) "agent", in relation to any person, means any one acting or purporting to act for or on behalf of such person, and includes the bankers, and persons employed as auditors and legal advisors, by such person;

(*b*) "officers", in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate;

(*c*) any reference to officers and other employees or agents shall be construed as a reference to past as well as present officers and other employees or agents, as the case may be.]

"Section 41 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

► **Blanket restraint order**.—Section 41 of the Competition Act, 2002 which refers to applicability of Section 240-A of the Companies Act, 1956 relates to authorisation for both search and seizure. Blanket restraint order against utilisation of seized documents for any purpose whatsoever, held, unwarranted, *CCI* v. *JCB (India) Ltd.*, (2020) 17 SCC 446.

Chapter VI
PENALTIES

[146][42. Contravention of orders of Commission.—(1) The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

(2) If any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under [147][Sections 6, 27, 28, 31, 32, 33, 42-A, 43, 43-A, 44 and 45 of the Act, he shall be liable to a penalty] which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

(3) If any person does not comply with the orders or directions issued, or fails to [148][pay the penalty imposed under sub-section (2)], he shall, without prejudice to any proceeding under Section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorised by it.]

► **Proof of mens rea**.—The imposition of penalty under Section 43-A is on account of breach of a civil obligation, and the proceedings are neither criminal nor quasi-criminal. There is no requirement of mens rea under Section 43-A or an intentional breach as an essential element for levy of penalty, *SCM Solifert Ltd.* v. *CCI*, (2018) 6 SCC 631.

[149][42-A. Compensation in case of contravention of orders of Commission.—Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued [150][under Sections 6, 27], 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction,

direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.]

[151][43. Penalty for failure to comply with directions of Commission and Director General.—If any person fails to comply, without reasonable cause, with a direction given by—

(*a*) the Commission under sub-sections (2) and (4) of Section 36; or

(*b*) the Director General while exercising powers referred to in sub-section (2) of Section 41,

such person [152][shall be liable to a penalty] which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.]

[153][43-A. Power to impose penalty for non-furnishing of information on combination.—If any person or enterprise fails to give notice to the Commission under sub-section (2) or sub-section (4) of Section 6 or contravenes sub-section (2-A) of Section 6 or submit information pursuant to an inquiry under sub-section (1) of Section 20, the Commission may impose on such person or enterprise, a penalty which may extend to one per cent., of the total turnover or assets or the value of transaction referred to in clause (*d*) of Section 5, whichever is higher, of such a combination:

Provided that in case any person or enterprise has given a notice under sub-section (4) of Section 6 and such notice is found to be void *ab initio* under sub-section (6) of Section 6, then a notice under sub-section (2) of Section 6 may be given by the acquirer or parties to the combination, as may be applicable, within a period of thirty days of the order of the Commission under sub-section (6) of that section and no action under this section shall be taken by the Commission till the expiry of such period of thirty days.]

44. Penalty for making false statement or omission to furnish material information.—If any person, being a party to a combination,—

(*a*) makes a statement which is false in any material particular, or knowing it to be false; or

(*b*) omits to state any material particular knowing it to be material,

such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to [154][rupees five crore], as may be determined by the Commission.

"Section 44 enforced w.e.f. 1-6-2011 *vide* Noti. No. S.O. 1230 (E), dt. 30-5-2011."

45. Penalty for [155][contraventions] in relation to furnishing of information.—[156][(1) Without prejudice to the provisions of [157][sub-section (6) of Section 6 and] Section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—

(*a*) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or

(*b*) omits to state any material fact knowing it to be material; or

(*c*) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

such person shall be [158][liable to a penalty] which may extend to rupees one crore as may be determined by the Commission.]

(2) Without prejudice to the provisions of sub-section (1), the Commission may also pass such other order as it deems fit.

"Section 45 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

► **Appeal to Supreme Court**.—Deposit of penalty amount, directed, and undertaking re interest thereon directed to be filed, *DLF Ltd.* v. *Competition Commission of India*, (2015) 13 SCC 560.

[159][**46. Power to impose lesser penalty.**—(1) The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated Section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as may be specified by regulations, than leviable under this Act or the rules or the regulations made under this Act:

Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under Section 26 has been received before making of such disclosure:

Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who has made the full, true and vital disclosures under this section:

Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to co-operate with the Commission till the completion of the proceedings before the Commission:

Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings,—

(*a*) not complied with the condition on which the lesser penalty was imposed by the Commission; or

(*b*) had given false evidence; or

(*c*) the disclosure made is not vital,

and thereupon such producer, seller, distributor, trader or service provider may be tried for the contravention with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

(2) The Commission may allow a producer, seller, distributor, trader or service provider included in the cartel, to withdraw its application for lesser penalty under this section, in such manner and within such time as may be specified by regulations.

(3) Notwithstanding anything contained in sub-section (2), the Director General and the Commission shall be entitled to use for the purposes of this Act, any evidence submitted by a producer, seller, distributor, trader or service provider in its application for lesser penalty, except its admission.

(4) Where during the course of the investigation, a producer, seller, distributor, trader or service provider who has disclosed a cartel under sub-section (1), makes a full, true and vital disclosure under sub-section (1) with respect to another cartel in which it is alleged to have violated Section 3, which enables the Commission to form a *prima facie* opinion under sub-section (1) of Section 26 that there exists another cartel, then the Commission may impose upon such producer, seller, distributor, trader or service provider a lesser penalty as may be specified by regulations, in respect of the cartel already being investigated, without prejudice to the producer, seller, distributor, trader or service provider obtaining lesser penalty under sub-section (1) regarding the newly disclosed cartel.]

"Section 46 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

47. Crediting sums realised by way of penalties [160][and recovery of legal costs by the Commission] to Consolidated Fund of India.—All sums realised by way of penalties [161][and recovery of legal costs by the Commission] under this Act shall be credited to the Consolidated Fund of India.

"Section 47 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

[162][**48. Contravention by companies.**—(1) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a

company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be in contravention of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for the last three preceding financial years:

Provided that in case any agreement referred to in sub-section (3) of Section 3 has been entered into by a cartel, the Commission may unless otherwise provided in this Act, impose upon such persons referred to in sub-section (1), a penalty of up to ten per cent. of the income for each year of the continuance of such agreement.

(2) Nothing contained in sub-section (1) shall render any such person liable to any penalty if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(3) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officers of the company, such director, manager, secretary or other officers shall also be deemed to be in contravention of the provisions of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for the last three preceding financial years:

Provided that in case any agreement referred to in sub-section (3) of Section 3 has been entered into by a cartel, the Commission may, unless otherwise provided under this Act, impose upon such person a penalty as it may deem fit which shall not exceed ten per cent. of the income for each year of the continuance of such agreement.

Explanation.—For the purposes of this section,—

(*a*) "company" means a body corporate and includes a firm or other association of individuals;

(*b*) "director", in relation to a firm, means a partner in the firm;

(*c*) "income", in relation to a person, shall be determined in such manner as may be specified by regulations.]

"Section 48 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

[163][48-A. Settlement.—(1) Any enterprise, against whom any inquiry

has been initiated under sub-section (1) of Section 26 for contravention of sub-section (4) of Section 3 or Section 4, may, for settlement of the proceeding initiated for the alleged contraventions, submit an application in writing to the Commission in such form and upon payment of such fee as may be specified by regulations.

(2) An application under sub-section (1) may be submitted at any time after the receipt of the report of the Director General under sub-section (4) of Section 26 but prior to such time before the passing of an order under Section 27 or Section 28 as may be specified by regulations.

(3) The Commission may, after taking into consideration the nature, gravity and impact of the contraventions, agree to the proposal for settlement, on payment of such amount by the applicant or on such other terms and manner of implementation of settlement and monitoring as may be specified by regulations.

(4) While considering the proposal for settlement, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

(5) If the Commission is of the opinion that the settlement offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the settlement within such time as may be specified by regulations, it shall, by order, reject the settlement application and proceed with its inquiry under Section 26.

(6) The procedure for conducting the settlement proceedings under this section shall be such as may be specified by regulations.

(7) No appeal shall lie under Section 53-B against any order passed by the Commission under this section.

(8) All settlement amounts, realised under this Act shall be credited to the Consolidated Fund of India.]

[164][48-B. Commitment.—(1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of Section 26 for contravention of sub-section (4) of Section 3 or Section 4, as the case may be, may submit an application in writing to the Commission, in such form and on payment of such fee as may be specified by regulations, offering commitments in respect of the alleged contraventions stated in the Commission's order under sub-section (1) of Section 26.

(2) An offer for commitments under sub-section (1) may be submitted at any time after an order under sub-section (1) of Section 26 has been passed by the Commission but within such time prior to the receipt by the party of the report of the Director General under sub-

section (4) of Section 26 as may be specified by regulations.

(3) The Commission may, after taking into consideration the nature, gravity and impact of the alleged contraventions and effectiveness of the proposed commitments, accept the commitments offered on such terms and the manner of implementation and monitoring as may be specified by regulations.

(4) While considering the proposal for commitment, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

(5) If the Commission is of the opinion that the commitment offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the commitment, it shall pass an order rejecting the commitment application and proceed with its inquiry under Section 26 of the Act.

(6) The procedure for commitments offered under this section shall be such as may be specified by regulations.

(7) No appeal shall lie under Section 53-B against any order passed by the Commission under this section.]

[165][48-C. Revocation of the settlement or commitment order and penalty.—If an applicant fails to comply with the order passed under Section 48-A or Section 48-B or it comes to the notice of the Commission that the applicant has not made full and true disclosure or there has been a material change in the facts, the order passed under Section 48-A or Section 48-B, as the case may be, shall stand revoked and withdrawn and such enterprise shall be liable to pay legal costs incurred by the Commission which may extend to rupees one crore and the Commission may restore or initiate the inquiry in respect of which the order under Section 48-A or Section 48-B was passed.]

Chapter VII
COMPETITION ADVOCACY

49. Competition advocacy.—[166][(1) The Central Government may, in formulating a policy on competition (including review of laws related to competition) or on any other matter, and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit.]

(2) The opinion given by the Commission under sub-section (1) shall

not be binding upon the Central Government [167][or the State Government, as the case may be,] in formulating such policy.

