Competition Act, 2002 vis-à-vis MRTP Act, 1969

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Abstract

We know that the focus of Competition Act, 2002 is on regulating the behavior of the undertaking rather than regulating the size of the undertaking, as was the case with erstwhile MRTP Act, 1969 which prevented undertakings from investing and growing. This paper attempts to bring out if the shift in focus of the new Competition law is accompanied by the changes in the working mechanism; and to determine if the changes made are sufficient to bring about desirable impact in the economy. In order to examine the same, this paper discusses the Competition Act, 2002 and the MRTP Act, 1969 in the light of organizational structure, powers conferred upon and duties assigned to the respective quasi-judicial bodies and investigative offices/bodies and, the procedures adopted to investigate the cases. To facilitate lucid analysis, this paper quotes and discusses some cases resolved under the two enactments along with the procedure of investigation adopted in those cases.

The research shows that there are considerable changes in the technique of investigation adopted under the new Act. The research also shows that though the quasi-judicial body (CCI) and investigative officer enjoy wide powers under the new Competition law, yet they are not sufficiently empowered in some respects. Therefore, the paper ends with some conclusive suggestions proposing mainly the search and seizure provisions along with other small yet significant changes which would further enhance the powers of CCI.

Key words: Anti-competitive; CCI; Competition Act; Competition law, India; Investigation Techniques; MRTP Act

INTRODUCTION

Competition Act, 2002 has been enacted to replace MRTP Act, 1969 which had become obsolete in several respects in the light of international economic developments relating to competition laws. MRTP Act, 1969 came into force in the year 1970 when India had a strong regulatory regime and there was a need to monitor the shaping of industries and protect national firms from domestic and international
competition, at a time when there was a need to not only curb anti-competitive trade practices but also to regulate the concentration of economic power. Therefore, MRTP Act sought to achieve the following five objectives - (a) prevention of concentration of economic power to the common detriment; (b) control of monopolies; (c) prohibition of Monopolistic Trade Practices (MTP); (d) prohibition of Restrictive Trade Practices (RTP) and; (e) prohibition of Unfair Trade Practices (UTP).

In the year 1991 when India decided to open its economy by removing controls and resorting to the policy of liberalization and globalization, there was a need to gear up the Indian market to face competition from within the country and outside. There was a need to shift focus from curbing monopolies to promoting competition. Then arose need to revamp a range of government policies and, design and conduct them in a complementary manner. “With the growing complexity of industrial structure and the need for achieving economies of scale for ensuring higher productivity and competitive advantage in the international market, the thrust of the industrial policy has shifted to controlling and regulating the monopolistic, restrictive and unfair trade practices rather than making it necessary for certain undertakings to obtain prior approval of the Central Government for expansion, establishment of new undertakings, merger, amalgamation, take over and appointment of Directors.” These are the excerpts from the Statement of Objects and Reasons subjoining the MRTP (Amendment) Bill, 1991. In 1991, the first two objectives of the MRTP Act out of the foregoing five were done away with, as the provisions relating to the concentration of economic power and pre-entry restrictions regarding need to obtain prior approval of the Central Government for establishing a new undertaking, expanding an existing undertaking, amalgamations, mergers and take-overs of undertakings had become a hindrance in the speedy implementation of industrial projects under the new industrial policy.

Besides, there were no clear cut definitions in the MRTP Act for certain restrictive trade practices like abuse of dominance, cartel, collusion and price fixing, bid rigging, boycott, refusal to deal and, predatory pricing which caused obscurities around the interpretation and application of the Act and allowed different interpretations by different courts of law causing respondents (defendant parties) to escape indictment. MRTP Act, 1969 was then found to be limited in its scope and hence insufficient to meet the challenges in the age of growing liberalization and globalization. Globally competitive laws and regulations were needed for the Indian industry to compete effectively on the global front. It was also deemed important to incorporate the "competition dimension" within government decisions on policies. Experience suggests that, in the process of transition to a less regulated and more open economy, the existence and application of competition policy can usefully support
other policy initiatives (APEC, 1999). The government’s new competition policy could be reflected through a range of executive policies and approaches but a legislative enactment was much needed to ensure non-discriminatory application of the policy and avoidance of abuse of discretion. This is how the new Competition Act was born and thus enacted in 2002.

