2025 INSC 1167

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9726 OF 2016

COMPETITION COMMISSION
OF INDIA — APPELLANT (S)

VERSUS

KERALA FILM EXHIBITORS
FEDERATION & ORS. — RESPONDENT(S)

J U D G M E N T

K.V. Viswanathan, J.

1. An important question involving the interpretation of certain provisions of the Competition Act, 2002, (for short "the Act") arises for consideration in this case.

2. The present statutory appeal, under Section 53T of the Act, has been filed against the judgment and order dated 19.04.2016 passed by the Competition Appellate Tribunal (for short the "COMPAT"). By the said judgment, the findings of the Competition Commission of India (for short the "Commission") that Respondent No.1-Kerala Film Exhibitors Federation (for short the "KFEF") acted in contravention of Section 3(1) read with Section 3(3)(b) of the Act and the penalty imposed on Respondent No.1 was upheld. The COMPAT set aside the penalty imposed on Respondent Nos.2 and 3 and also the directions which were in the nature of behavioural remedies, contained in clause (d) and (e) of para 9 of the order of the Commission. Aggrieved against that portion of the order of the COMPAT, the Commission is before us in appeal.

BRIEF FACTS: -

3. An information was filed by Respondent No.4-M/s Crown Theatre before the Commission alleging anti-competitive activities by

Respondent No.1-KFEF and its office-bearers –Mr. P.V. Basheer Ahamed, President (Respondent No. 2), and Mr. M.C. Bobby, General Secretary (Respondent No. 3). The information was registered vide Case No.16 of 2014 and the gravamen of the allegation was that film distributors were threatened that their films would not be screened at the cinema halls belonging to members of Respondent No.1, if those distributors offered their films for exhibition at Crown Theatre-Informant (Respondent No.4). It was further alleged that KFEF (Respondent No.1) and Mr. Basheer Ahamed (Respondent No.2) took steps to ensure that whenever new Tamil and Malayalam movies were released, it would not be screened at Crown Theatre. KFEF (Respondent No.1) called for a strike/ban on exhibition of films by its members in their cinema halls. Respondent No.4-Crown Theatre even resigned from the membership of KFEF. In accordance with the provisions of the Act, vide order dated 08.05.2014, the Commission directed the Director General (DG) to investigate the matter. Specific direction was given to investigate the role of the persons who were in charge of KFEF for their conduct with respect to the affairs of the Federation.

REPORT OF THE DIRECTOR GENERAL: -

4. The Director General, pursuant to the order passed by the Commission, investigated the matter and submitted his report dated 22.05.2015. According to the appellant, after collecting various incriminating materials which pointed to the role of Respondent Nos. 2 and 3 herein, the DG, in his report, made specific references to the same and highlighted their personal involvement in the anti-competitive measures undertaken by Respondent No.1. According to the appellant, the evidence and material showed that Respondent Nos.2 and 3 played an active role in anti-competitive activities of Respondent No.1-KFEF. It, in fact, has been claimed that there was not even a denial on the said score.

5. The DG concluded that Respondent No.1-KFEF contravened Section 3(3) of the Act and particularly its decision to boycott distributors if they had dealings with Respondent No.4-Crown Theatre, was anti-competitive causing appreciable adverse effect on competition. Respondent Nos.2 and 3 were described as key persons/key decision makers who played an active role in Respondent

No.1 (KFEF), in Chapter 6 of the Report titled "Role and liability of office-bearers."

NOTICE TO PARTIES BY THE COMMISSION: -

6. The Commission, by its order of 10.06.2015, upon consideration of the DG Report decided to forward a copy of the report, apart from Respondent No.1, to Mr. Basheer Ahamed (Respondent No.2), and Mr. M.C. Bobby (Respondent No.3), who were the President and the General Secretary of the KFEF (Respondent No.1) respectively, with a direction that the parties, including the individuals file their replies. Not only this, Respondent No.1 and the individuals were directed to furnish their audited balance sheet and profit and loss account for F.Y. 2011-12, 2012-13 and 2013-14 on or before 14.07.2015. Parties were further directed to appear before the Commission for oral hearing on 22.07.2015. A notice came to be issued on 10.06.2015, in terms of the order of the Commission.

PROCEEDINGS BEFORE COMMISSION AND ORDER: -

7. The Commission heard the parties on their objections. The three respondents were represented by common counsel who was heard by the Commission. The Commission passed its final order on

08.09.2015 under Section 27 of the Act. The Commission found that KFEF (Respondent No.1) had violated Section 3(3)(b) of the Act, and Respondent Nos.2 and 3, being the President and the General Secretary of Respondent No.1, were found to be in charge of the affairs of KFEF, liable under Section 48. The relevant portion of the Commission order dated 08.09.2015 is set out herein below:-

> "6.10 In view of the foregoing, the Commission is of the view that the conduct of OP amounts to contravention of section 3(1) read with section 3(3)(b) of the Act.
>
> 6.11 **With regard to the liability of the office bearers of OP under section 48 of the Act, the DG has identified Mr. Basheer Ahmed and Mr. M. C. Bobby, President and General Secretary of OP, respectively, to be the key decision makers of OP. Section 48(1) of the Act provides that where a person committing contravention of any of the provisions of this Act is a company (including a firm or an association), every person who, at the time the contravention was committed, was in charge of, and was responsible for the conduct of the business of the company/association, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.** Further the proviso to that sub-section entails that such person shall not be 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. As such the Commission notes that Mr. Basheer Ahmed and Mr. M.C. Bobby, being the President and General Secretary of OP, respectively, are responsible for the conduct of OP. It is evident that they were involved in the key decisions of OP. **Mr. Mukesh Mehta of M/s E4 Entertainment had also categorically stated he was**

directed by Mr. Basheer Ahmed over the phone to stop providing Tamil movies to the Informant. As a result, a movie namely, "Raja Rani" which was released at the Informant's theatre was taken down after three days. As such, it is evident that Mr. Basheer Ahmed played an active role in enforcing the directives of OP in controlling and restricting the exhibition of new movies across Kerala. Further, Mr. M.C. Bobby, General Secretary of OP, is also responsible for the conduct of OP being in a key position. Moreover, in spite of ample opportunity given to them, they failed to adduce any evidence to establish that the anti-competitive decisions were made without their knowledge or that they had exercised all due diligence to prevent their commissioning.

6.12 In view of the foregoing, the Commission is of the view that both Mr. Basheer Ahmed and Mr. M.C. Bobby, being in-charge of and responsible for the conduct of business of OP under section 48 of the Act, are liable to be penalised.

6.13 It is relevant to mention that in Case no. 45/2012, ***Kerala Cine Exhibitors Association*** vs. ***Kerala Film Exhibitors Federation and Others***, the Commission had already found these two office bearers responsible under section 48 of the Act and imposed a penalty @ 7% of their average income accordingly.

ORDER

7. Considering the findings elucidated in the earlier part of this order, the Commission finds that OP has indulged in anti-competitive conduct in violation of the provisions of section 3 of the Act. Further, two of its office bearers, namely, Mr. P.V. Basheer Ahmed and Mr. M.C. Bobby have continued with the said anti-competitive conduct despite the on-going investigation by the DG in Case no. 45 of 2012. It is thus clear that these persons have been repeatedly indulging in anti-competitive conduct to the detriment of competition in the market.

8. Section 27 of the Act empowers the Commission to pass all or any of the orders enumerated therein, and issue such other order or direction as it may deem fit in case of contravention of the provisions of section 3 or 4 of the Act. Further, in case of an anti-competitive conduct committed by a company, including a firm or other association of individuals, the Commission may proceed under section 48 of the Act to penalise the individuals responsible for the anti-competitive conduct on the part of such company. The Commission observes that OP has been penalised in Case no. 45/2012, ***Kerala Cine Exhibitors Association*** vs. ***Kerala Film Exhibitors Federation and Others*** for indulging in anti-competitive conduct which was of similar nature. Further, in various earlier cases pertaining to anti-competitive conduct by film associations, this Commission has taken a stern view that such activities are antithetic to competition and fair-play in the market.