(3) The Commission shall take suitable measures [168][* * *] for the promotion of competition advocacy [169][or culture], creating awareness and imparting training about competition issues.

"Section 49 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

Chapter VIII

FINANCE, ACCOUNTS AND AUDIT

50. Grants by Central Government.—The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

"Section 50 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

51. Constitution of Fund.—(1) There shall be constituted a fund to be called the "Competition Fund" and there shall be credited thereto—

(*a*) all Government grants received by the Commission;

(*b*) [170][* * *]

(*c*) the fees received under this Act;

(*d*) the interest accrued on the amounts referred to [171][clauses (*a*) and (*c*)];

[172][(*e*) all sums received by the Commission from such other sources as may be decided upon by the Government.]

(2) The Fund shall be applied for meeting—

(*a*) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries, allowances and pension payable to the Director General, Additional, Joint, Deputy or Assistant Directors General, the Registrar and officers and other employees of the Commission;

(*b*) the other expenses of the Commission in connection with the discharge of its functions and for the purposes of this Act.

(3) The Fund shall be administered by a committee of such Members of the Commission as may be determined by the Chairperson.

(4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

"Section 51 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

52. Accounts and audit.—(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

Explanation.—For the removal of doubts, it is hereby declared that the orders of the Commission, being matters appealable to the [173] [Appellate Tribunal or the Supreme Court], shall not be subject to audit under this section.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

"Section 52 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

53. Furnishing of returns, etc., to Central Government.—(1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues, as the Central Government may, from time to time, require.

(2) The Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid,

as soon as may be after it is received, before each House of Parliament.

"Section 53 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

[174][Chapter VIII-A

[175][APPELLATE TRIBUNAL]

[176][**53-A. Appellate Tribunal**.—The National Company Law Appellate Tribunal constituted under Section 410 of the Companies Act, 2013 (18 of 2013) shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall—

(*a*) hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under [177][sub-section (6) of Section 6, sub-sections (2), (2-A), (6) and (9) of Section 26], Section 27, Section 28, Section 31, Section 32, Section 33, Section 38, Section 39, Section 43, Section 43-A, Section 44, Section 45 or Section 46 of this Act; and

(*b*) adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under Section 42-A or under sub-section (2) of Section 53-Q of this Act, and pass orders for the recovery of compensation under Section 53-N of this Act.]

► **Interpretation/Construction**.—Expression "any" in Section 53-A(1)(*a*) qualifies each of the three expressions "direction issued, or decision made or order passed" and not only "direction issued". Only such directions, decisions or orders of Competition Commission (CCI) as stated in Section 53-A(1)(*a*) and no other are appealable, *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744.

► **Necessary parties**.—While non-joinder of necessary parties may prove fatal, the non-joinder of proper parties may not be fatal to the proceedings, but would certainly adversely affect interest of justice and complete adjudication of the proceedings before the appropriate forum, *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744.

In appeals arising from proceedings initiated suo motu by Commission, Commission is necessary party, whereas in other cases it would be proper party in appeals before Appellate Tribunal. Apart from provisions of Competition Act and Regulations framed thereunder, such right of Commission can be upheld by applying principles of Order 1 Rule 10 CPC, *Competition Commission of India* v. *SAIL*, (2010) 10 SCC 744.

53-B. Appeal to Appellate Tribunal.—(1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (*a*) of

Section 53-A may prefer an appeal to the Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period:

[178][Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the Commission, shall be entertained by the Appellate Tribunal unless the appellant has deposited twenty-five per cent. of that amount in the manner as directed by the Appellate Tribunal.]

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

► **Deposit of penalty amount**.—Condition of pre-deposit of 10% of penalty amount for entertaining appeal, imposed by Appellate Tribunal upheld with the modification that a separate account is opened in a nationalised bank and such amount is kept in a short term fixed deposit in the name of the company, *Ultra Tech Cement Ltd.* v. *Competition Commission of India*, (2018) 16 SCC 762.

► **Imposition of pre-deposit condition for entertaining appeal**.—Section 53-B does not impose any condition of pre-deposit for entertaining the appeal. Further, the right to file the appeal and have the said appeal decided on merits, if it is filed within the period of limitation, is conferred by the statute and that cannot be taken away by imposing the condition of deposit. Section 53-B(3) casts a duty upon the Appellate Tribunal to pass order on appeal, as it thinks fit i.e., either confirming, modifying or setting aside the direction, decision or order appealed against and it is to be done after giving an opportunity of hearing to the parties to the appeal. Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision, *B. Himmatlal Agrawal* v. *CCI*, (2018) 17 SCC 421.

53-C. Composition of Appellate Tribunal.—[179][* * *]

53-D. Qualifications for appointment of Chairperson and Members of Appellate Tribunal.—[180][* * *]

53-E. Selection Committee.—[181][* * *]

53-F. Term of office of Chairperson and Members of Appellate Tribunal.—[182][* * *]

53-G. Terms and conditions of service of Chairperson and Members of Appellate Tribunal.—[183][* * *]

53-H. Vacancies.—[184][* * *]

53-I. Resignation of Chairperson and Members of Appellate Tribunal.—[185][* * *]

53-J. Member of Appellate Tribunal to act as its Chairperson in certain cases.—[186][* * *]

53-K. Removal and suspension of Chairperson and Members of Appellate Tribunal.—[187][* * *]

53-L. Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases.—[188][* * *]

53-M. Staff of Appellate Tribunal.—[189][* * *]

53-N. Awarding compensation.—(1) Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under Section 42-A or [190][under sub-section (2) of Section 53-Q or the orders of the Supreme Court in an appeal against the findings of the Appellate Tribunal under Section 53-T or an order for settlement passed under Section 48-A, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by enterprise or as a result of order of settlement passed by the Commission].

(2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission [191][or Appellate Tribunal or the Supreme Court, or an order for settlement], if any, and also be accompanied with such fees as may be prescribed.

(3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1),

pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise:

Provided that the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

(4) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Appellate Tribunal, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of Rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Appellate Tribunal and the order of the Appellate Tribunal thereon.

Explanation.—For the removal of doubts, it is hereby declared that—

(*a*) an application may be made for compensation before the Appellate Tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (*a*) of sub-section (1) of Section 53-A [192][or the Supreme Court on appeal under Section 53-T] of the Act, has determined in a proceeding before it that violation of the provisions of the Act has taken place, or if provisions of Section 42-A or sub-section (2) of Section 53-Q of the Act are attracted.

(*b*) enquiry to be conducted under sub-section (3) shall be for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal [193][or the Supreme Court,] on whether any violation of the Act has taken place.

53-O. Procedure and powers of Appellate Tribunal.—(1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Appellate Tribunal shall have power to regulate its own procedure including the places at which they shall have their sittings.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a

suit in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(*e*) issuing commissions for the examination of witnesses or documents;

(*f*) reviewing its decisions;

(*g*) dismissing a representation for default or deciding it ex parte;

(*h*) setting aside any order of dismissal of any representation for default or any order passed by it ex parte;

(*i*) any other matter which may be prescribed.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

► **Unreasoned order**.—Competition Commission as well as Competition Appellate Tribunal are exercising very important quasi-judicial functions and their orders can have far-reaching consequences. Hence, Commission as well as Appellate Tribunal must pass orders supported by reasons, *Rangi International Ltd.* v. *Nova Scotia Bank*, (2013) 7 SCC 160.

53-P. Execution of orders of Appellate Tribunal.—(1) Every order made by the Appellate Tribunal shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send, in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,—

(*a*) in the case of an order against a company, the registered office of the company is situated; or

(*b*) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

53-Q. Contravention of orders of Appellate Tribunal.—[194][(1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for contempt proceeding under Section 53-U.]

(2) Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise contravening, without any reasonable ground, any order of the Appellate Tribunal or delaying in carrying out such orders of the Appellate Tribunal.

53-R. Vacancy in Appellate Tribunal not to invalidate acts or proceedings.—[195][* * *]

53-S. Right to legal representation.—(1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

(2) The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

(3) The Commission may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Explanation.—The expressions “chartered accountant” or “company secretary” or “cost accountant” or “legal practitioner” shall have the meanings respectively assigned to them in the Explanation to Section 35.

53-T. Appeal to Supreme Court.—The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them:

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

53-U. Power to punish for contempt.—The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971) shall have effect subject to modifications that,—

(*a*) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;

(*b*) the references to the Advocate-General in Section 15 of the said Act shall be construed as a reference to such Law Officer as the Central Government may, by notification, specify in this behalf.]

Chapter IX

MISCELLANEOUS

54. Power to exempt.—The Central Government may, by notification, exempt from the application of this Act, or any provision thereof, and for such period as it may specify in such notification—

(*a*) any class of enterprises if such exemption is necessary in the interest of security of the State or public interest;

(*b*) any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;

(*c*) any enterprise which performs a sovereign function on behalf of the Central Government or a State Government:

Provided that in case an enterprise is engaged in any activity including the activity relatable to the sovereign functions of the Government, the Central Government may grant exemption only in respect of activity relatable to the sovereign functions.

"Section 54 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

55. Power of Central Government to issue directions.—(1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

"Section 55 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

56. Power of Central Government to supersede Commission.—(1) If at any time the Central Government is of the opinion—

(*a*) that on account of circumstances beyond the control of the Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(*b*) that the Commission has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has suffered; or

(*c*) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Commission for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Commission to make representations against the proposed supersession and shall consider representations, if any, of the Commission.

(2) Upon the publication of a notification under sub-section (1) superseding the Commission,—

(*a*) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;

(*b*) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify in this behalf;

(*c*) all properties owned or controlled by the Commission shall, until the Commission is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Commission by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (*a*) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section

and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

"Section 56 enforced w.e.f. 20-5-2009 *vide* Noti. No. S.O. 1241 (E), dt. 15-5-2009."

57. Restriction on disclosure of information.—No information relating to any enterprise, being an information which has been obtained by or on behalf of [196][the Commission or the Appellate Tribunal] for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

"Section 57 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

[197][58. Chairperson, Members, Director General, Secretary, officers and other employees, etc., to be public servants.—The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Secretary and officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).]

59. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director General, Additional, Joint, Deputy or Assistant Directors General or [198][the Secretary or officers or other employees of the Commission or the Chairperson, Members, officers and other employees of the Appellate Tribunal] for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

"Section 59 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

[199][59-A. Compounding of certain offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only or imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by the Appellate Tribunal or a court before which such proceeding is pending.]

60. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

"Section 60 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

61. Exclusion of jurisdiction of civil courts.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the [200][Commission or the Appellate Tribunal] is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

"Section 61 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

62. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

"Section 62 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

63. Power to make rules.—(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

"Sub-section (1) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340(E), dt. 31-3-2003."

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

[201](*a*) the value of the assets or turnover of the enterprise acquired, taken control of, merged or amalgamated in India under clause (*e*) of Section 5;

(*ab*) the percentage of voting rights higher than twenty-six per cent. under sub-clause (*i*) of clause (*b*) of the *Explanation* to Section 5;

(*ac*) the criteria of combinations under sub-section (4) of Section 6;

(*ad*) the criteria under sub-section (7) of Section 6;]

[202][([203][*ae*]) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of Section 9;]

(*b*) the form and manner in which and the authority before whom the oath of office and of secrecy shall be made and subscribed to under sub-section (3) of Section 10;

"Clause (b) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

(*c*) [204][* * *]

(*d*) the salary and the other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under sub-section (1) of Section 14;

"Clause (d) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

[205][(*da*) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees may be appointed under sub-section (1-A) of Section 16;]

(*e*) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or such [206][such officers or other employees] under sub-section (3) of Section 16;

"Clause (e) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

(*f*) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or [207] [such officers or other employees] under sub-section (4) of Section 16;

"Clause (f) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

(*g*) the salaries and allowances and other terms and conditions of service of the [208][Secretary] and officers and other employees payable, and the number of such officers and employees under sub-section (2) of Section 17;

"Clause (g) enforced w.e.f. 31-3-2003 *vide* Noti. No. S.O. 340 (E), dt. 31-3-2003."

(*h*) [209][* * *]

(*i*) [210][* * *]

(*j*) [211][* * *]

(*k*) the form in which the annual statement of accounts shall be prepared under sub-section (1) of Section 52;

"Clause (k) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

(*l*) the time within which and the form and manner in which the Commission may furnish returns, statements and such particulars as the Central Government may require under sub-section (1) of Section 53;

"Clause (l) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

(*m*) the form in which and the time within which the annual report shall be prepared under sub-section (2) of Section 53;

"Clause (m) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

[212][(*ma*) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of Section 53-B and the fees payable in respect of such appeal;

(*mb*) [213][* * *]

(*mc*) [214][* * *]

(*md*) [215][* * *]

(*me*) the fee which shall be accompanied with every application made under sub-section (2) of Section 53-N;

(*mf*) the other matters under clause (*i*) of sub-section (2) of Section 53-O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit]

[216][(*mg*) the form of the publication of guidelines under sub-section (5) of Section 64-B;]

[217][(*n*) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal shall be dealt with by the Commission or the Appellate Tribunal, as the case may be, under the fourth proviso to sub-section (2) of Section 66.]

(*o*) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

"Clause (o) enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

(3) Every notification issued under sub-section (3) of Section 20 and Section 54 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agree that the notification should not be issued or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without

prejudice to the validity of anything previously done under that notification or rule, as the case may be.

► **Scope of Rule making power**.—Where the Act conferred rule-making power for carrying out the provisions of the chapter, held, rules could not be so framed as not to carry out the purpose of the chapter or to be in conflict with, *Laghu Udyog Bharati* v. *Union of India*, (1999) 6 SCC 418.

Conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act, or which is inconsistent therewith or repugnant thereto, *ADM (Rev.) Delhi Admn.* v. *Siri Ram*, (2000) 5 SCC 451.

64. Power to make regulations.—(1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters, namely:—

(*a*) the cost of production to be determined under clause (*b*) of the Explanation to Section 4;

(*b*) the form of notice as may be specified and the fee which may be determined under sub-section (2) of Section 6;

[218][(*c*) the manner of determination of substantial business operations in India under clause (*d*) of Section 5;]

[219](*ca*) the form and fee for notice for combination under sub-section (4) of Section 6;

(*cb*) the time and manner for filing notice of acquisition under clause (*a*) of Section 6-A;

(*cc*) the manner and circumstance in which the acquirer may exercise the ownership or beneficial right or interest in shares or convertible securities including voting right and receipt of dividends or any other distributions as an exception under clause (*b*) of Section 6-A;]

[220][(*d*) the procedures to be followed for engaging the experts and professionals under sub-section (3) of Section 17;

(*e*) the fee which may be determined under clause (*a*) of sub-section (1) of Section 19;

(*f*) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of Section 22;

[221][(*fa*) other details to be indicated in the show-cause notice under sub-section (9) of Section 26;

(*fb*) the manner of determining turnover or income under the [222]

[*Explanation I*] to clause (*b*) of Section 27;

(*fc*) the manner in which modification may be proposed by parties to the combination to the Commission under sub-section (2) of Section 29-A;]

(*g*) the manner in which penalty shall be recovered under sub-section (1) of Section 39;

[223][(*ga*) the lesser penalty to be imposed on producer, seller, distributor, trader or service provider under sub-section (1) of Section 46;

(*gb*) the manner and time for withdrawal of application for lesser penalty under sub-section (2) of Section 46;

(*gc*) the lesser penalty to be imposed on producer, seller, distributor, trader or service provider under sub-section (4) of Section 46;

(*gd*) the manner of determining income under clause (*c*) of *Explanation* to Section 48;

(*ge*) the form of application and fee under sub-section (1), the time under sub-section (2), the terms and manner of implementations and monitoring under sub-section (3) and the procedure for conducting settlement proceedings under sub-section (6) of Section 48-A;

(*gf*) the form of application and fee under sub-section (1), the time under sub-section (2), the terms and manner of implementations and monitoring under sub-section (3) and the procedure for commitments offered under sub-section (6) of Section 48-B;

(*gg*) the other details to be published along with draft regulations and the period for inviting public comments under clause (*a*) of Section 64-A;]

(*h*) any other matter in respect of which provision is to be, or may be, made by regulations.]

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

"Section 64 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715

(E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

► **Nature of Regulations**.—Regulations deemed to have statutory sanction and force if they play an essential and integral role in their sphere of operation, *G.B. Pant University of Agriculture & Technology* v. *State of U.P.*, (2000) 7 SCC 109: 2000 SCC (L&S) 884.

[224][64-A. Process of issuing regulations.—The Commission shall ensure transparency while making regulations under Section 64, by—

(*a*) publishing draft regulations along with such other details as may be specified on its website and inviting public comments for a specified period prior to issuing regulations;

(*b*) publishing a general statement of its response to the public comments, not later than the date of notification of the regulations;

(*c*) periodically reviewing such regulations:

Provided that if the Commission is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently in public interest or the subject matter of the regulation relates solely to the internal functioning of the Commission, it may make regulations or amend the existing regulations, as the case may be, without following the provisions stated in this section recording the reason, for doing so.]

[225][64-B. Commission to issue guidelines.—(1) The Commission may publish guidelines on the provisions of this Act or the rules and regulations made thereunder either on a request made by a person or on its own motion.

(2) Guidelines issued under sub-section (1) shall not be construed as determination of any question of fact or law by the Commission, its Members or officers and shall not be binding on the Commission, its Members or officers.

(3) Without prejudice to anything contained in sub-section (1), the Commission shall publish guidelines as to the appropriate amount of any penalty for any contravention of provision of this Act.

(4) While imposing penalty under clause (*b*) of Section 27 or under Section 43-A or Section 48 for any contravention of provision of this Act, the Commission shall consider the guidelines under sub-section (3) and provide reasons in case of any divergence from such guidelines.

(5) The guidelines under sub-sections (1) and (3) shall be published in such form as may be prescribed.]

65. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be

necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

"Section 65 enforced w.e.f. 19-6-2003 *vide* Noti. No. S.O. 715 (E), dt. 19-6-2003 as corrected by S.O. 1098(E), dt. 24-9-2003."

66. Repeal and saving.—[226][(1) The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of Section 5 of the said Act (hereafter referred to as the repealed Act) shall stand dissolved:

[227][* * *]

(1-A) The repeal of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) shall, however, not affect,—

(*a*) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(*b*) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(*c*) any penalty, confiscation or punishment incurred in respect of any contravention under the Act so repealed; or

(*d*) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.]

(2) On the dissolution of the Monopolies and Restrictive Trade Practices Commission, the person appointed as the Chairman of the Monopolies and Restrictive Trade Practices Commission and every other person appointed as Member and Director General of Investigation and Registration, Additional, Joint, Deputy, or Assistant Directors General of Investigation and Registration and any officer and other employee of that Commission and holding office as such immediately before such dissolution shall vacate their respective offices and such Chairman and other Members shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of term of their office or of any contract of service:

Provided that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive

Trade Practices Commission appointed on deputation basis to the Monopolies and Restrictive Trade Practices Commission, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be:

[228][Provided further that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Competition Commission of India or the Appellate Tribunal, in such manner as may be specified by the Central Government, with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Competition Commission of India or the Appellate Tribunal, as the case may be, and shall continue to do so unless and until his employment in the Competition Commission of India or the Appellate Tribunal, as the case may be, is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Competition Commission of India or the Appellate Tribunal, as the case may be.]

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee, employed in the Monopolies and Restrictive Trade Practices Commission, to [229][the Competition Commission of India or the Appellate Tribunal, as the case may be] shall not entitle such Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Monopolies and Restrictive Trade Practices Commission has established a provident fund, superannuation, welfare or other fund for the benefit of the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or the officers and other employees employed in the Monopolies and Restrictive Trade Practices Commission, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to [230][the Competition Commission of India or the Appellate Tribunal, as the case may be, shall, out of the monies standing] on the dissolution of the Monopolies and Restrictive Trade Practices Commission to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, [231][the Competition Commission of India or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the said Commission or the Tribunal, as the case may be, in such manner as may be prescribed.]

[232][(3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending (including such cases, in which any unfair trade practice has also been alleged), before the Monopolies and Restrictive Trade Practices Commission shall, [233][on the commencement of the Competition (Amendment) Act, 2009], stand transferred to the Appellate Tribunal and shall be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.]