Since MRTP Act belonged to the pre-reforms era, it aimed to promote competition to protect the interest of the consumers or the public interest in general by prohibiting monopolistic, restrictive and unfair trade practices. Before 1991, there were also provisions in the said Act to prohibit monopolies and regulate the size of the undertakings. The Competition Act, on the other hand, seeks to ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in the market within India and for this purpose, the new Act provides for the establishment of a quasi-judicial body viz., the Competition Commission of India (CCI). Also, the focus has now shifted from regulating the size of the undertaking to regulating the behavior of the undertaking. The erstwhile MRTP Act prevented companies from investing and growing, while the Competition Act, 2002 is designed to allow companies to grow while preventing any abuse of market power. The new Competition Act deals with three aspects, namely, Prohibition of Anti-competitive Agreements, Abuse of Dominant Position and Regulation of Combinations. All the three aspects are inquired into by the CCI on the touchstone of ‘appreciable adverse effect on competition’.

As we know both the enactments provide for establishment of quasi-judicial bodies [MRTP Act, 1969 provided for setting up of Monopolies and Restrictive Trade Practices Commission (MRTPC) and the Competition Act, 2002 provides for setting up of Competition Commission of India (CCI)] and Director General’s offices to assist these bodies. Certain powers and duties have been given to both under the two Acts for effective enforcement of the provisions of the Acts. There also seems similarity in the organizational structure under the two Acts, though the focal points of interest of the two Acts are very different.

As the new legislation (Competition Act, 2002) has now been fully enforced with its new institutional framework and working mechanisms, it is now time to study, discuss and appreciate the impact that has been brought about by the new competition law in India. While doing so, we must also appreciate the changes brought about in the working mechanism under the new Act. This paper is intended to bring out the changes in the procedure of handling of cases under the new Act and/or suggest changes, wherever necessary. For this purpose, this paper discusses both enactments with reference to the changes in the powers and functioning of the quasi-judicial bodies and the Investigating offices/officer(s) and the
investigative techniques employed under the two Acts. This paper also tries to see if any meaningful relationship can be established between the changes in the working mechanism and the shift in the focus in the new Act.

This paper is divided into three sections. The first section discusses and compares – the organizational structure under the two Acts, the powers of the MRTPC and CCI, the powers of Director General under the Acts, and the investigative techniques employed and the procedure followed to resolve cases under the two Acts. In the second section of this paper, a few resolved cases have been cited to facilitate better understanding of the considerations that were relevant in each case for making a decision. And, the third section concludes this paper.

BASIS OF COMPARISON

I. Organizational structure

MRTP Commission was headed by a Chairman with a minimum of two and a maximum of eight other Members. Chairman was a person who was or has been qualified to be a judge of the Supreme Court or of a High Court while Members were persons of ability, integrity and standing with adequate knowledge and experience of dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. The Central Government had also appointed Director General of Investigation and Registration for making investigations for the purposes of the Act and for maintaining a Register of Agreements and for performing various functions provided under the Act.