9. With regard to the penalty, it may be noted that the objective of imposing a penalty under section 27 of the Act is two-fold. Firstly, to discipline the erring party for its anti-competitive conduct and, secondly, as a deterrence to stall future contraventions. Such deterrence is not only for the concerned erring entity which has been found guilty of contravention, but also for all other entities which are operating under similar circumstances and are indulging in similar anti-competitive conduct. As spelt out earlier, in numerous cases pertaining to anti-competitive conduct by film associations, the Commission has imposed heavy financial penalties. As a matter of record, information in one such case was filed by the present OP against Film Distributors Association, Kerala. Further, the allegations against the anti-competitive conduct by OP was first reported to the Commission in mid-2012 in Case no. 45 of 2012 wherein the Commission directed the DG to initiate an investigation vide its prima facie order 09.01.2013. The Commission was seized of the matter in Case no. 45 of 2012 when OP further indulged in the similar anti-competitive conduct. However, it appears that OP has turned a blind eye to the past orders of the Commission against like film

associations in other states for similar anti-competitive conduct as well as the on-going investigation against it in Case No. 45 of 2012. In view of these, the Commission issues the following directions under section 27 of the Act:

a. OP and its office bearers, namely, Mr. P.V. Basheer Ahmed and Mr. M.C. Bobby shall immediately cease and desist from indulging in anti-competitive conduct which they have been found to be indulging in contravention of section 3 of the Act, as explained in earlier paragraphs. This shall come into effect immediately, i.e., on the day of receipt of this order by them.

b. OP shall pay penalties as worked out hereunder and deposit the penalties calculated at the rate of 10% of its average income within 60 days from the receipt of the order by them:

Year	**Turnover/Income during the Year (in rupees)**
2011-2012	824145.24
2012-2013	Not submitted
2013-2014	Not submitted
Total	824145.24
Average	824145.24
10% of Average Turnover (Penalty Amount)	82414.52

c. Further, Mr. P.V. Basheer Ahmed and Mr. M.C. Bobby shall pay penalties calculated at the rate of 10% of their average income as worked out hereunder and deposit the penalties within 60 days from the receipt of the order by them:

Year	P.V. Basheer Ahmed	M.C. Bobby
2011-2012	920227	
2012-2013	771685	490490
2013-2014	0	683510
Total	1691912	1433358
Average	563970.67	477786
10% of Average Income (Penalty Amount)	56397.07	47778.6

d. OP shall not associate Mr. P.V. Basheer Ahmed and Mr. M.C. Bobby with its affairs, including administration, management and governance, in any manner for a period of two years. This shall be complied with before expiry of 60 days from the receipt of the order by OP.

e. Mr. P.V. Basheer Ahmed and Mr. M.C. Bobby shall not associate with OP, including its administration, management and governance, in any manner for a period of two years. This shall be complied with before expiry of 60 days from the receipt of the order by them.

f. OP shall organize, in letter and spirit, at least five competition awareness and compliance programmes over next six months in the State of Kerala for its members. The compliance of this shall commence before expiry of 60 days from the receipt of the order by OP.

10. The OP and the office bearers of the OP, namely, Mr. P.V. Basheer Ahmed and Mr. M.C. Bobby shall file with the Commission a report of compliance each with the above directions, pertaining to them, within 90 days of receipt of this order by them.

11. Secretary is directed to inform the parties accordingly."

(Emphasis supplied)

APPELLATE PROCEEDINGS : -

8. The three respondents filed a common appeal before the erstwhile COMPAT being Appeal No. 99 of 2015 against the order of the Commission dated 08.09.2015. By virtue of the impugned order dated 19.04.2016, the COMPAT, while upholding the findings on merits, set aside the penalty and directions only insofar as Mr. Basheer Ahamed (Respondent No.2) and Mr. M.C. Bobby (Respondent No.3) were concerned. The reasoning of the COMPAT on this score is as follows:-

> **"20.** A reading of the investigation report shows that on receipt of order dated 08.05.2014 passed by the Commission under Section 26(1), the Addl. DG issued notice to Appellant No. 1 under Section 41(2) read with Section 36(2) to enable it to explain its stand viz. a viz. the allegations contained in the information. He also issued summons to various persons and recorded their statements. Not only this, he confronted Appellant No. 2 with the statements/affidavits of Shri Mukesh R. Mehta, Ms. Sandra Thomas and Shri Lal Jose to enable him to admit/deny and to explain the position of Appellant No. 1. Not only this, he confronted Appellant No. 2 with the statements made by the representative of Respondent No. 2 and various film distributors and gave opportunity to him to explain the same. After recording the statements and considering the material collected during investigation, the Addl. DG submitted report with the finding

that Appellant No. 1 had acted in contravention of Section 3(1) read with Section 3(3)(b) of the Act.

21. We have minutely gone through the statements of Shri Roopesh G. Makhija, Manager of R.M. Films, Shri Mukesh R. Mehta (Proprietor of M/s. E4 Entertainment), Ms. Sandra Thomas (Managing Director of M/s. Friday Ticket) and others along with the explanation given by Appellant No. 2 when he was confronted with the statements of these persons and are convinced that Appellant No. 1 had directly/indirectly pressurized the film distributors not to release the films to Respondent No. 2 or withdraw the film already released because it refused to participate in the agitation held under the aegis of Appellant No. 1 in 2012 and also resigned from its membership.

The findings recorded by the Addl. DG, which have been approved by the Commission by independently taking cognizance of the statements made by the persons to whom summons were issued, are based on a comprehensive analysis of the evidence collected by him and we do not find any error either procedural or substantive in the investigation conducted by the Addl. DG and the findings/conclusion recorded by him. On its part, the Commission independently considered the statements of three of the persons who were summoned by the Addl. DG and agreed with the conclusion recorded by the Addl. DG that the conduct of Appellant No. 1 was contrary to Section 3(1) read with Section 3(3)(b). The view taken by the Commission is quite plausible and reasonable and the findings recorded by it do not suffer from any such legal infirmity which may call for interference under Section 53-B(2) of the Act.

22. We shall now consider whether the penalty imposed by the Commission on Appellants Nos. 2 and 3 and the directions given that Appellant No. 1 shall not associate them with its affairs including administrative, management and governance in any manner for a period of two years and the corresponding directions given to Appellants Nos. 2 and 3 are legally sustainable.

23. The admitted factual matrix of the case shows that after considering the information filed by Respondent No. 2 under Section 19(1)(a) of the Act, the Commission ordered an investigation against Appellant No. 1. The Addl. DG conducted investigation and returned a finding that the conduct of Appellant No. 1 was in contravention of Section 3(1) read with Section 3(3)(b). In Chapter 6 of his report, the Addl. DG discussed the role of Appellants Nos. 2 and 3 and opined that they were the key decision-makers on behalf of Appellant No. 1 and that they were instrumental in anti-competitive activities of Appellant No. 1. **These findings were recorded by the Addl. DG without issuing notice to Appellants Nos. 2 and 3 that on the basis of the material collected during the investigation, he proposes to make observations adverse to their conduct. The Commission also did not issue any notice to Appellants Nos. 2 and 3 proposing to debar them from discharging the functions as important functionaries of Appellant No. 1**.

24. No doubt, under Section 27(g), the Commission is vested with omnibus powers to pass such other order or issue such direction as it may deem fit, but that power has to be exercised in consonance with the principles of natural justice which the Commission bound to comply with in view of Section 36(1) of the Act.

25. Admittedly, no notice was given by the Commission to Appellants Nos. 2 and 3 proposing to impose penalty on them and to debar them from participating in the affairs of Appellant No. 1 and no opportunity of hearing was afforded to them to represent their cause. Thus, there is no escape from the conclusion that the directions contained in Clauses (d) and (e) of paragraph 9 of the impugned order are vitiated due to violation of the principles of natural justice and the same are liable to be quashed.

26. In the result, the appeal is partly allowed. The finding recorded by the Commission that Appellant No. 1 has acted in contravention of Section 3(1) read with Section 3(3)(b) and penalty imposed on it is upheld. However, the penalty

> imposed on Appellants Nos. 2 and 3 as also directions contained in Clauses (d) and (e) of paragraph 9 of the impugned order are set aside".
>
> (Emphasis supplied)

9. Aggrieved by that portion of the order setting aside the penalty and directions on the ground that no opportunity of hearing was afforded to Respondent Nos.2 and 3, the appellant is before us in appeal.