[234][*Explanation*.—For the removal of doubts, it is hereby declared that all cases referred to in this sub-section, sub-section (4) and sub-section (5) shall be deemed to include all applications made for the losses or damages under Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), as it stood before its repeal;]

(4) Subject to the provisions of sub-section (3), all cases pertaining to unfair trade practices other than those referred to in clause (*x*) of sub-section (1) of Section 36-A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission [235][immediately before the commencement of the Competition (Amendment) Act, 2009, shall, on such commencement] stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 (68 of 1986) and the National Commission shall dispose of such cases as if they were cases filed under that Act:

Provided that the National Commission may, if it considers appropriate, transfer any case transferred to it under this sub-section to the concerned State Commission established under Section 9 of the Consumer Protection Act, 1986 (68 of 1986) and that State Commission shall dispose of such case as if it was filed under that Act:

[236][Provided further that all the cases relating to the unfair trade practices pending, before the National Commission under this sub-section, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President, shall, on and from that

date, stand transferred to the Appellate Tribunal and be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.]

[237][(5) All cases pertaining to unfair trade practices referred to in clause (*x*) of sub-section (1) of Section 36-A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission shall, [238][on the commencement of the Competition (Amendment) Act, 2009], stand transferred to the Appellate Tribunal and the Appellate Tribunal shall dispose of such cases as if they were cases filed under that Act.]

(6) All investigations or proceedings, other than those relating to unfair trade practices, pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

(7) All investigations or proceedings, relating to unfair trade practices other than those referred to in clause (*x*) of sub-section (1) of Section 36-A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 (68 of 1986) and the National Commission may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

[239][Provided that all investigations or proceedings, relating to unfair trade practices pending before the National Commission, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President shall, on and from that date, stand transferred to the Appellate Tribunal and the Appellate Tribunal may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.]

(8) All investigations or proceedings relating to unfair trade practices referred to in clause (*x*) of sub-section (1) of Section 36-A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India and the Competition Commission of India may conduct or order for conduct of such investigation in the manner as it deems fit.

(9) Save as otherwise provided under sub-sections (3) to (8), all

cases or proceedings pending before the Monopolies and Restrictive Trade Practices Commission shall abate.

(10) The mention of the particular matters referred to in sub-sections (3) to (8) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

NOTIFICATIONS

(1)

Ministry of Finance (Deptt. of Company Affairs), Noti. No. S.O. 1198(E), dated October 14, 2003, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 14th October, 2003, p. 1, No. 943

In exercise of the powers conferred by sub-section (1) read with sub-section (3) of Section 7 of the Competition Act, 2002 (12 of 2003), the Central Government hereby establishes, with effect from 14th October, 2003, the Competition Commission of India having its head office at New Delhi.

(2)

Ministry of Corporate Affairs, Noti. No. S.O. 1240(E), dated May 15, 2009, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 15th May, 2009, p. 1, No. 770

In exercise of the powers conferred by Section 53-A of the Competition Act, 2002 (12 of 2003), the Central Government establishes, with effect from 15th May, 2009, the Competition Appellate Tribunal having its headquarters at Delhi.

(3)

Ministry of Corporate Affairs, Noti. No. S.O. 480(E), dated March 4, 2011, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 4th March, 2011, p. 1, No. 412

In exercise of the powers conferred by sub-section (3) of Section 20 of the Competition Act, 2002 (12 of 2003), the Central Government in consultation with the Competition Commission of India, hereby enhance, on the basis of the wholesale price index, the value of assets and the value of turnover, by fifty per cent for the purposes of Section 5 of the said Act.

(4)

Ministry of Corporate Affairs, Noti. No. S.O. 673(E), dated March 4, 2016, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 4th March, 2016, p. 1, No. 582

In exercise of the powers conferred by clause (*a*) of Section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public interest, hereby exempts the ‘Group’ exercising less than fifty per cent of voting rights in other enterprise from the provisions of Section 5 of the said Act for a period of five years with effect from the date of publication of this notification in the Official Gazette.

(5)

Ministry of Corporate Affairs, Noti. No. S.O. 989(E), dated March 27, 2017, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 29th March, 2017, p. 3, No. 881

In exercise of the powers conferred by clause (*a*) of Section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public interest, hereby rescinds the notification of the Government of India in the Ministry of Corporate Affairs, S.O. 674(E), dated the 4th March, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (*ii*), dated the 4th March, 2016, except as respects things done or omitted to be done before such rescission.

(6)

Ministry of Corporate Affairs, Noti. No. S.O. 93(E), dated January 8, 2013, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 8th January, 2013, p. 1, No. 89

In exercise of the powers conferred by clause (*a*) of Section 54 of the Competition Act, 2002 (12 of 2003), the Central Government hereby exempts a banking company in respect of which the Central Government has issued a notification under Section 45 of the Banking Regulation Act, 1949 (10 of 1949), from the application of the provisions of Sections 5 and 6 of the Competition Act, 2002, in public interest for a period of five years from the date of publication of this notification in the Official Gazette.

(7)

Ministry of Finance (Deptt. of Revenue) (Central Board of Direct Taxes), Noti. No. S.O. 530(E), dated February 19, 2016, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 19th February, 2016, p. 2, No. 452

In exercise of the powers conferred by clause (46) of Section 10 of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purpose of the said clause, the Competition Commission of India, a Commission established under sub-section (1) of Section 7 of the Competition Act, 2002 (12 of 2003), in respect of the following specified income arising to the said Commission, namely—

(*a*) amount received in the form of Government grants;

(*b*) fees received under the Competition Act, 2002; and

(*c*) interest accrued on Government grants and interest accrued on fees received under the Competition Act, 2002.

2. This notification shall be effective subject to the following conditions, namely—

(*i*) the Competition Commission of India does not engage in any commercial activity;

(*ii*) the activities and the nature of the specified income of the Competition Commission of India shall remain unchanged throughout the financial year; and

(*iii*) the Competition Commission of India shall file return of income in accordance with clause (*g*) of sub-section (4-C) of Section 139 of the Income Tax Act, 1961.

3. This notification shall be applicable for the specified income of the Competition Commission of India for the Financial Years 2016-2017 to 2020-2021.

(8)

Ministry of Corporate Affairs, Noti. No. S.O. 646(E), dated March 2, 2016, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 3rd March, 2016, p. 2, No. 557

In exercise of the powers conferred by clause (*a*) of Section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public interest, hereby exempts the Vessels Sharing Agreements of Liner Shipping Industry from the provisions of Section 3 of the said Act, for a period of one year from the date of publication of this notification in the Official Gazette, in respect of carriers of all nationalities operating ships of any nationality from any Indian port provided such agreements do not include concerted practices involving fixing of prices, limitation of capacity or sales and the allocation of markets or customers.

During the said period of one year, the Director General, Shipping, Ministry of Shipping, Government of India shall monitor such agreements and for which, the persons responsible for operations of such ships in India shall file copies of existing Vessels Sharing Agreements or Vessels Sharing Agreements to be entered into with applicability during the said period along with other relevant documents within thirty days of the publication of this notification in the Official Gazette or within ten days of signing of such agreements, whichever is later, with the Director General, Shipping.

(9)

Ministry of Corporate Affairs, Noti. No. S.O. 675(E), dated March 4, 2016, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 4th March, 2016, p. 1, No. 583

In exercise of the powers conferred by sub-section (3) of Section 20 of the Competition Act, 2002 (12 of 2003), the Central Government in consultation with the Competition Commission of India, hereby enhances, on the basis of the wholesale price index, the value of assets and the value of turnover, by hundred per cent for the purposes of Section 5 of the said Act, from the date of publication of this notification in the Official Gazette.

(10)

Ministry of Corporate Affairs, Noti. No. S.O. 988(E), dated March 27, 2017, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 29th March, 2017, p. 2, No. 881

In exercise of the powers conferred by clause (*a*) of Section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public interest, hereby exempts the enterprises being parties to—

(*a*) any acquisition referred to in clause (*a*) of Section 5 of the Competition Act;

(*b*) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, referred to in clause (*b*) of Section 5 of the Competition Act; and

(*c*) any merger or amalgamation, referred to in clause (*c*) of Section 5 of the Competition Act, where the value of assets being acquired, taken control of, merged or amalgamated is not more than rupees three hundred and fifty crores in India or turnover of not more than rupees one thousand crores in India, from the provisions of Section 5 of the said Act for a period of [240][ten years] from the date of publication of this notification in the official gazette.

2. Where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, the value of assets of the said portion or division or business and or attributable to it, shall be the relevant assets and turnover to be taken into account for the purpose of calculating the thresholds under Section 5 of the Act. The value of the said portion or division or business shall be determined by taking the book value of the assets as shown, in the audited books of accounts of the enterprise or as per statutory auditor's report where the financial statement have not yet become due to be filed, in the financial year immediately preceding the financial year in which the date of the proposed combination falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout design or similar other commercial rights, if any, referred to in sub-section (5) of Section 3. The turnover of the said portion or division or business shall be as certified by the statutory auditor on the basis of the last available audited accounts of the company.

(11)

Ministry of Corporate Affairs, Noti. No. S.O. 989(E), dated March 27, 2017, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 29th March, 2017, p. 3, No. 881

In exercise of the powers conferred by clause (*a*) of Section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public interest, hereby rescinds the notification of the Government of India in the Ministry of Corporate Affairs, S.O. 674(E), dated the 4th March, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (*ii*), dated the 4th March, 2016, except as respects things done or omitted to be done before such rescission.

(12)

Ministry of Corporate Affairs, Noti. No. S.O. 1034(E), dated March 11, 2020, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 11st March, 2020, p. 1, No. 929

In exercise of the powers conferred by clause (*a*) of Section 54 of the Competition Act, 2002 (12 of 2003), the Central Government hereby exempts a Banking Company in respect of which the Central Government has issued a notification under Section 45 of the Banking Regulation Act, 1949 (10 of 49), from the application of the provisions of Sections 5 and 6 of the Competition Act, 2002, in public interest for a period of five years from the date of publication of this notification in the Official Gazette.

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[1] Received the assent of the President on January 13, 2003 and published in the Gazette of India, Extra., Part II, Section 1, dated 14th January, 2003, pp. 1-29, No. 12.