On the other hand, Competition Commission of India has a Chairman and not less than two Members. Maximum number of Members can be six. They are the persons of ability, integrity and standing having special knowledge of international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy. The Chairman of the Commission need not be a sitting or retired High Court or Supreme Court judge as it used to be in the case of MRTP Commission. Now the Chairman and Members of the CCI are appointed on the recommendations of a Selection Committee. The Selection Committee is headed by Chief Justice of India or his nominee with Secretaries of the Ministry of Law and Justice, and Corporate Affairs and two experts of repute in the aforesaid fields. There was no such Selection Committee under the MRTP Act and the Chairman and the Members of the MRTP Commission used to be appointed by the Central Government. Under the Competition Act also, the Central Government has appointed Director General and various other officers to perform functions for various divisions under the Act. In fact, CCI’s organizational structure is heavily loaded with professionals and it has got a strong Economics Wing. Besides, CCI
has the power to engage experts and professionals having special knowledge in different fields so as to assist the Commission in the discharge of its functions efficiently and effectively. On the other hand, MRTP Commission had only on a few occasions engaged experts for research work to study ‘Concentration of Economic Power’ but the same had no statutory backing of the law.

CCI is also assisted by the Registrar who, besides being the custodian of the Records of the Commission, is required to perform such other functions as are prescribed under the Act, Rules, and Regulations besides such other duties as are entrusted to him by the Commission. Competition Commission of India

II. POWERS OF CCI AND MRTPC

The Commission under the MRTP Act had the same powers as are vested in a Civil Court and had the following additional powers-

(a) to direct an undertaking to cease and desist from indulging in a trade practice which is anti-competitive in nature and is prejudicial to the public interest;

(b) to declare that a particular clause of the agreement entered into between the parties
is void and to direct the parties to the agreement to modify the same so as to remove the taint of RTP prejudicial to public interest;

(c) to grant temporary injunction, restraining an errant undertaking from continuing an anti-competitive trade practice during the course of inquiry;

(d) to award compensation to any person for the loss suffered or injury sustained on account of RTP, UTP or MTP. The affected person can be the Central government, or any State government, or any trader or class of traders, or any consumer;

(e) to direct parties to issue corrective advertisement in case of UTP flowing from a false or misleading advertisement;

(f) to recommend to the Central Government, division of undertakings or severance of inter-connection between undertakings, if their working is prejudicial to public interest or has led or is leading to MTP or RTP.

While the MRTP Commission has frequently used the powers of passing a cease and desist order in its tenure of over three decades, it has rarely used its powers of recommending to the Central government for division of undertakings or severance of inter-connection between undertakings.

The status given to the CCI is very high. The Commission has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908). CCI also has the power to pass any or all of the following orders where after inquiry it 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 4 -

(a) Direct the enterprise or association of enterprises or the person or association of persons which are parties to such agreements or abuse, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position;

(b) Impose penalty, as it may deem fit (subject to a maximum limit prescribed in the Act), upon each of such persons and enterprises;

(c) Direct to modify agreements and the Commission, in its order, may also specify the extent and the manner in which modification is to be done;

(d) Direct division of an enterprise enjoying dominant position to ensure that the enterprise does not abuse its dominant position;

(e) Grant temporary injunctions to the delinquent enterprise in order to restrain it from carrying on such act until the conclusion of inquiry or until further orders;

(f) Pass such other order as it may deem fit.

As regards Regulation of Combinations, the Commission has the power to inquire into certain
Combinations involving enterprises, the turnover or assets of which exceed the threshold limit prescribed in the Act. The Commission, after due procedure laid down in Section 29, may approve, approve with modification or reject the proposed combination and declare the Agreement of the Combination as void. The CCI also has reach beyond the geographical borders of India to inquire into agreements, such as abuse of dominant position or combination, and deal with practices and actions outside India which have an appreciable adverse effect on competition in the relevant market in India. And for this purpose, the Commission, with the prior approval of the Central Government, is empowered under Section 18 to enter into any memorandum or arrangement with any foreign agency of any foreign country. This is certainly an improvement over the MRTP Act which did not have any such provision.