CONTENTIONS OF LEARNED COUNSEL: -

10. We have heard Mr. Arjun Krishnan, learned counsel for the appellant-Commission and Mr. Harshad V. Hameed, learned counsel for the Respondent Nos. 1 to 3.

11. Mr. Arjun Krishnan, learned counsel for the appellant-Commission, who very ably presented the case submitted that Respondent Nos. 2 and 3 being the President and the General Secretary of Respondent No.1 (KFEF) are, by virtue of the office held by them, responsible for the affairs of the Federation. The use of the phrase "*key persons*" and "*key decision makers*", while referring to Respondent Nos.2 and 3 in the DG Report itself, clearly indicates that they were in charge of and responsible. Alternatively, it is argued by

Mr. Arjun Krishnan, learned counsel, that in view of the anti-competitive conduct, consent and connivance of Respondent Nos.2 and 3 with Respondent No.1 is clearly attracted. Learned counsel contends that Respondent Nos.2 and 3 are covered either under Section 48(1) of the Act and, if not, definitely under Section 48(2) of the Act. Learned counsel contends that in the absence of any challenge to the order of the COMPAT on merits, those findings have attained finality. Learned counsel contends that the Act did not contemplate a two-stage procedure, namely, one for liability and another for imposing penalty. According to the learned counsel, the COMPAT committed a serious error in setting aside the penalty and directions against Respondent Nos.2 and 3 on the erroneous ground that no notice was issued to them. According to the learned counsel, the scheme of the Act contemplates a single hearing. Learned counsel, to buttress the submission, argued that what is contemplated is a reasonable opportunity of hearing and that there is no obligation to inform the proposed penalty to Respondent Nos.2 and 3. Adequate opportunity was given to Respondent Nos.2 and 3 when the DG Report was furnished to them and their comments were called for.

Learned counsel draws attention to the appellant-Commission calling for the Income Tax Returns of Respondent Nos.2 and 3 to reinforce his submission. Learned counsel adverted to the conduct of Respondent Nos.2 and 3 in an earlier proceeding being Case No. 45 of 2012 to show the consistent course of anti-competitive conduct by them. Learned counsel relied on certain authorities in support of his proposition.

12. Learned counsel contended that the impugned order of COMPAT deserves to be set aside. Alternatively, it was contended that there was no justification for setting aside the monetary penalty imposed on Respondent Nos.2 and 3.

13. Refuting the submissions of the appellant, equally ably, Mr. Harshad V. Hameed, learned counsel for Respondent Nos. 1, 2 and 3 contended that the COMPAT was justified in passing the order. According to the learned counsel, regulatory authorities ought to provide adequate notice and opportunity before imposing penalties failing which their orders would be vulnerable on the ground of violation of principles of natural justice.

14. According to the learned counsel, merely supplying a copy of the DG Report did not constitute sufficient notice for the purpose of imposing penalty. Learned counsel contends that a specific show cause notice addressing the proposed penalty as the office-bearers was required to be issued to Respondent Nos.2 and 3. According to the learned counsel, making office-bearers personally responsible for decisions collectively taken by bodies would "cripple and fetter" if not altogether take way the right to form associations, a guaranteed fundamental right under Article 19 of the Constitution of India. Learned counsel contended that penalty, in any event, is disproportionate. So contending, learned counsel vehemently defended the order of the COMPAT.

QUESTION FOR CONSIDERATION: -

15. In the above background, the question that arises for consideration is whether the notice issued by the appellant to Respondent Nos.2 and 3 on 10.06.2015, constitutes sufficient notice and/or whether the Respondent Nos. 2 and 3 were entitled to a second show cause notice proposing to impose the penalty under Section 27 of the Act?

ANALYSIS AND REASONS: -

SURVEY OF THE RELEVANT PROVISIONS OF THE STATUTE

16. As the preamble to the Act indicates, the Act was enacted to provide, keeping in view the economic development of the country, 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 and incidental thereto. The precursor to the Act was the Monopolies and Restrictive Trade Practices Act, 1969 (for short "the MRTP Act"). The MRTP Act had become obsolete in certain respects in the light of international economic developments and there was a felt need to shift the focus from curbing monopolies to promoting competition.

17. A High-Level Committee on Competition Policy and Law was constituted by the Central Government and the Committee submitted its report on 22.05.2000. The Act established a quasi-judicial body called the Competition Commission of India which was to undertake

competition advocacy for creating awareness and imparting training on competition issues. The Act aimed at curbing negative aspects of competition through the medium of Commission. The Commission was to look into violations of the Act based on its own knowledge or information or complaints received and references received by the Central Government, the State Governments or statutory authorities. The Commission was empowered to pass orders for granting interim relief or any other appropriate relief and compensation or to pass orders imposing penalties. An appeal was to lie to the Competition Appellate Tribunal. Originally, the Act proposed an appeal to the Supreme Court directly. However, thereafter an appeal was provided by Section 53A to the COMPAT. Since 26.05.2017, the National Company Law Appellate Tribunal (for short "NCLAT") was designated as the Appellate Tribunal for matters arising out of the area of the Commission.

18. The Act provides for investigation by the DG on directions issued by the Commission. The Act empowers the Commission to impose penalties. For the purpose of the present case, we need to briefly refer to Section 3 which deals with anti-competitive

agreements; Section 4 which deals with abuse of dominant position; Section 19 which speaks of inquiry into certain agreements and dominant position of enterprise; Section 26 which talks of procedure for inquiry under Section 19; Section 27 which provides for order by Commission after inquiry into agreements or abuse of dominant position; Section 28 which speaks of division of enterprise enjoying dominant position, and Section 48 which deals with contravention by companies (which definition was to include a body corporate, a firm or other association of individuals).

19. Section 48 deals with how every person who, at the time of the contravention was in charge of, and was responsible to the company was to be deemed in contravention of the Act and as to how the Commission was empowered to impose penalty on such persons as it may deem fit which shall not be more than 10% of the average income for the last preceding three years.

20. In this background, we deem it appropriate to set out Sections 26, 27, 36, 48 of the Act and Regulation 21, 22 and 48 of the Competition Commission of India (General) Regulations, 2009, as it then stood.

“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.

(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.

(4) The Commission may forward a copy of the report referred to in sub-section (3) 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 sub-section (3) 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 sub-section (3) 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 sub-section (3) 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.

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;

(b) impose such penalty, as it may deem fit which shall be not more than ten percent 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.

* * *

(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;

* * *

(g) pass such other order or issue such directions as it may deem fit: -

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.

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 authorized 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 authorized 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.

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.”

COMPETITION COMMISSION OF INDIA (GENERAL) REGULATIONS, 2009 (as it stood at the relevant time)

21. Procedure for Inquiry under Section 26 of the Act.-

*** * ***

(7) If the report of the Director General mentioned under sub-regulation (1) finds contravention of any of the provisions of the Act, the Secretary shall obtain the orders of the Commission for inviting objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(8) On consideration of the objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, or the report of further investigation of further inquiries, as the case may be, if the Commission is of the opinion that further inquiry is called for, the Secretary shall fix the meeting of the Commission for consideration thereof, after issue of notice as per Regulation 22, to the Central Government or the State Government or the

statutory authority or the parties concerned, as the case may be.

* * *

22. Mode of service of notice, etc.–(1) Every notice or other document required to be served on or delivered to any person, under these regulations, may be served personally or sent by registered post, or by speed post or by courier service at the address furnished by him or her or it for service, or at the place where the person ordinarily resides or carries on business or occupation or works for gain.

* * *

48. Procedure for imposition of penalty under the Act.– (1) Notwithstanding anything to the contrary contained in any regulations framed under the Act, no order or direction imposing a penalty under Chapter VI of the Act shall be made unless the person or the enterprise or a party to the proceeding, during an ordinary meeting of the Commission, has been given a show cause notice and reasonable opportunity to represent his case before the Commission.

(2) In case the Commission decides to issue show cause notice to any person or enterprise or a party to the proceedings, as the case may be, under sub-regulation (1), the Secretary shall issue a show cause notice giving not less then fifteen days asking for submission of the explanation in writing within the period stipulated in the notice.