[*] Now made applicable to the U.T. of Jammu and Kashmir and the U.T. of Ladakh [*Vide* S.O. 3912(E), dt. 30-10-2019 (w.e.f. 30-10-2019).]

[2] *Subs*. by Act 7 of 2017, S. 171(*a*) (w.e.f. 26-5-2017). Earlier, *inserted* by Act 39 of 2007, S. 2 (w.e.f. 12-10-2007). Prior to substitution it read as:

> '(*ba*) "Appellate Tribunal" means the Competition Appellate Tribunal established under sub-section (1) of Section 53-A;'

[3] *Ins*. by Act 9 of 2023, S. 3(*a*) (w.e.f. 18-5-2023).

[4] *Subs*. by Act 9 of 2023, S. 3(*b*) (w.e.f. 18-5-2023). Prior to substitution it read as:

> "a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions of subsidiaries, whether such unit or division or subsidiary is located at

the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space"

5. *Ins*. by Act 9 of 2023, S. 3(*c*) (w.e.f. 18-5-2023).

6. *Subs*. for "Section 617 of the Companies Act, 1956" by Act 9 of 2023, S. 3(*d*) (w.e.f. 18-5-2023).

7. *Subs*. for "1 of 1956" by Act 9 of 2023, S. 2(*b*) (w.e.f. 18-5-2023).

8. *Subs*. by Act 9 of 2023, S. 3(*e*) (w.e.f. 18-5-2023). Prior to substitution it read as:

'(*p*) "public financial institution" means a public financial institution specified under Section 4-A of the Companies Act, 1956 and includes a State Financial, Industrial or Investment Corporation;'

9. *Subs*. by Act 9 of 2023, S. 3(*f*) (w.e.f. 18-5-2023). Prior to substitution it read as:

'(*t*) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;'

10. *Ins*. by Act 9 of 2023, S. 3(*g*) (w.e.f. 18-5-2023).

11. *Subs*. for "the Companies Act, 1956" by Act 9 of 2023, S. 2(*a*) (w.e.f. 18-5-2023).

12. *Subs*. for "1 of 1956" by Act 9 of 2023, S. 2(*b*) (w.e.f. 18-5-2023).

13. *Ins*. by Act 9 of 2023, S. 4(*a*) (w.e.f. 18-5-2023).

14. *Subs*. for "Any agreement amongst enterprises or persons" by Act 9 of 2023, S. 4(*b*)(*i*) (w.e.f. 18-5-2023).

15. *Subs*. for "supply" by Act 9 of 2023, S. 4(*b*)(*ii*) (w.e.f. 18-5-2023).

16. *Ins*. by Act 9 of 2023, S. 4(*b*)(*iii*) (w.e.f. 18-5-2023).

17. *Subs*. by Act 9 of 2023, S. 4(*b*)(*iv*)(*i*) (w.e.f. 18-5-2023). Prior to substitution it read as:

'(*a*) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;'

18. *Subs*. by Act 9 of 2023, S. 4(*b*)(*iv*)(*i*) (w.e.f. 18-5-2023). Prior to substitution it read as:

'(*b*) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;'

19. *Ins*. by Act 9 of 2023, S. 4(*b*)(*iv*)(*ii*) (w.e.f. 18-5-2023).

[20]. *Ins*. by Act 9 of 2023, S. 4(*b*)(*iv*)(*ii*) (w.e.f. 18-5-2023).

[21]. *Ins*. by Act 9 of 2023, S. 4(*b*)(*iv*)(*iii*) (w.e.f. 18-5-2023).

[22]. *Ins*. by Act 9 of 2023, S. 4(*b*)(*iv*)(*iii*) (w.e.f. 18-5-2023).

[23]. *Subs*. for "includes any agreement to sell goods on condition" by Act 9 of 2023, S. 4(*b*)(*iv*)(*iv*) (w.e.f. 18-5-2023).

[24]. *Ins*. by Act 9 of 2023, S. 4(*c*) (w.e.f. 18-5-2023).

[25]. *Subs*. by Act 39 of 2007, S. 3 (w.e.f. 20-5-2009).

[26]. *Subs*. for "under sub-section (l), if an enterprise" by Act 39 of 2007, S. 3 (w.e.f. 20-5-2009).

[27]. *Subs*. for "discriminatory condition or price" by Act 9 of 2023, S. 5 (w.e.f. 18-5-2023).

[28]. *Ins*. by Act 39 of 2007, S. 3 (w.e.f. 20-5-2009).

[29]. *Ins*. by Act 39 of 2007, S. 3 (w.e.f. 20-5-2009).

[30]. *Subs*. by Act 39 of 2007, S. 4 (w.e.f. 1-6-2011). Prior to substitution it read as:

> "(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or"

[31]. *Subs*. by Act 39 of 2007, S. 4 (w.e.f. 1-6-2011). Prior to substitution it read as:

> "(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or"

[32]. *Subs*. by Act 39 of 2007, S. 4 (w.e.f. 1-6-2011). Prior to substitution it read as:

> "(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or"

[33]. *Subs*. by Act 39 of 2007, S. 4 (w.e.f. 1-6-2011). Prior to substitution it read as:

> "(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or"

[34]. *Subs*. by Act 39 of 2007, S. 4 (w.e.f. 1-6-2011). Prior to substitution it read as:

> "(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen

hundred crores in India; or"

[35] *Subs.* by Act 39 of 2007, S. 4 (w.e.f. 1-6-2011). Prior to substitution it read as:
"(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India"

[36] *Subs.* for "India." by Act 9 of 2023, S. 6(A) (w.e.f. 10-9-2024).

[37] *Ins.* by Act 9 of 2023, S. 6(B) (w.e.f. 10-9-2024).

[38] *Ins.* by Act 9 of 2023, S. 6(B) (w.e.f. 10-9-2024).

[39] *Subs.* by Act 9 of 2023, S. 6(C) (w.e.f. 10-9-2024). Prior to substitution it read as:
"*Explanation*.—For the purposes of this section,—

(*a*) "control" includes controlling the affairs or management by—

(*i*) one or more enterprises, either jointly or singly, over another enterprise or group;

(*ii*) one or more groups, either jointly or singly, over another group or enterprise;

(*b*) "group" means two or more enterprises which, directly or indirectly, are in a position to—

(*i*) exercise twenty-six per cent or more of the voting rights in the other enterprise; or

(*ii*) appoint more than fifty per cent of the members of the Board of Directors in the other enterprise; or

(*iii*) control the management or affairs of the other enterprise;

(*c*) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of Section 3."

[40] *Subs.* for "may, at his or its option" by Act 39 of 2007, S. 5 (w.e.f. 1-6-2011).

[41] *Subs.* for "within thirty days of" by Act 9 of 2023, S. 7(*a*)(*i*) (w.e.f. 10-9-2024).

[42] *Ins.* by Act 9 of 2023, S. 7(*a*)(*ii*) (w.e.f. 10-9-2024).

[43] *Ins.* by Act 9 of 2023, S. 7(*a*)(*iii*) (w.e.f. 10-9-2024).

[44] *Ins.* by Act 9 of 2023, S. 7(*a*)(*iv*) (w.e.f. 10-9-2024).

[45] *Ins.* by Act 39 of 2007, S. 5 (w.e.f. 1-6-2011).

[46] *Subs.* for "two hundred and ten days" by Act 9 of 2023, S. 7(*b*) (w.e.f. 10-9-2024).

[47] *Subs.* for "Sections 29, 30 and 31" by Act 9 of 2023, S. 7(*c*) (w.e.f. 10-9-2024).

[48] *Subs.* by Act 9 of 2023, S. 7(*d*) (w.e.f. 10-9-2024). Prior to substitution it read as:

"(4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement."

[49] *Subs.* by Act 9 of 2023, S. 7(*d*) (w.e.f. 10-9-2024). Prior to substitution it read as:

"(5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in sub-section (4), shall, within seven days from the date of the acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

Explanation.—For the purposes of this section, the expression—

(*a*) "foreign institutional investor" has the same meaning as assigned to it in clause (*a*) of the Explanation to Section 115-AD of the Income Tax Act, 1961 (43 of 1961);

(*b*) "venture capital fund" has the same meaning as assigned to it in clause (*b*) of the Explanation to clause (23-FB) of Section 10 of the Income Tax Act, 1961 (43 of 1961)."

[50] *Ins.* by Act 9 of 2023, S. 8 (w.e.f. 10-9-2024).

[51] *Subs.* by Act 39 of 2007, S. 6 (w.e.f. 12-10-2007).

[52] *Ins.* by Act 9 of 2023, S. 9 (w.e.f. 18-5-2023).

[53] *Subs.* by Act 39 of 2007, S. 7 (w.e.f. 12-10-2007).

[54] *Ins.* by Act 9 of 2023, S. 10 (w.e.f. 18-5-2023).

[55] *Subs.* by Act 39 of 2007, S. 8 (w.e.f. 12-10-2007).

[56] *Subs.* by Act 9 of 2023, S. 11 (w.e.f. 18-5-2023). Prior to substitution it read as:

"12. *Restriction on employment of Chairperson and other Members in certain cases*.—The Chairperson and other Members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)."

[57]. *Subs*. by Act 39 of 2007, S. 10 (w.e.f. 20-5-2009).

[58]. *Subs*. by Act 39 of 2007, S. 11 (w.e.f. 12-10-2007).

[59]. *Subs*. for "Central Government may, by notification" by Act 9 of 2023, S. 12 (w.e.f. 18-7-2023).

[60]. *Subs*. for "such other advisers, consultants and officers" by Act 39 of 2007, S. 11 (w.e.f. 12-10-2007).

[61]. *Subs*. for "such other advisers, consultants and officers" by Act 39 of 2007, S. 11 (w.e.f. 12-10-2007).

[62]. *Subs*. for "such other advisers, consultants and officers" by Act 39 of 2007, S. 11 (w.e.f. 12-10-2007).

[63]. *Subs*. by Act 39 of 2007, S. 12 (w.e.f. 12-10-2007).

[64]. *Subs*. by Act 9 of 2023, S. 13 (w.e.f. 18-5-2023). Prior to substitution it read as:

"18. *Duties of Commission*.—Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India:

Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country."