The Competition Commission of India (CCI), under the Competition Act, 2002, had also been given the power- to review its own order on an application made by the aggrieved party (under Section 37) and, to award compensation to the aggrieved party (under Section 34). The orders passed by the Commission could only be overturned by the Supreme Court of India. This was very much similar to MRTP Act. However, the Competition (Amendment) Act, 2007 has brought about changes in these three aspects by providing for setting up of a Competition Appellate Tribunal. Today, the orders passed by the Competition Commission of India (CCI) are appealable before the Appellate Tribunal and then to the Supreme Court of India. This makes CCI less powerful as compared to the erstwhile MRTPC which used to be headed by a High Court Judge. The power to award compensation to the aggrieved party has now been given to the Competition Appellate Tribunal under Section 53N of the Competition (Amendment) Act, 2007. As a result, Section 37 and Section 34 have been omitted and such powers have been withdrawn from the Commission. It is probably because the CCI does not function like a Court even though it is vested with the powers of a civil Court. It does not function like a court probably because the head of CCI should not necessarily be a judge. No cross examination of the witnesses takes place before the CCI. The parties rarely get opportunity to argue their case before the CCI. It functions like a Regulatory body but by passing Cease and Desist Orders and imposing penalties under Section 27 of the Act, the CCI discharges the functions of an adjudicatory body. There is a need to empower the CCI with sufficient adjudicatory powers through suitable amendments in the Act. For these reasons the power to review its own order, as available under the MRTP Act, has not been given to the CCI. It can only rectify its orders under Section 38 to remove any apparent mistakes but substantive part of the order cannot be amended. Similarly, through an
amendment in the year 2007, the power to award compensation has been taken away from CCI and given to the Competition Appellate Tribunal (COMPAT) whose proceedings are judicial in nature. It is also seen from Section 22 of Competition Act that the CCI holds meetings and does not function like a Court to conduct hearing of the parties.

Another important function of the CCI is to promote Competition Advocacy. Under Section 49, the Central Government or a State Government, in formulating a policy on competition (including review of laws related to competition) or any other matter, may make a reference to the Commission for its opinion on possible effects of such policy. The Commission is required to give its opinion to the Central Government within sixty days from the date of such reference. However, such opinion is not binding upon the Central Government or the State Government, as the case may be, in formulating such policy. The Commission is also required to take suitable measures for the promotion of competition advocacy creating public awareness and imparting training about the competition issues.

III. POWERS OF DG UNDER THE TWO ACTS

In order to appreciate the changes in the powers and duties of the Director General with regard to investigations, it is better to first briefly discuss the functions of the Director General of Investigation and Registration (DGI&R) under the MRTP Act 1969. DGI&R was a statutory officer who was appointed for carrying out investigations and for maintaining a Register of agreements containing clauses relating to restrictive trade practices (RTPs) as they were required to be registered under the Act. It was the duty of DGI&R to investigate into the restrictive trade practices (RTPs), monopolistic trade practices (MTPs), and the unfair trade practices (UTPs) and; place the case before the MRTP Commission (MRTPC) so as to carry out a detailed inquiry to hold whether the trade practice in question was prejudicial to the public interest. DGI&R could undertake the investigation either suo moto or on the directions of the MRTP Commission. Besides the functions of investigation and registration of agreements, it was his duty to appear before the Commission as a party to prosecute the case as a custodian of public interest. The Regulations of the MRTPC also provided that DGI&R shall also represent the Commission before the Supreme Court or High Court whenever an appeal or writ petition is filed against the order of the MRTPC. The DGI&R, besides other duties entrusted to it by the Commission, would also assist the Commission in carrying out proceedings of inquiries which were initiated by the Commission upon its own knowledge or information.

Under the Competition Act, at the highest level of the investigative wing is a Director General (DG). The DG has been vested with
all the powers as have been conferred upon the Commission under sub-section (2) of Section 36, namely, summoning and enforcing the attendance of witnesses, examining them on oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses or documents, etc. The DG investigates any contravention to the provisions of the Act or any rules or regulations made thereunder when directed by the Commission, and submits his investigation reports to the Commission. The DG, under the Competition Act, does not have any suo motu powers to cause an investigation. It is only when the Commission is of the opinion 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 of the Act that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter. Under the new Act, the DG does not assist the Commission in carrying out proceedings of inquiries which are initiated by the Commission upon its own knowledge or information (suo motu).