(3) The Commission shall, on receipt of the explanation, and after oral hearing if granted, proceed to decide the matter of imposition of penalty on the facts and circumstances of the case."

21. With effect from 18.05.2023, amendments to Sections 26, 27 and 48 of the Act read as under: -

"26. Procedure for inquiry under section 19.—

(2A) 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.

(3A) 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.

(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.

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;

(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.

* * * * *

(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;

* * * * *

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

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.

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."

(Emphasis supplied)

22. With effect from 17.09.2024, the Competition Commission of India (General) Regulations, 2024 introduced the following amendments to Regulation 22 and renumbered Regulation 48 as 49 with certain additions which reads thus:-

"22. Procedure for inquiry under section 26 of the Act –

(8) Upon completion of further inquiry in terms of sub-sections (7) or (8) of section 26 of the Act, the Commission may pass a final order closing the matter under sub-section (9) of section 26 of the Act or pass an order under section 27, before which it shall issue a show-cause notice to the parties concerned, in terms of the proviso to sub-section (9) of section 26 of the Act, indicating the contraventions alleged to have been committed and the time period for responding to the notice.

(9) Upon receipt of reply to the show-cause notice referred to in sub-regulation (8) from the parties concerned, and after giving them a reasonable opportunity to be heard, the Commission may pass a final order closing the matter of pass an order under section 27 of the Act.

49. Procedure for imposition of penalty under the Act.

(1) Notwithstanding anything to the contrary contained in any regulations framed under the Act, no order or direction imposing a penalty under Chapter VI of the Act shall be made unless the person or the enterprise or a party to the proceeding, during an ordinary meeting of the Commission, has been given a show cause notice and reasonable opportunity to represent his case before the Commission.

(2) In case of persons proceeded against in terms of section 48 of the Act, forwarding of the investigation report and/or the supplementary investigation report or issue of show-cause notice under sub-regulation (8) of regulation 22 of these regulations, as the case may be, to such persons, shall be deemed to be the show cause notice in terms of sub-regulation (1) above.

(3) In case the Commission decides to issue show cause notice to any person or enterprise or a party to the proceedings, as the case may be, under sub- regulation (1), the Secretary shall issue a show cause notice giving not less than 15 (fifteen) days asking for submission of the explanation in writing within the period stipulated in the notice.

(4) The Commission shall, on receipt of the explanation, and after oral hearing if granted, proceed to decide the matter of imposition of penalty on the facts and circumstances of the case."

ANALYSIS OF THE PROVISIONS

23. A careful examination of Section 26 of the Act, as it stood at the relevant time, indicates the following:- 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 forms an opinion that there exists a *prima facie* case, the Commission shall direct the Director General to cause an investigation to be made into the matter. On the contrary, if the Commission forms an opinion, that there is 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.

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

25. On receipt of the report the Commission has to forward a copy of the report to the Central Government or the State Government or the Statutory Authority or the parties concerned.

26. Thereafter, certain crucial sub-sections occur in Section 26. In the report if the Director General recommends that there is no contravention, 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.

27. If after consideration of the objections or suggestions received from the Central Government or the State Government or the Statutory Authority or the parties concerned the Commission agrees with the recommendation of the Director General that there is no contravention, the Commission shall close the matter forthwith and pass such orders as it deems fit and communicate its orders to the Central Government or the State Government or the Statutory Authority or the parties concerned, as the case may be.

28. Now, if after consideration of the objections or suggestions sent by the Central Government, State Government or the Statutory Authority or the parties concerned 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 the Act.

29. Similarly, if the report of the Director General referred to in sub-section 3 recommends that there is contravention of any of the provisions of the 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 the Act.

COMMISSION CAN DIFFER WITH THE DG:-

30. It will be seen that if the Director General finds no contravention, still the Commission can not only direct further investigation by Director General but, can also cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter. This would mean that even in cases where Director General has not found any contravention, the Commission may find contravention after the inquiry. Similarly, if the Director General finds contravention and the Commission is of the opinion that further inquiry is called for it shall inquire into such contravention.

31. Under the Regulations, as it then stood, in case the Commission decides to inquire into the matter under Section 26 of the Act, a copy of the report is forwarded to the Central Government or the State Government or the Statutory Authority or the parties concerned.

32. Thereafter, a meeting is fixed of the Commission after service of notice under Regulation 22. Additionally, Regulation 48, as it then stood, prescribed that no order or direction imposing a penalty under Chapter VI of the Act (which includes Section 48) shall be made unless the person or the enterprise or a party to the proceeding, during an ordinary meeting of the Commission, has been given a show cause notice and reasonable opportunity to represent his case before the Commission.

33. We will also briefly notice this position post the amendment of Section 26 w.e.f. 18.05.2023 and of the Regulations in 2024. Sub-Section (9) has been added to Section 26 which provides that upon completion of the investigation or inquiry under sub-section (7) or sub-section (8), 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. The proviso to sub-section 9 states 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.

34. The new Regulations, notified on 17.09.2024, provided in Regulation 49 with slight modifications what was provided in Regulation 48 earlier. The modification was that an express provision was incorporated in sub-Regulation 2 to the effect that in case of persons proceeded against in terms of Section 48 of the Act, forwarding of the investigation report and/or the supplementary investigation report or issuance of show-cause notice under sub-regulation 8 of Regulation 22 shall be deemed to be show cause notice in terms of sub-Regulation 1 of Regulation 48. Sub-Regulation 8 of Regulation 22 provided that upon completion of further inquiry in terms of sub-section (7) or (8) of Section 26 of the Act, the Commission may pass a final order closing the matter under sub-section 9 of Section 26 of the Act or pass an order under Section 27, before which it shall issue a show-cause notice to the parties concerned, in terms of the proviso to sub-section (9) of Section 26 of the Act, indicating the contraventions alleged to have been committed and the time period for responding to the notice.

35. Hence, it will be clear that prior to the amendment of Section 26 in 2023, once the Director General files the report, and the Commission does not feel the need for a further investigation/inquiry, all that is required is to issue a notice to the party by forwarding the report eliciting an answer to the contravention. In case the parties are not able to give a satisfactory answer and violation of the Act is found, penalty may be imposed under Section 48. It may happen that, in the event of the Director General not finding a contravention and the Commission on further investigation or inquiry finding contravention, mere forwarding of the report of the Director General or the supplementary report of DG will be of no avail. In that situation the notice should set out the new findings arrived at which are the aspects where the Commission has differed with the Director General. This principle is akin to the situation prevalent in service jurisprudence about the Disciplinary Authority being obligated to serve a notice setting out the areas where such authority differs from the inquiry officer.

36. In ***Yoginath D. Bagde*** v. ***State of Maharashtra and Another***[1]**,** this Court held as under:

> "28. In view of the provisions contained in the statutory rule extracted above, it is open to the disciplinary authority either to agree with the findings recorded by the enquiring authority or disagree with those findings. If it does not agree with the findings of the enquiring authority, it may record its own findings. Where the enquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority agrees with those findings, there would arise no difficulty. So also, if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges were established, "an opportunity of hearing" may have to be read into the rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same

[1] (1999) 7 SCC 739

evidence and material on which a finding of "not guilty" has already been recorded."

37. As far as the present case is concerned, the Director General's report was concurred with by the Commission and hence a notice in the nature of the one issued on 10.06.2015 which is traceable to Regulation 21 read with Regulation 48 and 22 and Section 26 of the Act is enough compliance with the provisions of the Act, for the purpose of imposition of a penalty under Section 27.