[65]. *Subs*. for "receipt of a complaint" by Act 39 of 2007, S. 13 (w.e.f. 20-5-2009).

[66]. *Ins*. by Act 9 of 2023, S. 14(*a*) (w.e.f. 18-5-2023).

[67]. The words "by hindering entry into the market" *omitted* by Act 9 of 2023, S. 14(*b*)(*i*) (w.e.f. 18-5-2023).

[68]. *Subs*. for "accrual of benefits" by Act 9 of 2023, S. 14(*b*)(*ii*) (w.e.f. 18-5-2023).

[69]. *Ins*. by Act 9 of 2023, S. 14(*c*) (w.e.f. 18-5-2023).

[70]. *Ins*. by Act 9 of 2023, S. 14(*c*) (w.e.f. 18-5-2023).

[71]. *Ins*. by Act 9 of 2023, S. 14(*d*)(*i*) (w.e.f. 18-5-2023).

[72]. *Ins*. by Act 9 of 2023, S. 14(*d*)(*ii*) (w.e.f. 18-5-2023).

[73]. *Ins*. by Act 9 of 2023, S. 14(*d*)(*ii*) (w.e.f. 18-5-2023).

[74] *Subs.* for "clause (*c*) of that section" by Act 9 of 2023, S. 15(*a*) (w.e.f. 18-5-2023).

[75] *Omitted* by Act 39 of 2007, S. 14 (w.e.f. 1-6-2011). Prior to omission it read as:

"or upon receipt of a reference under sub-section (1) of Section 21".

[76] *Subs.* by Act 9 of 2023, S. 15(*b*) (w.e.f. 18-5-2023). Prior to substitution it read as:

"by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turnover"

[77] *Subs.* for "combination" by Act 9 of 2023, S. 15(*c*) (w.e.f. 18-5-2023).

[78] *Subs.* by Act 9 of 2023, S. 16 (w.e.f. 18-5-2023). Prior to substitution it read as:

"Provided that any statutory authority, may, suo motu, make such a reference to the Commission."

[79] *Subs.* by Act 39 of 2007, S. 15 (w.e.f. 20-5-2009).

[80] *Ins.* by Act 39 of 2007, S. 16 (w.e.f. 20-5-2009).

[81] *Subs.* for "this Act" by Act 9 of 2023, S. 17(*a*) (w.e.f. 18-5-2023).

[82] *Subs.* by Act 9 of 2023, S. 17(*b*) (w.e.f. 18-5-2023). Prior to substitution it read as:

"Provided that the Commission, may, suo motu, make such a reference to the statutory authority."

[83] *Subs.* by Act 39 of 2007, S. 17 (w.e.f. 12-10-2007).

[84] The words "and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote" *omitted* by Act 9 of 2023, S. 18 (w.e.f. 18-5-2023).

[85] *Omitted* by Act 39 of 2007, S. 18 (w.e.f. 12-10-2007). Prior to omission it read as:

"23. *Distribution of business of Commission amongst Benches*.—(1) Where any Benches are constituted, the Chairperson may, from time to time, by order, make provisions as to the distribution of the business of the Commission amongst the Benches and specify the matters, which may be dealt with by each Bench.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairperson thereon shall be final.

(3) The Chairperson, may—

(*i*) transfer a Member from one Bench to another Bench; or

(*ii*) authorise the Members of one Bench to discharge also the functions of the Members of other Bench:

Provided that the Chairperson shall transfer, with the prior approval of the Central Government, a Member from one Bench situated in one city to another Bench situated in another city.

(4) The Chairperson may, for the purpose of securing that any case or matter which, having regard to the nature of the questions involved, requires or is required in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than two Members, issue such general or special orders as he may deem fit.".

86. *Omitted* by Act 39 of 2007, S. 18 (w.e.f. 12-10-2007). Prior to omission it read as:

"24. *Procedure for deciding a case where Members of a Bench differ in opinion*.—If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it."

87. *Omitted* by Act 39 of 2007, S. 18 (w.e.f. 12-10-2007). Prior to omission it read as:

"25. *Jurisdiction of Bench*.—An inquiry shall be initiated or a complaint be instituted or a reference be made under this Act before a Bench within the local limits of whose jurisdiction—

(*a*) the respondent, or each of the respondents, where there are more than one, at the time of the initiation of inquiry or institution of the complaint or making of reference, as the case may be, actually and voluntarily resides, or carries on business, or personally works for gain; or

(*b*) any of the respondents, where there are more than one, at the time of the initiation of the inquiry or institution of complaint or making of reference, as the case may be, actually and voluntarily resides or carries on business or personally works for gain provided that in such case either the leave of the Bench is given, or the respondents who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(*c*) the cause of action, wholly or in part, arises.

Explanation.—A respondent, being a person referred to in sub-clause (*iii*) or sub-clause (*vi*) or sub-clause (*vii*) or sub-clause (*viii*) of clause (*l*) of Section 2, shall be deemed to carry on business at its sole or principal place of business in India or at its registered office in India or where it has also a subordinate office at such place."

88. *Subs*. by Act 39 of 2007, S. 19 (w.e.f. 20-5-2009).

89. *Ins*. by Act 9 of 2023, S. 19(*a*) (w.e.f. 18-5-2023).

90. *Ins*. by Act 9 of 2023, S. 19(*b*) (w.e.f. 18-5-2023).

91. *Ins*. by Act 9 of 2023, S. 19(*b*) (w.e.f. 18-5-2023).

92. *Subs*. for "sub-section (3)" by Act 9 of 2023, S. 19(*c*) (w.e.f. 18-5-2023).

93. *Subs*. for "sub-section (3)" by Act 9 of 2023, S. 19(*c*) (w.e.f. 18-5-2023).

94. *Subs*. for "sub-section (3)" by Act 9 of 2023, S. 19(*d*) (w.e.f. 18-5-2023).

95. *Subs*. for "sub-section (3)" by Act 9 of 2023, S. 19(*e*) (w.e.f. 18-5-2023).

96. *Ins*. by Act 9 of 2023, S. 19(*f*) (w.e.f. 19-9-2024).

97. *Subs*. by Act 9 of 2023, S. 20 (w.e.f. 6-3-2024). Prior to substitution it read as:

"(*b*) impose such penalty, as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover for each year of the continuance of such agreement, whichever is higher."

98. *Omitted* by Act 39 of 2007, S. 20 (w.e.f. 20-5-2009). Prior to omission it read as:

"(*c*) award compensation to parties in accordance with the provisions contained in Section 34;"

99. *Omitted* by Act 39 of 2007, S. 20 (w.e.f. 20-5-2009). Prior to omission it read as:

"(*f*) recommend to the Central Government for the division of an enterprise enjoying dominant position;"

100. *Subs*. for "order" by Act 39 of 2007, S. 20 (w.e.f. 20-5-2009).

101. *Ins*. by Act 39 of 2007, S. 20 (w.e.f. 20-5-2009).

102. *Subs*. by Act 39 of 2007, S. 21 (w.e.f. 20-5-2009). Prior to substitution it read as:

"Central Government, on recommendation under clause (f) of section 27".

103. *Omitted* by Act 39 of 2007, S. 21 (w.e.f. 20-5-2009). Prior to omission it read as:

"(*d*) the payment of compensation to any person who suffered any loss due to dominant position of such enterprise;"

104. *Ins*. by Act 39 of 2007, S. 22 (w.e.f. 1-6-2011).

105. *Subs*. for "within thirty days" by Act 9 of 2023, S. 21(*a*) (w.e.f. 10-9-2024).

106. *Ins*. by Act 39 of 2007, S. 22 (w.e.f. 1-6-2011).

107. *Ins*. by Act 9 of 2023, S. 21(*b*) (w.e.f. 10-9-2024).

108. *Subs*. for "within seven working days" by Act 9 of 2023, S. 21(*c*)(*i*) (w.e.f. 10-9-2024).

109. *Ins*. by Act 39 of 2007, S. 22 (w.e.f. 1-6-2011).

[110] *Subs*. for "within ten working days" by Act 9 of 2023, S. 21(*c*)(*ii*) (w.e.f. 10-9-2024).

[111] *Subs*. for "within fifteen working days" by Act 9 of 2023, S. 21(*d*) (w.e.f. 10-9-2024).

[112] *Subs*. for "within fifteen working days" by Act 9 of 2023, S. 21(*e*) (w.e.f. 10-9-2024).

[113] *Subs*. for "within fifteen days" by Act 9 of 2023, S. 21(*f*) (w.e.f. 10-9-2024).

[114] *Subs*. by Act 9 of 2023, S. 21(*g*) (w.e.f. 10-9-2024). Prior to substitution it read as:

"(6) After receipt of all information and within a period of forty-five working days from the expiry of the period specified in sub-section (5), the Commission shall proceed to deal with the case in accordance with the provisions contained in Section 31."

[115] *Ins*. by Act 9 of 2023, S. 21(*g*) (w.e.f. 10-9-2024).

[116] *Ins*. by Act 9 of 2023, S. 22 (w.e.f. 10-9-2024).

[117] *Subs*. by Act 39 of 2007, S. 23 (w.e.f 1-6-2011).

[118] The words "certain" *omitted* by Act 9 of 2023, S. 23(*a*) (w.e.f. 10-9-2024).

[119] The words "including the combination" *omitted* by Act 9 of 2023, S. 23(*b*) (w.e.f. 10-9-2024).

[120] *Ins*. by Act 9 of 2023, S. 23(*c*) (w.e.f. 10-9-2024).

[121] *Subs*. by Act 9 of 2023, S. 23(*d*) (w.e.f. 10-9-2024). Prior to substitution it read as:

"(3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination."

[122] *Subs*. by Act 9 of 2023, S. 23(*d*) (w.e.f. 10-9-2024). Prior to substitution it read as:

"(4) The parties, who accept the modification proposed by the Commission under sub-section (3), shall carry out such modification within the period specified by the Commission."

[123] *Subs*. by Act 9 of 2023, S. 23(*d*) (w.e.f. 10-9-2024). Prior to substitution it read as:

"(5) If the parties to the combination, who have accepted the modification under sub-section (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act."

[124] *Subs*. by Act 9 of 2023, S. 23(*d*) (w.e.f. 10-9-2024). Prior to substitution it read as:

"(6) If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section."