IV. TECHNIQUES OF INVESTIGATION UNDER THE TWO ACTS

The methodology adopted by the Director General for the purpose of preliminary investigation under the MRTP Act was too simple. On receipt of a complaint or information or an agreement, the Director General used to obtain the comments or explanation of the party complained against so as to satisfy himself as to whether or not the matter required to be inquired into by the Commission. For the purpose of investigation, the Director General could call for any relevant information to make out a case and even record the statement of the party complained against. If the Commission found that there was a prima facie case of anti-competitive trade practice, it would institute an inquiry by issue of a Notice of Enquiry. After following the quasi-judicial proceedings like filing of a reply by the respondent, rejoinder by the Director General, evidence and arguments by both the parties, the Commission used to pass a ‘Cease and Desist’ order where it found that the trade practices were prejudicial to the public interest. As already mentioned in the above section, the DGI&R also had the duty to appear before the Commission as a party to prosecute the case on the basis of the information provided by the plaintiff/informant. The Commission (MRTPC) functioned like a court where complainant(s)/informant(s) would also be called upon as witness(es) for cross examination during the court proceedings. Similar procedure was followed for cases related to MTPs and UTPs.

MRTP Commission used to function like a Court by forming Two Benches as the Members had never been maximum
number of eight as provided in MRTP Act, 1969. Both CCI and MRTP Commission are assisted by Director General for the purpose of investigation and such other functions as provided in the respective Acts. While the Director General used to appear before the MRTP Commission regularly either personally or through his representatives to prosecute the Enquiries before the MRTP Commission as custodian of public interest, the DG under the new Act does not appear before the CCI regularly in every Enquiry after submitting his report after investigation. Needless to say, the techniques of investigation have considerable changes under the two Acts.

Under the Competition Act, 2002, the techniques of investigation into anti-competitive agreements or abuse of dominant position have undergone a copernicus change with the change in the focus. Under the new Act, the Director General shall cause an investigation only on the directions of the Competition Commission of India (CCI). The Director General has no suo moto powers of (to initiate an) investigation. Yet the DG, under the Competition Act, has (other additional) wide powers of investigation. In fact, Section 41(2) of the Competition Act provides that the DG shall have the same powers as the CCI under Section 36(2) of the Act. It follows that evidence, either oral or by way of documents, can now be recorded by the DG and no evidence takes place before the CCI. During the course of investigation, the DG may

(a) Admit evidence taken in the form of verifiable transcripts of tape recordings, unedited versions of video recording, electronic mail, telephone records, etc.;

(b) Admit on record every document purporting to be a certificate, certified copy or other document, which is admissible under the law;

(c) Admit the entries in the books of account;

(d) Admit the opinion of any person acquainted with the handwriting of the person by whom a document is supposed to have been written or signed;

(e) Admit the opinion of the handwriting experts;

(f) Take notice of the facts of which notice can be taken by a court of law under Section 57 of the Indian Evidence Act, 1872;

(g) Accept the facts, which parties to the proceedings admit or agree in writing as proved.

The DG may also order that any particular fact or facts may be supported by affidavit. In exercise of these powers, the DG has completed several investigations by recording the evidence of the parties/witnesses and submitted the reports for orders of the CCI. These powers of recording evidence were not earlier available to the DGI&R under the MRTP Act. Under the MRTP Act, the documents were taken on record and cross examination of witnesses was done in the court of the
MRTP Commission. The preliminary investigation report under the MRTP Act used to contain the allegations of the complainants, replies thereto of the parties complained against and the documents furnished by them, along with the suggestions of the DG recommending inquiry into the cases of MTPs, RTPs and UTPs. Thus, the techniques of investigation have now, under the new Competition Act, undergone a big change. However, it is still felt that DG should have the powers of Search and Seizure also so that the clinching evidence to prove horizontal agreements, like cartel, comes into the hands of the prosecuting authorities.