38. In ***Competition Commission of India*** vs. ***Steel Authority of India Limited And Another***[2], this Court observed as under:-

> **"71.** The intimation received by the Commission from any specific person complaining of violation of Section 3(4) read with Section 19 of the Act, sets into motion, the mechanism stated under Section 26 of the Act. Section 26(1), as already noticed, requires the Commission to form an opinion whether or not there exists a prima facie case for issuance of direction to the Director General to conduct an investigation. This section does not mention about issuance of any notice to any party before or at the time of formation of an opinion by the Commission on the basis of a reference or information received by it. Language of Sections 3(4) and 19 and for that matter, any other provision of the Act does not suggest that notice to the informant or any other person is required to be issued at this stage. In contradistinction to this, when the Commission receives the report from the Director General and if it has not already taken a decision to close the case under Section 26(2), the Commission is not only expected to forward the copy of the report, issue notice, invite objections or suggestions from the informant, the Central

[2] (2010) 10 SCC 744

> Government, the State Government, statutory authorities or the parties concerned, but also to provide an opportunity of hearing to the parties before arriving at any final conclusion under Sections 26(7) or 26(8) of the Act, as the case may be. **This obviously means that wherever the legislature has intended that notice is to be served upon the other party, it has specifically so stated and we see no compelling reason to read into the provisions of Section 26(1) the requirement of notice**, when it is conspicuous by its very absence. Once the proceedings before the Commission are completed, the parties have a right to appeal under Section 53-A(1)(*a*) in regard to the orders termed as appealable under that provision. Section 53-B requires that the Tribunal should give, parties to the appeal, notice and an opportunity of being heard before passing orders, as it may deem fit and proper, confirming, modifying or setting aside the direction, decision or order appealed against."
>
> (Emphasis supplied)

NOTICE DATED 10.06.2015: -

39. It is undisputed that the DG who investigated the complaint concluded that Respondent No.1-KFEF contravened Section 3(3) of the Act causing appreciable adverse effects on competition. The report also by name found Respondent Nos.2 and 3 as the key persons/key decision makers who played active role in Respondent No.1-KFEF. It is also undisputed that the appellant, by its order of 10.06.2015, upon consideration of the DG Report forwarded the Report to Respondent No.2, Mr. Basheer Ahamed, President of Respondent No.1, and Respondent No.3 Mr. M.C. Bobby, General

Secretary of Respondent No.1, with a direction to the individuals to file their replies and also furnish their audited balance sheet and profit and loss account for the F.Y. 2011-12, 2012-13, 2013-14 on or before 14.07.2015. They were also asked to appear for oral hearing on 22.07.2015. They were heard through common counsel by the Commission on the said date. The notice dated 10.06.2015 is set out hereinbelow:-

> "In the present case the commission vide its order dated 8th May 2014 under section 26 (1) of the Completion Act. 2002 (Act) had Director General (DG) to cause an investigation into the matter. Accordingly, the DG, after completion of the investigation, had filed the investigation report.
>
> The commission considered the investigation report filed by the DG in its ordinary meeting held today the commission decided to forward an electronic copy of the investigation report of the parties for filing their replies. **The commission also decided to forward electronic copy of the investigation report of the DG to Shri Basheer Ahamed, president of OP and Shri M.C. Bobby, General Secretary of OP (the persons identified by the DG as office bearers of OP who at the time of contravention of the provisions of the Act were found to be the key decision makers among the office bearers of OP) for filing their replies /objections. The commission directed the parties including the said individuals to file their replies/objections latest by 14th July 2015. The informant is directed to provide a copy of its replies/objections to the Opposite parties and each of the opposite parties is directed to provide a copy of its replies /objections to the informant.**
>
> **The OP is directed to furnish its audited balance sheet and profit and loss account/turnover for the financial years 2011-12, 2012-13 and 2013-14 latest by 14th July 2015. The aforesaid individuals are directed to file their income details**

including their Income Tax Returns for the financial years 2011-12, 2012-13 and 2013-14 latest by 14th July 2015.

The parties are directed to appear before the commission, either in person or through their duly authorized representative, for an oral hearing on 22 July 2015 at 10:30 AM.

The Secretary is directed to inform all concerned for necessary compliance."

(Emphasis supplied)

40. This notice is in terms of Section 26 of the Act read with Regulation 21 as it then stood. Equally, the notice also fulfils the requirement of Section 48 of the Act read with Regulation 21 and Regulation 48 of the Commission (General) Regulations, 2009, as it then stood.

41. After hearing the parties and analyzing the evidence, the Commission, by its order of 08.09.2015, found Respondent Nos. 1-3 to have indulged in anti-competitive conduct in violation of Section 3 of the Act. Thereafter, it imposed penalties on Respondent Nos. 1-3 including the monetary penalty. Apart from monetary penalty, Respondent No.1 was directed not to associate Respondent Nos. 2 and 3 with its affairs including administration, management and governance in any manner for a period of two years.

Correspondingly, Respondent Nos.2 and 3 were also directed not to associate with Respondent No.1 for a period of two years.

42. Under Section 48, every person who, at the time of the contravention, was in charge of, and was responsible along with the company was deemed to be guilty of the contravention and was liable to be proceeded and punished. The liability was fixed by the statute itself. The notice of 10.06.2015 was categoric in pointing out the fact that there are contraventions alleged in the DG Report and it was clear in fixing the individuals who were the key personnel in charge of the affairs of Respondent No.1. A clear opportunity was given to file reply/objections. Respondent Nos.2 and 3 can complain of no prejudice if on the basis of this notice, the Commission held them guilty for contravening the Act and proceeded to impose penalty under Section 27. We are fully convinced that the notice dated 10.06.2015 issued in the present case fulfils the requirement in law as it then stood.

43. Since we are not concerned with the amended statute w.e.f. 18.05.2023 and the regulations w.e.f. 17.09.2024, we make no comment on the same.

CONTRAST OF THE ACT WITH THE MRTP ACT, 1969 : -

44. To understand the nature of penalties that can be imposed under the Act, one has to necessarily contrast the penalty provisions of the Act with its precursor, the MRTP Act. Under the MRTP Act, the Commission had limited powers of passing only cease and desist orders. Only after the cease-and-desist orders are passed and if there was a violation, certain penalties were prescribed. The net result was, a violator could violate the law with impunity and on receipt of a cease-and-desist order, cease the activity. There was no deterrent inasmuch as there was no penalty for the violation and only a penalty for violation of an order passed by the Commission was contemplated. This was found to be very ineffective.

45. It will be noticed that under Section 27, the Commission apart from monetary penalty, can also direct imposition of cease and desist orders and other behavioural and/or structural remedies.

46. In an erudite monograph titled "*Remedies and Commitments in Abuse Cases*" by Dr. Anna Renata Pisarkiewicez (Consultant, OECD), presented as a Background Note to OECD Competition Policy Roundtable, the concept of behavioral remedies and structural

remedies that are imposed by competition agencies to penalize anti-competitive behavior is lucidly discussed. They are reproduced hereunder: -

> **"3.2. Behavioural remedies**
>
> In contrast to structural remedies, which seek to restore competition by requiring changes in the structure of the dominant firm's business, behavioural or conduct remedies alter how a dominant firm conducts its operations. Depending on whether the implementation of behavioural remedies involves third parties, such as other market participants, or not, behavioural remedies can be broadly divided into internal and external. The former does not involve third parties and relate to firm's internal management and organisation. **For example, a dominant firm might be required to introduce a compliance programme or change its corporate governance provisions**. The latter, on the other hand, concern a firm's interaction with third parties, and may require the dominant firm, for example, to modify or terminate its existing contracts or alter its pricing schemes. There are also behavioural remedies that concern firm's internal operations, but are prone to affect third parties, or the market in general. A pre-installation of a dominant firm's own software might be a case in point.
>
> Behavioural or conduct remedies can be positive/declaratory or negative/prohibitor, depending on whether they require a company to do or to stop doing something, or both. Negative remedies, which typically take the form of a cease-and-desist order simply require the defendant to stop the abusive behaviour. Positive remedies tend to reflect the abusive behaviour. For example, a remedy to a refusal to supply would be a duty to supply. The countermeasure to anti-competitive self-preferencing would be an obligation not to discriminate. Of course, the distinction between positive and negative remedies can be seen as purely semantic as any prohibition can be easily translated into a positive obligation, i.e. a prohibition not to engage in abusive

tying corresponds to a positive obligation to untie jointly sold produces or services. Moreover, negative and positive remedies can be applied jointly, i.e. a negative cease-and-desist order might be complemented by a set of positive remedies that prescribe a specific behaviour.