[125.] *Omitted* by Act 9 of 2023, S. 23(*e*) (w.e.f. 10-9-2024). Prior to omission it read as:

"(7) If the Commission agrees with the amendment submitted by the parties under sub-section (6), it shall, by order, approve the combination."

[126.] *Omitted* by Act 9 of 2023, S. 23(*e*) (w.e.f. 10-9-2024). Prior to omission it read as:

"(8) If the Commission does not accept the amendment submitted under sub-section (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3)."

[127.] *Omitted* by Act 9 of 2023, S. 23(*e*) (w.e.f. 10-9-2024). Prior to omission it read as:

"(9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act."

[128.] *Omitted* by Act 9 of 2023, S. 23(*e*) (w.e.f. 10-9-2024). Prior to omission it read as:

"(10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that—

(*a*) the acquisition referred to in clause (*a*) of Section 5; or

(*b*) the acquiring of control referred to in clause (*b*) of Section 5; or

(*c*) the merger or amalgamation referred to in clause (*c*) of Section 5,

shall not be given effect to:

Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section."

[129.] *Omitted* by Act 9 of 2023, S. 23(*e*) (w.e.f. 10-9-2024). Prior to omission it read as:

"(11) If the Commission does not, on the expiry of a period of two hundred and ten days from the date of notice given to the Commission under sub-section (2) of Section 6, pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.

Explanation.—For the purposes of determining the period of two hundred and ten specified in this sub-section, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub-section (8) shall be excluded."

[130.] *Omitted* by Act 9 of 2023, S. 23(*e*) (w.e.f. 10-9-2024). Prior to omission it read as:

"(12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties."

131. *Ins*. by Act 39 of 2007, S. 25 (w.e.f. 20-5-2009).

132. *Subs*. for "29 and 30" by Act 9 of 2023, S. 24 (w.e.f. 10-9-2024).

133. *Ins*. by Act 39 of 2007, S. 25 (w.e.f. 20-5-2009).

134. *Subs*. by Act 39 of 2007, S. 26 (w.e.f. 20-5-2009).

135. *Omitted* by Act 39 of 2007, S. 27 (w.e.f. 12-10-2007). Prior to omission it read as:

"34. *Power to award compensation*.—(1) Without prejudice to any other provisions contained in this Act, any person may make an application to the Commission for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by such enterprise.

(2) The Commission may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise.

(3) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of Rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon.

136. *Renumbered* by Act 9 of 2023, S. 25 (w.e.f. 18-5-2023).

137. *Subs*. for "A person or an enterprise" by Act 9 of 2023, S. 25(*a*) (w.e.f. 18-5-2023).

138. *Ins*. by Act 9 of 2023, S. 25(*b*) (w.e.f. 18-5-2023).

139. *Subs*. by Act 39 of 2007, S. 29 (w.e.f. 12-10-2007).

140. *Omitted* by Act 39 of 2007, S. 30 (w.e.f. 12-10-2007). Prior to omission it read as:

"37. *Review of orders of Commission*.—Any person aggrieved by an order of the Commission from which an appeal is allowed by this Act but no appeal has been preferred, may, within thirty days from the date of the order, apply to the Commission for review of its order and the Commission may make such order thereon as it thinks fit:

Provided that the Commission may entertain a review application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application in time:

Provided further that no order shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is given and the Director General where he was a party to the proceedings."

[141]. *Subs*. by Act 39 of 2007, S. 31 (w.e.f. 20-5-2009).

[142]. *Omitted* by Act 39 of 2007, S. 32 (w.e.f. 12-10-2007). Prior to omission it read as:

"40. *Appeal*.—Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days:

Provided further that no appeal shall lie against any decision or order of the Commission made with the consent of the parties."

[143] *Subs*. for sub-section (3) by Act 9 of 2023, S. 26(*a*) (w.e.f. 18-5-2023). Prior to substitution it read as:

"(3) Without prejudice to the provisions of sub-section (2), Sections 240 and 240-A of the Companies Act, 1956 (1 of 1956]), so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act."

[144] *Ins*. by Act 9 of 2023, S. 26(*a*) (w.e.f. 18-5-2023).

[145] *Subs*. by Act 9 of 2023, S. 26(*b*) (w.e.f. 18-5-2023). Prior to substitution it read as:

'*Explanation*.—For the purposes of this section,—

(*a*) the words "the Central Government" under Section 240 of the Companies Act, 1956 (1 of 1956) shall be construed as "the Commission";

(*b*) the word "Magistrate" under Section 240-A of the Companies Act, 1956 (1 of 1956) shall be construed as "the Chief Metropolitan Magistrate, Delhi."'

[146]. *Subs*. by Act 39 of 2007, S. 34 (w.e.f. 20-5-2009).

[147]. *Subs*. for "Sections 27, 28, 31, 32, 33, 42-A and 43-A of the Act, he shall be punishable with fine" by Act 9 of 2023, S. 27(*a*) (w.e.f. 18-5-2023).

[148]. *Subs*. for "pay the fine imposed under sub-section (2)" by Act 9 of 2023, S. 27(*b*) (w.e.f. 18-5-2023).

[149]. *Ins*. by Act 39 of 2007, S. 35 (w.e.f. 20-5-2009).

[150]. *Subs*. for "under Sections 27" by Act 9 of 2023, S. 28 (w.e.f. 10-9-2024).

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151. *Subs*. by Act 39 of 2007, S. 36 (w.e.f. 20-5-2009).

152. *Subs*. for "shall be punishable with fine" by Act 9 of 2023, S. 29 (w.e.f. 18-5-2023).

153. *Subs*. by Act 9 of 2023, S. 30 (w.e.f. 10-9-2024). Prior to substitution it read as:

"43-A. *Power to impose penalty for non-furnishing of information on combinations*.—If any person or enterprise who fails to give notice to the Commission under sub-section (2) of Section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one per cent of the total turnover or the assets, whichever is higher, of such a combination."

154. *Subs*. for "rupees one crore" by Act 9 of 2023, S. 31 (w.e.f. 18-5-2023).

155. *Subs*. for "offences" by Act 9 of 2023, S. 32(*a*) (w.e.f. 18-5-2023).

156. *Subs*. by Act 39 of 2007, S. 38 (w.e.f. 20-5-2009).

157. *Ins*. by Act 9 of 2023, S. 32(*b*)(*i*) (w.e.f. 18-5-2023).

158. *Subs*. for "punishable with fine" by Act 9 of 2023, S. 32(*b*)(*ii*) (w.e.f. 18-5-2023).

159. *Subs*. by Act 9 of 2023, S. 33 (w.e.f. 20-2-2024). Prior to substitution it read as:

"46. *Power to impose lesser penalty*.—The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated Section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as it may deem fit, than leviable under this Act or the rules or the regulations:

Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under Section 26 has been received before making of such disclosure.

Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who has made the full, true and vital disclosures under this section:

Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to cooperate with the Commission till the completion of the proceedings before the Commission.

Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings,

(*a*) not complied with the condition on which the lesser penalty was imposed by the Commission; or

(*b*) had given false evidence; or

(*c*) the disclosure made is not vital

and thereupon such producer, seller, distributor, trader or service provider may be tried for the offence with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person have been liable, had lesser penalty not been imposed."

160. *Ins*. by Act 9 of 2023, S. 34 (w.e.f. 10-9-2024).

161. *Ins*. by Act 9 of 2023, S. 34 (w.e.f. 10-9-2024).

162. *Subs*. by Act 9 of 2023, S. 35 (w.e.f. 6-3-2024). Prior to substitution it read as:

"48. *Contravention by companies*.—(1) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act, or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means a body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm."

163. *Ins*. by Act 9 of 2023, S. 35 (w.e.f. 6-3-2024).

164. *Ins*. by Act 9 of 2023, S. 35 (w.e.f. 6-3-2024).

165. *Ins*. by Act 9 of 2023, S. 35 (w.e.f. 6-3-2024).

166. *Subs*. by Act 39 of 2007, S. 40 (w.e.f. 12-10-2007).

167. *Ins*. by Act 39 of 2007, S. 40 (w.e.f. 12-10-2007).

168. The words ", as may be prescribed," *omitted* by Act 39 of 2007, S. 40 (w.e.f. 12-10-2007).

169. *Ins*. by Act 9 of 2023, S. 36 (w.e.f. 18-5-2023).

170. *Omitted* by Act 39 of 2007, S. 41 (w.e.f. 12-10-2007). Prior to omission it read as:

"(*b*) the monies received as costs from parties to proceedings before the Commission;"

171. *Subs*. for "clauses (*a*) to (*c*)" by Act 39 of 2007, S. 41 (w.e.f. 12-10-2007).

172. *Ins*. by Act 9 of 2023, S. 37 (w.e.f. 18-5-2023).

173. *Subs*. for "Supreme Court" by Act 39 of 2007, S. 42 (w.e.f. 12-10-2007).

174. *Ins*. by Act 39 of 2007, S. 43 (w.e.f. 12-10-2007 for S. 53-A, 20-12-2007 for Ss. 53-C to 53-M and 20-5-2009 for S. 53-B, S. 53-N, S. 53-O, S. 53-P, S. 53-Q, S. 53-R, S. 53-S, S. 53-T and S. 53-U).

175. *Subs*. for "COMPETITION APPELLATE TRIBUNAL" by Act 7 of 2017, S. 171(*b*) (w.e.f. 26-5-2017).

176. *Subs*. by Act 7 of 2017, S. 171(*c*) (w.e.f. 26-5-2017). Prior to substitution it read as:

"53-A. *Establishment of Appellate Tribunal*.—(1) The Central Government shall, by notification†, establish an Appellate Tribunal to be known as Competition Appellate Tribunal,—

(*a*) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of Section 26, Section 27, Section 28, Section 31, Section 32, Section 33, Section 38, Section 39, Section 43, Section 43-A, Section 44, Section 45 or Section 46 of this Act;

(*b*) adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under Section 42-A or under sub-section (2) of Section 53-Q of this Act, and pass orders for the recovery of compensation under Section 53-N of this Act.

(2) The Headquarter of the Appellate Tribunal shall be at such place as the Central Government may, by notification, specify."