It is to be noted that the procedure to investigate combinations is not being discussed in this paper.

FEW RESOLVED CASES UNDER THE TWO ACTS

Let us start with the study of a few resolved cases under the MRTP Act, 1969.

(a) In Restrictive Trade Practices Enquiry No.1/1971 (RRTA Vs Incheck Tyres & Ors.), General Code of Conduct for the ‘Members of Automotive Tyre Industry in India’ came up for consideration. The agreement sought to regulate the production, distribution and sale of tyres and tubes with a view to completely eliminate competition in the industry. The Commission held the Code to be void and passed a Cease and Desist Order.

(b) In re. Alkali Manufacturers Association of India Vs American Natural Soda Ash Corporation, USA (ANSAC) (RTP Enquiry No.228/1996), the Commission instituted an inquiry into the restrictive trade practices of cartel and predatory pricing adopted by American Natural Soda Ash Corporation, USA. During the course of enquiry, the Commission passed an interim injunction restraining ANSAC from exporting soda ash to India in the form of a cartel, directly or indirectly. The Commission was persuaded by the orders of the Commission of the European Communities holding ANSAC to be a cartel.

(c) Similarly, on another complaint of Alkali Manufacturers Association of India, an RTP Enquiry No.238 of 1997 was instituted against Sinochem International Chemicals Co. LTD. into the restrictive trade practices of formation of a cartel for export of soda ash to India and adopting predatory pricing for the purpose of undercutting the Indian manufacturers. The Commission arrived at a prima facie conclusion that Sinochem was a cartel indulging in cartelization for the purpose of export of soda ash to India. It was prima facie inferred that Sinochem was exporting soda ash to India at a price lower than the normal price.
Competition Commission of India has also passed a number of orders under Section 27 of the Competition Act in respect of anti-competitive agreements and abuse of dominant position. Here are a few cases:

a) In the case of DLF Ltd., CCI has passed an order dated 12/08/2011 in case No.19/2010 and imposed a penalty of rupees six hundred thirty crores for abusing its dominant position and entering into an agreement with flat buyers which contained several clauses which were one-sided. The case started with a complaint of Belaire Owner’s Association alleging arbitrary and one-sided stipulations in the agreement with the allottees. The DG was asked to conduct an in-depth investigation of various allegations made in the information/complaint. While conducting investigation, the DG obtained details from the informant as well as from the company. The DG also collected materials from different sources in order to assess various issues involved in the case. Additionally, the dynamics of real estate market along with state of regulations in Real Estate sector in India and some other jurisdictions were also examined. The DG carried out exhaustive assessment of dominance with reference to explanation (a) to Section 4(2) of the Competition Act. In his report, the DG assessed dominance of the company along the lines indicated in Section 19(4) of the Act. The DG found that the company is the biggest real estate player in terms of its size and resources. The report of DG brought out that the quarter ending March 2010 has seen an increase of 202.6% of income and 1308.2% of sales of the company further boosting their position. The DG observed in his report that in this case there were 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/service for consumers. With regard to countervailing buying power, the DG stated that there is huge housing shortage and the buyers cannot influence the business decisions of the company since the residential units are in shortage. The investigation report of the DG comprehensively examined various aspects of the conduct of DLF Ltd. with regard to (i) Commencement of project without sanction (ii) Increase in number of floors mid-way (iii) Inordinate delay in completion and possession (iv) Forfeiture of amounts (v) increasing of Floor Area Ratio (FAR) and Density Per Acre (DPA) (vi) Clauses of agreement were heavily biased in favor of DLF Ltd. and against the consumers.
After examination of the details of the case, CCI in exercise of its powers under Section 27(a) of the Act, directed DLF Ltd. to cease and desist from formulating and imposing such unfair conditions in its agreements with buyers in Gurgaon. It also imposed penalty in exercise of its powers under Section 27(b) of the Act.