As behavioural remedies are tailor made, allowing competition agencies to shape them according to the needs of a specific case, they can come in many forms. Examples of behavioural remedies that have been imposed in past abuse of dominance decisions include obligations to:

- Modify or terminate existing contracts (these might include, for example, extension of the notice period to inform about intention to discontinue commercialisation or amendment of license conditions);
- Eliminate exclusivity provisions;
- Introduce and comply with new pricing schemes or conditions;
- Enable customers' or consumers' switching;
- Adopt compliance programmes or set up trainings in competition law;
- **Amend corporate governance provisions.**

While a competition authority might choose to impose just one behavioural remedy, in practice often a set of complementary remedies is imposed on dominant firms. Moreover, behavioural remedies can complement structural remedies with a view to ensuring the effective implementation of the latter.

3.1. Structural remedies

Structural remedies require firms to divest, release or carve-out certain tangible or intangible assets they own. They have several important advantages. By removing the very source of a dominant firm's ability and incentive to engage in an anticompetitive conduct, they help to eliminate, or at least decrease the dominant firm's market power and create conditions favourable to entry and competition. They are also relatively simple to devise and implement as due to their one-off nature they do not typically require extensive, time- and

resource-consuming monitoring, so typical of behavioural remedies. Moreover, they are difficult for companies to circumvent and avoid."

(Emphasis supplied)

47. Section 48, as it stood at the relevant time, provided that with regard to body corporates, firms and association of individuals (compendiously referred to as a Company in the statute), 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, was deemed to be guilty of contravention and was liable to be proceeded against and punished accordingly. The proviso to Section 48(1) stated that if the concerned individual proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contraventions, such person would not be held liable. Sub-section 2 of Section 48 provided that even with regard to any Director, Manager, Secretary or other Officer of the Company, they shall also be deemed to be guilty if the contravention has been committed by the Company and it is proved that the contravention had taken place with consent or connivance of the said individual or if

the contravention is attributable to any negligence on the part of any Director, Manager, Secretary or other Officer of the Company. By the 2023 Amendment, a cap on monetary penalty of 10 per cent of the average income for the last 3 preceding financial years was fixed.

48. The Act which is intended to provide teeth to the regulator, namely, the Commission to check anti-competitive agreements and abuse of dominant position empowers the Commission, under Section 27, to pass monetary penalties as well as behavioural and structural remedies and such power is traceable to the opening clause of Section 27 read with Section 27(a) (b) (d) (e) and (g). The idea was that the contravention be effectively brought to an end, keeping in mind the principle of proportionality.

49. A behavioural remedy or a structural remedy is principally imposed on the enterprise. When a behavioural remedy impinges on corporate governance, corollary orders to give effect to the behavioural remedy may have to be made on individuals. *Stricto senso* the penalty is on the enterprise and the corollary direction is a consequential direction to give effect to the penalty imposed on the enterprise. Without such powers to impose corollary directions,

behavioural remedies and structural remedies imposed on enterprises which incidentally impinge on individuals could never be given effect to. The behavioural remedy imposed on Respondent No. 1 can never be given effect to unless the corollary part of that direction, directing the Respondent No. 2 and 3 not to associate themselves with Respondent No.1 (KFEF), is given effect to. This also reinforces the holding that the penalty of a behavioural remedy is primarily on Respondent no. 1 with incidental consequences on Respondent Nos. 2 and 3.

PRINCIPLE OF PROPORTIONALITY IN PENALTY IMPOSITION : -

50. As the study by Dr. Anna Renata Pisarkiewicz sets out, a proportional remedy is one that addresses the identified competition concern, without going beyond what is necessary to remedy it. This implies that in abuse cases proportional remedies should restore, as much as possible, the competitive situation that existed before the abuse occurred, without seeking to improve the market structure that existed prior to the abuse. Further, length of the application of remedies should be balanced inasmuch as while it should be long

enough to allow intended effects to materialize and short enough to account for the dynamic nature of the markets.

51. In ***Excel Crop Care Limited*** vs. ***Competition Commission of India And Another***[3], this Court recognized the doctrine of proportionality in the context of Section 27 of the Act in the following terms:-

> **"92.** Even the doctrine of "proportionality" would suggest that the court should lean in favour of "relevant turnover". No doubt the objective contained in the Act viz. to discourage and stop anti-competitive practices has to be achieved and those who are perpetrators of such practices need to be indicted and suitably punished. It is for this reason that the Act contains penal provisions for penalising such offenders. At the same time, the penalty cannot be disproportionate and it should not lead to shocking results. That is the implication of the doctrine of proportionality which is based on equity and rationality. It is, in fact, a constitutionally protected right which can be traced to Article 14 as well as Article 21 of the Constitution. The doctrine of proportionality is aimed at bringing out "proportional result or proportionality stricto sensu". It is a result-oriented test as it examines the result of the law in fact the proportionality achieves balancing between two competing interests : harm caused to the society by the infringer which gives justification for penalising the infringer on the one hand and the right of the infringer in not suffering the punishment which may be disproportionate to the seriousness of the Act."

[3] (2017) 8 SCC 47

NO SECOND NOTICE CONTEMPLATED UNDER THE STATUTE: -

52. In this background, reverting to the question at hand, it will be clear that all that the Act contemplates after the receipt of a report from the DG indicating contravention is to set the procedure in motion under Section 26(8) of the Act, as it then stood, read with Section 48 of the Act, Regulation 21 and 48 of the Commission (General) Regulations, 2009. This aspect has already been dealt with. There is no mandate in the statute for the issuance of a second show cause notice setting out the proposed penalty.

REPORT OF THE 'REVIEW COMMITTEE': -

53. This view that no second notice is contemplated is reinforced by the Report of the Competition Law Review Committee (for short the "Review Committee") July, 2019. That Review Committee adverted to the judgment of the Division Bench of Delhi High Court in ***Mahindra and Mahindra Ltd. v. Competition Commission of India and Another***[4]. We should immediately point out that we are only referring to this judgment since it is referred to as a part of the

[4] (2019) SCC Online Del 8032

findings of the 2019 Report of the Review Committee. This judgment is pending in appeal before this Court and we should not be taken to have observed one way or the other on the correctness or otherwise of the said judgment. That judgment dealt with the constitutional validity of Section 27 since the argument in that case was that the provision is unconstitutional for want of a prescription for a separate penalty hearing. The Division Bench of the High Court held the provision to be constitutional. In the present matter, we are not concerned with the constitutional validity of Section 27 and the case has been placed only on the anvil of its interpretation.

54. The Review Committee dealing with the aspect of separate penalty hearing from para 3.14 to 3.19 observed as under:-

> "*Separate Penalty Hearing*
>
> 3.14. Currently, the Competition Act does not mandate the CCI to provide a separate penalty hearing and the CCI hears the parties on merits and penalties together. In this regard, a concern that was flagged before the Committee was that parties may not get adequate opportunity to be heard on penalties, including on mitigating and aggravating factors. Accordingly, the Committee considered whether a separate hearing should be provided to the parties before the CCI passes its orders on penalties.
>
> 3.15. Notably, the Delhi High Court in *Mahindra & Mahindra Ltd. v. Competition Commission of India* dealt with a similar issue where the petitioner alleged that Section 27(b) of the Competition Act is unconstitutional *inter-alia* on the ground that no separate penalty hearing is provided under the provision.