177. *Subs*. for "sub-sections (2) and (6) of Section 26" by Act 9 of 2023, S. 38 (w.e.f. 10-9-2024).

178. *Ins*. by Act 9 of 2023, S. 39 (w.e.f. 18-5-2023).

179. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

"53-C. *Composition of Appellate Tribunal*.—The Appellate Tribunal shall consist of a Chairperson and not more than two other Members to be appointed by the Central Government."

180. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

"53-D. *Qualifications for appointment of Chairperson and Members of Appellate Tribunal*.—(1) The Chairperson of the Appellate Tribunal shall be a person, who is, or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(2) A Member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, competition matters, including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal."

181. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

"53-E. *Selection Committee*.—(1) The Chairperson and Members of the Appellate Tribunal shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

(*a*) the Chief Justice of India or his nominee Chairperson;

(*b*) the Secretary in the Ministry of Corporate Affairs Member;

(*c*) the Secretary in the Ministry of Law and Justice Member.

(2) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed."

182. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

"53-F. *Term of office of Chairperson and Members of Appellate Tribunal*.—The Chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, and shall be eligible for re-appointment:

Provided that no Chairperson or other Member of the Appellate Tribunal shall hold office as such after he has attained,—

(*a*) in the case of the Chairperson, the age of sixty-eight years;

(*b*) in the case of any other Member of the Appellate Tribunal, the age of sixty-five years."

183. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

"53-G. *Terms and conditions of service of Chairperson and Members of Appellate Tribunal*.—(1) The salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed.

(2) The salaries, allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall not be varied to their disadvantage after their appointment."

184. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

"53-H. *Vacancies*.—If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.".

185. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

"53-I. *Resignation of Chairperson and Members of Appellate Tribunal*.—The Chairperson or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.".

186. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

"53-J. *Member of Appellate Tribunal to act as its Chairperson in certain cases*.—(1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death or resignation, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member or, as the case may be, such one of the Members of the Appellate Tribunal, as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.".

187. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

"53-K. *Removal and suspension of Chairperson and Members of Appellate Tribunal*.—(1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any other Member of the Appellate Tribunal, who—

(*a*) has been adjudged an insolvent; or

(*b*) has engaged at any time, during his term of office, in any paid employment; or

(*c*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*d*) has become physically or mentally incapable of acting as such Chairperson or other Member of the Appellate Tribunal; or

(*e*) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal; or

(*f*) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no Chairperson or a Member of the Appellate Tribunal shall be removed from his office on the ground specified in clause (*e*) or clause (*f*) of sub-section (1) except by an order made by the Central Government after an inquiry made in this behalf by a Judge of the Supreme Court in which such Chairperson or Member had been informed of the charges against him and given a

reasonable opportunity of being heard in respect of those charges.”.

188. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

“53-L. *Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases*.—The Chairperson and other Members of the Appellate Tribunal shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Appellate Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).”

189. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

“53-M. *Staff of Appellate Tribunal*.—(1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.”.

190. *Subs*. by Act 9 of 2023, S. 40(*a*) (w.e.f. 6-3-2024). Prior to substitution it read as:

“under sub-section (2) of Section 53-Q of the Act, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by the enterprise”

191. *Ins*. by Act 9 of 2023, S. 40(*b*) (w.e.f. 6-3-2024).

192. *Ins*. by Act 9 of 2023, S. 40(*c*)(*i*) (w.e.f. 6-3-2024).

193. *Ins*. by Act 9 of 2023, S. 40(*c*)(*ii*) (w.e.f. 6-3-2024).

194. *Subs*. by Act 9 of 2023, S. 41 (w.e.f. 18-5-2023). Prior to substitution it read as:

“(1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for a penalty of not exceeding rupees one crore or imprisonment for a term up to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence punishable under this sub-section, save on a complaint made by an officer authorised by the Appellate Tribunal.”

195. *Omitted* by Act 7 of 2017, S. 171(*d*) (w.e.f. 26-5-2017). Prior to omission it read as:

“53-R. *Vacancy in Appellate Tribunal not to invalidate acts or proceedings*.—No act or proceeding of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the constitution of the Appellate Tribunal."

196. *Subs*. for "the Commission" by Act 39 of 2007, S. 44 (w.e.f. 12-10-2007).

197. *Subs*. by Act 39 of 2007, S. 45 (w.e.f. 12-10-2007).

198. *Subs*. by Act 39 of 2007, S. 46 (w.e.f. 12-10-2007). Prior to substitution it read as:
"Registrar or officers or other employees of the Commission"

199. *Ins*. by Act 9 of 2023, S. 42 (w.e.f. 18-5-2023).

200. *Subs*. for "Commission" by Act 39 of 2007, S. 47 (w.e.f. 12-10-2007).

201. *Ins*. by Act 9 of 2023, S. 43(*i*) (w.e.f. 18-5-2023).

202. *Subs*. by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007).

203. *Re-lettered* by Act 9 of 2023, S. 43(*i*) (w.e.f. 18-5-2023).

204. *Omitted* by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007). Prior to omission it read as:
"(*c*) the financial and administrative powers which may be vested in the Member Administration under Section 13;"

205. *Ins*. by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007).

206. *Subs*. for "such other advisers, consultants or officers" by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007).

207. *Subs*. for "such other advisers, consultants or officers" by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007).

208. *Subs*. for "Registrar" by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007).

209. *Omitted* by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007). Prior to omission it read as:
"(*h*) for securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of Section 23;"

210. *Omitted* by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007). Prior to omission it read as:
"(*i*) any other matter in respect of which the Commission shall have power under clause (*g*) of sub-section (2) of Section 36;"

211. *Omitted* by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007). Prior to omission it read as:
"(*j*) the promotion of competition advocacy, creating awareness and imparting training about competition issues under sub-section (3) of Section 49;"

212. *Ins*. by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007).

[213] *Omitted* by Act 7 of 2017, S. 171(*e*) (w.e.f. 26-5-2017). Prior to omission it read as:

"(*mb*) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of Section 53-E;".

[214] *Omitted* by Act 7 of 2017, S. 171(*e*) (w.e.f. 26-5-2017). Prior to omission it read as:

"(*mc*) the salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of Section 53-G;".

[215] *Omitted* by Act 7 of 2017, S. 171(*e*) (w.e.f. 26-5-2017). Prior to omission it read as:

"(*md*) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of Section 53-M;".

[216] *Ins*. by Act 9 of 2023, S. 43(*ii*) (w.e.f. 18-5-2023).

[217] *Subs*. by Act 39 of 2007, S. 48 (w.e.f. 12-10-2007).

[218] *Subs*. by Act 9 of 2023, S. 44(*i*) (w.e.f. 18-5-2023). Prior to substitution it read as:

"(*c*) the form in which details of the acquisition shall be filed under sub-section (5) of Section 6;"

[219] *Ins*. by Act 9 of 2023, S. 44(*i*) (w.e.f. 18-5-2023).

[220] *Subs*. by Act 39 of 2007, S. 49 (w.e.f. 12-10-2007).

[221] *Ins*. by Act 9 of 2023, S. 44(*ii*) (w.e.f. 18-5-2023).

[222] *Corrected* by corrigendum dated 26-4-2023, Issue No. 11.

[223] *Ins*. by Act 9 of 2023, S. 44(*iii*) (w.e.f. 18-5-2023).

[224] *Ins*. by Act 9 of 2023, S. 45 (w.e.f. 18-5-2023).

[225] *Ins*. by Act 9 of 2023, S. 45 (w.e.f. the date to be notified).

[226] *Subs*. by Act 39 of 2007, S. 50 (w.e.f. 1-9-2009).

[227] The proviso and the Explanation *omitted* by Act 39 of 2009, S. 2(*a*) (w.r.e.f. 14-10-2009). Prior to omission it read as:

"Provided that, notwithstanding anything contained in this sub-section, the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of Section 5 of the repealed Act may continue to exercise jurisdiction and powers under the repealed Act for a period of two years from the date of the commencement of this Act in respect of all cases or proceedings (including complaints received by it or references or applications made to it) filed before the commencement of this Act as if the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) had not been repealed and all the provisions of the said Act so repealed shall mutatis mutandis apply to such cases or proceedings or complaints or references or applications and to all other matters.

Explanation.—For the removal of doubts, it is hereby declared that nothing in this proviso shall confer any jurisdiction or power upon the Monopolies and Restrictive Trade Practices Commission to decide or adjudicate any case or proceeding arising under the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) on or after the commencement of this Act."

228. *Subs*. by Act 39 of 2007, S. 50 (w.e.f. 1-9-2009).

229. *Subs*. for "the Central Government" by Act 39 of 2007, S. 50 (w.e.f. 1-9-2009).

230. *Subs*. by Act 39 of 2007, S. 50 (w.e.f. 1-9-2009). Prior to substitution it read as:
"the Central Government shall, out of the monies standing"

231. *Subs*. by Act 39 of 2007, S. 50 (w.e.f. 1-9-2009).

232. *Subs*. by Act 39 of 2007, S. 50 (w.e.f. 1-9-2009).

233. *Subs*. by Act 39 of 2009, S. 2(*b*)(*i*) (w.r.e.f. 14-10-2009). Prior to substitution it read as:
"after the expiry of two years referred to in the proviso to sub-section (1)"

234. *Ins*. by Act 39 of 2009, S. 2(*b*)(*ii*) (w.r.e.f. 14-10-2009).

235. *Subs*. for "on or before the expiry of two years referred to in the proviso to sub-section (1)" by Act 39 of 2009, S. 2(*c*)(*i*) (w.r.e.f. 14-10-2009).

236. *Ins*. by Act 39 of 2009, S. 2(*c*)(*ii*) (w.r.e.f. 14-10-2009).

237. *Subs*. by Act 39 of 2007, S. 50 (w.e.f. 1-9-2009).

238. *Subs*. by Act 39 of 2009, S. 2(*d*) (w.r.e.f. 14-10-2009). Prior to substitution it read as:
"after the expiry of two years referred to in the proviso to sub-section (1)"

239. *Ins*. by Act 39 of 2009, S. 2(*e*) (w.r.e.f. 14-10-2009).

240. *Subs*. for "five years" by Noti. No. S.O. 1192(E), dt. 16-3-2022 (w.e.f. 16-3-2022).