b) In another case against M/s Coal India Ltd. (CIL) and M/s South Eastern Coal Fields Ltd., the CCI imposed a penalty of rupees seventeen hundred crores in exercise of its powers under Section 27(b) of the Act. The case was initiated on the complaint of M/s Gujarat State Electricity Corporation Ltd. The informant was aggrieved because the opposite parties had indulged in the contravention of the provisions of Section 4 of the Act. The informant had given details of various clauses of the FSA as also the acts and omissions of the opposite parties which allegedly emanated from the dominant position of the opposite parties in the relevant market. The investigation carried out by DG revealed that the relevant product for the purpose of investigation in this case was non-coking coal which is used as primary raw material by power producers for the generation of electricity. To ascertain the dominant position, it was noted by the DG that the power producers had huge dependency on CIL as it is the largest producer of coal. It was further noted that the import of coal was not substitutable with domestic coal due to various factors. The Commission held on the basis of its findings during the course of proceedings that CIL in abuse of its dominance did not try to evolve/draft/finalize the terms and conditions of FSAs through a mutual bilateral process and the same were sought to be imposed upon the buyers without seeking, much less considering, the inputs of the power producers. While passing a cease and desist order, the Commission also decided to impose a penalty of rupees 1733.05 crores, being 3% of the average turnover of the last three years.

CONCLUSION

With the advent of liberalization in the economy, there was a need to have a strong Competition law in India which has teeth to punish the guilty and protect the gullible consumers. MRTP Act, 1969 had outlived its utility and was not geared to meet the emerging challenges which were enjoined with opening up of the economy (especially after the amendments made to the Act in 1991). The powers of passing ‘cease and desist’ orders and of directing corrective steps for future as envisaged under the MRTP Act were not enough. Therefore, the
Competition Law enacted in the year 2002 provided for imposing penalty on the enterprises which indulged in anti-competitive agreements and abuse of dominant position taking advantage of the unequal position of the consumers who were at the receiving end. Competition Act, 2002, as amended in the year 2007 is definitely an improvement over the erstwhile MRTP Act. The new Act deals with not only anti-competitive agreements but also with the abuse of dominant position and the regulation of combinations. In the new Act, the trade practices, which need to be inquired into, have been clearly named and defined while it was not so under the old law. The mergers and acquisitions of enterprises beyond a threshold limit requires the approval of the Competition Commission of India after it has been investigated on the touchstone of appreciable adverse effect on competition. Under the MRTP Act, 1969, the trade practices used to be investigated with reference to their prejudiciality to the public interest while the Competition Act, 2002 investigates the practices from the point of view of their appreciable adverse effect on competition (AAEC). Besides, the new competition law is designed to protect the Indian enterprises from the anti-competitive practices and abuse of dominant position of the enterprises from abroad. In other words, Competition Act, 2002 empowers CCI to inquire into an agreement or abuse of dominant position or combination if such agreement or abuse of dominant position or combination has or is likely to have an appreciable adverse effect (AAEC) on competition in India even if such agreement or abuse of dominant position takes place outside India. The new Act has given enhanced powers of investigation to the Director General who can use different investigative techniques to assist the CCI in discharging its duties and functions. The investigation done by the Director General in the cases of DLF Ltd. and Coal India Ltd. as detailed in the section above is an example of improved techniques of investigation in the new Act. The Competition Act, 2002 is, thus, result-oriented and is the need of the hour. However, there is a further requirement to empower the Director General to collect evidence through Search and Seizure to prove the existence of horizontal agreements like cartel and to empower the CCI with adjudicatory powers so that its orders are not challenged on technical grounds.

References and Readings
4. Competition Act, 2002

5. Competition (Amendment) Act, 2007


9. MRTP Act, 1969


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