After reviewing the procedure for conducting investigation, inquiry and passing of final orders under the Competition Act, the High Court held that the absence of a second specific hearing before imposition of a penalty under Section 27(b) does not expose the provision to the vice of arbitrariness and unconstitutionality. The Court observed that:

> *"197. If these considerations are kept in mind, the fact that certain types of penalties (which are pre-determined quantum for specific violations of the Act) elicit show cause notice as prelude to penalty on the one hand, and absence of any compulsion to issue a separate show cause notice preceding a penalty under Section 27(b) (although a show cause notice and full hearing is provided with opportunity to submit against the report of DG) does not in the opinion of this Court, render that provision arbitrary.*
>
> *198. The court is cognizant of the fact that there are several adjudications - quasi judicial and by judicial tribunals, which envision a "rolled up" hearing which visualizes only one show cause notice - that can culminate in both an adverse finding and a consequential penalty."*

3.16. In the instant case, the Delhi High Court analysed the procedure adopted by the CCI and held that this procedure gives sufficient safeguard to parties likely to be affected adversely, both as regards findings and sanctions. The Court observed that:

> *"However, a deeper analysis of the nature of the proceeding before the CCI would reveal that the procedure it adopts- and is required to adopt gives sufficient safeguard to parties likely to be affected adversely, both as regards findings and the sanctions. The first step, of course, is to decide whether to issue notice. Excel Crop Care (supra) and the later decisions have now held conclusively that this step is administrative and does not contemplate any prior notice or hearing to the opposite parties. The next stage is investigation by the DG. At this stage, the parties – whenever needed – receive notice and opportunity; if it is denied, they can seek directions to the DG from the CCI. This stage includes evidence*

gathering and wherever necessary, cross-examination on behalf of one or more individuals, before the DG- and later, before the CCI, if the complaint is that cross-examination is not granted. The next stage is the report of the DG, which is shared by the parties, who then make their comments, and are granted full opportunity of hearing. This step is very significant, because when the parties do address the CCI and submit their contentions, they have foreknowledge of all the materials, including adverse materials and comments made in the DG's report. This stage is a "full blown" hearing, when the parties know and have a fair awareness of the range of options available with the CCI in terms of both findings and the sanctions (such as orders enjoining some activity, or requiring positive steps to be taken). This forewarning, as it were, and the statutory cap (of not more than 10 percent) is a broad guideline within which both CCI and the parties before it, operate."

3.17. Against this background, the Committee deliberated on the need to have a separate hearing over and above the hearing as is contemplated under the Competition Act. While the Committee noted that such a separate notice / hearing is provided for in the EU and the UK, it felt that the procedure as envisaged under the Competition Act currently provides a fair opportunity of hearing to parties against whom an order of penalty is passed. This has also been confirmed by the Delhi High Court in the Mahindra case, as discussed above. Further, the Committee felt that its recommendation regarding mandatory requirement for the CCI to issue penalty guidance along with reasons in case of deviation from the guidance will add another layer of safeguard to the already existing process that has been upheld by the Delhi High Court to be constitutionally valid. **On the basis of this and in light of the observations of the Delhi High Court as discussed above, the Committee felt that a separate penalty hearing may not be recommended.**

Quantum of Penalty for individuals

3.18. Currently, the Competition Act does not provide any mechanism or quantum of penalty that may be imposed on individuals. In the absence of any guidance, it was pointed out to the Committee that the CCI has been using the same standard as

used for enterprises under Section 27 for the purpose of imposing penalties on individuals i.e. imposition of penalty up to 10% of the average income for the past three years of the individual.

3.19. **The Committee deliberated on these issues and recommended that unless otherwise stated in the Competition Act, a provision should be introduced to reflect the quantum of penalty that may be imposed on individuals for the purposes of the contraventions of the Competition Act. The Committee recommended that unless otherwise stated in the Competition Act, such a provision should specify that in case of a contravention of the provisions of the Competition Act, in terms of Section 48, the concerned individual will be liable to a penalty of up to 10% of the average income for the last three preceding financial years. However, for any contravention relating to cartels, the amount of penalty that may be imposed should be up to 10% of the income of each year of the continuance of the cartel.**"

(Emphasis supplied)

55. As would be clear from the recommendation at para 3.17 above, the Review Committee specifically deliberated on the issue but concluded that the Act as it stood provided a fair opportunity and in view of that it felt that a separate penalty hearing was not recommended. The Review Committee, no doubt, recommended that mandatorily Commission should issue penalty guidelines along with reasons in case of deviation from the guidelines. That does not detract from the fact that the Act did not contemplate a second notice at the time of imposition of penalty.

56. With the furnishing of the DG Report and the opportunity being given to the parties which have been duly complied with in this case, a fair opportunity has been given to Respondent Nos.2 and 3 to address on all aspects of the contravention. It should also not be forgotten that notice and the supply of DG Report is to enable the parties to answer on the contravention. It is for the Commission to maintain the principles of proportionality in the imposition of penalty as prescribed in section 27 of the Act, which may include monetary penalty and behavioural and structural remedies.

TIME IS OF ESSENCE – NO NOTICE NEEDED OF PROPOSED PENALTY:-

57. Considering the importance of fair competition and the ultimate goal of protecting the interest of the consumers, these internationally recognized remedies, the power to impose which is statutorily engrafted in the different sub-sections of Section 27, are within the powers of the Commission to impose. This is the only way that the change that was desired from the erstwhile MRTP regime which only rest contented with the cease-and-desist orders, could be achieved. If these penalties are not recognized in the statute, the purpose of

enacting the Competition Act, 2002, would be defeated and the Commission, like the MRTP Commission would continue to be a toothless body. It is also to be emphasized that both in ***SAIL's case (supra)*** and in ***Excel Crop's case (supra),*** timebound disposal of proceedings before the Commission has been emphasized.

58. In ***SAIL's case (supra),*** the following was held in paragraph 134 and 136:

> "134. The scheme of the Act and the Regulations framed thereunder clearly demonstrate the legislative intent that the investigations and inquiries under the provisions of the Act should be concluded as expeditiously as possible. The various provisions and the Regulations, particularly Regulations 15 and 16, direct conclusion of the investigation/inquiry or proceeding within a "reasonable time". The concept of "reasonable time" thus has to be construed meaningfully, keeping in view the object of the Act and the larger interest of the domestic and international trade.
>
> 136. In our considered view the scheme and essence of the Act and the Regulations are clearly suggestive of speedy and expeditious disposal of the matters. Thus, it will be desirable that the competent authority frames regulations providing definite time-frame for completion of investigation, inquiry and final disposal of the matters pending before the Commission. Till such regulations are framed, the period specified by us supra shall remain in force and we expect all the authorities concerned to adhere to the period specified."

59. In ***Excel Crop's case (supra)***, the findings in ***SAIL's case (supra)*** about the need for dealing with matters relating to

contravention of the Act expeditiously and in a timebound manner were reiterated.

60. The ecosystem of competition law provides for behavioural and structural remedies to be imposed depending on the facts of the case. As to what remedy will best address the mischief in the individual case and act as a deterrent not only for the violator but also generally would be for the Commission to decide. Internationally, these remedies are well accepted and our statute in Section 27 vests the power in the Commission to pass such orders as deemed necessary to check the malaise. The ecosystem of the Competition Act is sufficient notice to the violator that the regulating body has vast discretion and depending on the factual scenario can fashion an appropriate remedy. The only check is that it should be proportionate and should have nexus with the object sought to be achieved- namely to punish the recalcitrant party and also ensure that the penalty acts as a deterrent. Providing a back and forth between the regulator and the person in breach to arrive at an appropriate penalty can defeat the purpose of the Act and can be a source of great abuse as the time given can be used to even present the Commission with a fait accompli, defeating

the object of the Act. That will also result in enormous loss of time when time is of essence under the statute.

NOTICE IS TO ANSWER THE CONTRAVENTION – NOT THE PROPOSED PENALTY:-

61. ***Associated Cement Companies Ltd. vs. T.C. Shrivastava & Others***[5], is a matter arising under the Labour Jurisprudence, where the aspect of second opportunity was dealt with. It was highlighted therein that the opportunity given was to explain the charges and not the proposed punishment. The following paragraphs makes the position abundantly clear:-

> "8. At the outset the legal position as has been clarified by this Court in the *Saharanpur Light Railway Co.* case may be stated. In the context of certain modification sought to be introduced in a Standing Order requiring a second show-cause notice this Court has observed thus:
>
> > As regards the modification requiring a second show-cause notice, neither the ordinary law of the land nor the industrial law requires an employer to give such a notice. In none of the decisions given by courts or the tribunals such a second show-cause notice in the case of removal has ever been demanded or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Article 311. Even that has now been removed by the recent amendment of that article. To import such a requirement from Article 311 in industrial matters does not appear to be either necessary or proper and would be equating industrial

[5] 1984 Supp SCC 87

employees with civil servants. In our view, there is no justification on any principle for such equation. Besides, such a requirement would unnecessarily prolong disciplinary enquiries which in the interest of industrial peace should be disposed of in as short time as possible. In our view it is not possible to consider this modification as justifiable either on the ground of reasonableness or fairness and should therefore be set aside.

It is thus clear that neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a Standing Order may not provide for it but unless the Standing Order provides for it either expressly or by necessary implication no enquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity. **The question is whether para 3 of the Standing Order 17 provides for such second opportunity being given to the delinquent? The relevant words are "all dismissal orders shall be passed by the manager … *after giving the accused an opportunity to offer any explanation*". The italicised words are wholly inappropriate to convey the idea of a second hearing or opportunity on the question of punishment but appropriate in the context of seeking an explanation in regard to the alleged misconduct charged against him. An 'explanation' is to be called from the 'accused' which suggests that the same is to be called for prior to the recording of a finding that the delinquent is guilty of misconduct; it is the alleged misconduct that is to be explained by him and not the proposed punishment. On a plain reading of the relevant words no second opportunity of showing cause against the proposed punishment is contemplated either expressly or by necessary implication. In other words, it is clear to us that the opportunity spoken of by para 3 of Standing Order 17 is the opportunity to be given to the delinquent to meet the charges framed against him**. In this connection it will be pertinent to mention that the concerned Standing Order was framed and came into force on March 1, 1946 and was duly certified on October 16, 1952 under the Industrial Employment (Standing Orders) Act, 1946 i.e. prior to the enunciation of the law by courts regarding the observance of the principles of natural justice such as issuance of a charge-sheet, holding of an enquiry, opportunity to lead evidence, etc. and it is well-known that after the enunciation of these principles model Standing Orders have been framed to provide for the detailed steps required to be undertaken during a domestic enquiry. Since the instant Standing Order was certified prior to the formulation of the above principles it merely contains a bald provision for "giving the accused an opportunity to offer

> any explanation". In other words, different stages in domestic enquiry were never in the contemplation of the framers of the Standing Order. That being the position it would be difficult to attribute any intention to the framers thereof to provide for a second opportunity being given to the delinquent of showing cause against the proposed punishment. The latter part of para 3 merely casts a unilateral obligation on the concerned authority or the officer to give due consideration to the gravity of the misconduct and the previous record of the delinquent in awarding the maximum punishment."

(Emphasis supplied)

62. Once the explanation is offered, it is for the Commission to conclude whether there is breach of the Act or not. As to what penalty to impose, it will be guided by the doctrine of proportionality, when it chooses the penalty or penalties from the menu of penalties available.

63. Furthermore, appeal is provided under section 53A and 53T of the Act. The appellate body also shall examine whether the penalty imposed by the original authority is proportionate. By doing so, the appellate authority/court is not curing the violation of natural justice since there is no violation of natural justice by the original authority/court but what it does is to review whether the penalty is proportionate. Being an appellate authority, its powers are co-ordinate with original authority and it can even modify the penalty. It is not bound by the constraints a judicial review court exercising powers under Article 226 may be faced with. There is no need to

remit the matter to the original authority for imposition of an appropriate penalty. The appellate Tribunal can itself substitute the penalty. This itself is a salutary safeguard. The behavioural and structural remedy to be imposed should be dependent on what the facts of the case warrant, depending on the nature of the contravention. The most appropriate remedy that will prevent the recurrence is for the Commission to decide. The only requirement is that it should be proportionate and should have the objective of preventing the recurrence of the contravention.

PENALTY ON FACTS - PROPORTIONATE: -

64. Coming to the facts of the case, we find that the penalty is not disproportionate. The Commission in its order noted that both Respondent Nos.2 and 3 played an active role in enforcing the directives of Respondent No.1 in controlling and restricting the exhibition of new movies across the State of Kerala. Further, even after giving ample opportunity, no evidence was adduced to establish that the anti-competitive decisions were made without their knowledge or that they had exercised all due diligence to prevent them from being committed. The Commission also relied on the

evidence of Mr. Mukesh Mehta, of M/s E-4 Entertainment, and Mr. Rupesh Makhija, Manager of M/s RM Films, Calicut. Further, Ms. Sandra Thomas, Managing Partner of M/s Friday Tickets had given evidence to the effect that M/s Friday Tickets did not distribute films to the informant because of the ban imposed by Respondent No.1 on the informant. Except for stating that the evidence of Ms. Sandra Thomas was baseless, nothing concrete was adduced to counter the statement. Relying on this evidence, contravention was found and penalty was imposed. Penalty imposed was 10 percent of the average income which worked out to Rs.56,397.07 in the case of Respondent No.2 Mr. P.V. Basheer Ahamed, and Rs. 47,778.60 in the case of Mr. M.C. Bobby, Respondent No.3. Further, Respondent No.1 was directed not to associate with Respondent Nos.2 and 3 with its affairs including administration, management and governance, in any manner for a period of 2 years and corresponding directions were issued to Respondent Nos.2 and 3 to not to associate with Respondent No.1.

65. We do not find that the penalty is disproportionate.The monetary penalty was meagre. The acts committed had serious and deleterious effect on the informant and the general public and unless deterrent

penalties were imposed prejudice to public would have been enormous. The penalty imposed, as above, cannot be said to be of such a nature as to shock the conscience of a judicially trained mind.

66. Respondent Nos.2 and 3 were also found to have indulged in similar anti-competitive conduct in Case No.45/2012 before the Commission, and in that case, a penalty of 7 percent of their average income for the past 3 years was imposed. In spite of that, they continued with their anti-competitive conduct resulting in the present case being lodged. It is very clear that mere monetary penalty has not acted as a deterrent on Respondent No.2 and 3 as well as Respondent No.1. A behavioural remedy like the one ordered in the present case would alone protect the interest of the consumers and uphold the majesty of law. For this additional reason, we find the penalty imposed by Commission to be proportionate. In ***State Bank of India And Others vs. Mohammad Badruddin***[6], this Court, while holding that there cannot be a bar to take into consideration the previous penalty even in the context of Article 311 after the 42nd Amendment Act, held as under in para 23:

[6] (2019) 16 SCC 69

> "23. The previous punishments could not be subject-matter of the charge-sheet as it is beyond the scope of inquiry to be conducted by the inquiry officer as such punishments have attained finality in the proceedings. The requirement of second show-cause notice stands specifically omitted by the 42nd Amendment. Therefore, the only requirement now is to send a copy of Inquiry Report to the delinquent to meet the principle of natural justice being the adverse material against the delinquent. There is no mandatory requirement of communicating the proposed punishment. Therefore, there cannot be any bar to take into consideration previous punishments in the constitutional scheme as interpreted by this Court. Thus, the non-communication of the previous punishments in the show-cause notice will not vitiate the punishment imposed."

67. We are not impressed with the argument of violation of Article 19(1)(c) of the Constitution. Unethical practices can always be checked since the right under article 19(1)(c) is not absolute and reasonable restrictions can be imposed under Article 19(4). In the present case there is no challenge to the validity, and we have to proceed on the basis that the statute is valid. Equally, the holding of the COMPAT that the findings recorded by the Additional DG against Respondent Nos.2 and 3 were without issuing notice to them stating that he proposes to make observations adverse to their conduct, is in the teeth of Section 48. It is undisputed that the Additional DG issued notice to Respondent No.1, and Respondent No.2 who was present before the Additional DG, was confronted with the evidence. In any

event Respondent Nos.2 and 3 are being roped-in and rendered liable for the contravention in view of the deeming provision in Section 48 since it is undisputed that they were, at the time when the contravention was committed, in charge of and were responsible for the affairs of Respondent No.1

CONCLUSION: -

68. For the reasons stated above, we allow the appeal and set aside the judgement of the COMPAT dated 04.02.2016 in Appeal No.99/2015 insofar as it set aside the penalty and directions against Respondent Nos.2 and 3 and the direction contained in clauses (d) and (e) of para 9 of the order of the Commission. We restore the findings of the Commission dated 08.09.2015 in its entirety. The directions to Respondent No.1 not to associate with Respondent No.2 and 3 with its affairs including administration, management and governance of Respondent No.1 and the directions to Respondent Nos.2 and 3 not to associate with Respondent No.1 in the administration, management and governance of Respondent No.1 for a period of 2 years shall commence from 01.12.2025 and continue till the period of 2 years is

over. Compliance to be filed before the Commission within three months from today with regard to all the directions imposed by the Commission in its order dated 08.09.2015. No order as to costs.

.....J.
[**MANOJ MISRA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
26th September, 2025