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"Competition Comission Of India: Safeguarding Fair Play In Mergers And Acqusitions In India"

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ABSTRACT

Competition is a sign of development subject to healthy and impartial circumstances for all. Indian business is not an exception for the same. Indian legal literature has always tried to pinpoint the problem of anticompetitive attitude of business icons in Indian market. MRTP Act has been enacted with an objective to restrict the monopoly in market. This piece of legislation has worked on various anti-monopolistic practises and tried to curtail it. But after the Industrial Governmental Policy 1991 the concept liberalization, privatization and globalization become the power booster for Indian market, which leads to various and unlimited investment in Indian business by foreign player. In this attractive stage of market Mergers and Acquisitions has becomes the significant route of business growth. Most of the market player started accepting the merger or acquisition with various reasons. This has resulted in to the competitive atmosphere in the market with various kinds of unfair practices and greedy trice to control the market. It started working as a barrier to the new entities for their entry in the market. Business tycoon has started using their all power and reputation to become king of market. This leads towards the dominant position and concentration of powers in the hands of few powerful people which has completely misbalanced the competitive attitude of market. The Indian legal framework became insufficient to handle the new emerging problems in this regard. Hence the necessity of proper law resulted into The Competition Act 2002 as a remedy for anti-competitive deals in market. It has created The Competition Commission of India as the regulatory authority to curtail the impact of mergers and acquisition on the competition. It has assigned the task to CCI to check and examine the various deals of mergers and acquisition in Indian market in the light of various restriction and limitation to given under the Act 2002. Thus, the researcher is going to analyse the different dimensions of role of CCI to regulate the mergers and acquisitions in the market affecting the healthy competition.

Introduction:-

In this paper the researcher is going to analyse the role of the Competition Commission of India in regulating mergers and acquisitions. This paper will be divided into four parts. Firstly, it will deal with various definitions and concepts related to the topic. Secondly it will deal with the background resulting in the birth of Competition Act. Thirdly, the researcher will dwell into the various provisions specifying the combination and role of Competition Commission India and its powers. Finally, the researcher is going to analyse the sufficiency of the Competition Act regulating the mergers and acquisitions and what could have been the efficient ways to maximize the benefit or purpose of the Competition Act.

PART A – Concepts; -

Whenever we read or write something it is very necessary to know the exactly meaning of keywords and fundamental of the topics related.Otherwise, it becomes difficult to understand the core meaning of the thoughts express in view of it. Few concepts are very necessary to be understood in their actual meaning. Some of it are as follows

1. "person" includes— (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); (vii) any body corporate incorporated by. or under the laws of a country outside India; (viii) a co-operative society registered under any law relating to co-operative societies; (ix) a local authority; (x) every artificial juridical person, not falling within any of the preceding sub-clauses;[1]A company formed and registered under this Act or an existing company. An 'existingcompany' means a company formed and registered under any of the former companies Acts.
2. Industrial policy means rules, regulations, principles, policies and procedures laid down by government for regulating, developing, and controlling industrial undertakings in the country. It prescribes the respective roles of the public, private, joint, and co-operative sectors for the development of industries It also indicates the role of the large, medium and small-scale sector.
3. "enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the d Explanation.-For the purposes of this clause,— (a) "activity" includes profession or occupation; (b) "article" includes a new article and "service" includes a new service; (c) "unit" or "division", in relation to an enterprise, includes (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods; (ii) any branch or office established for the provision of any service.
4. (b) "agreement" includes any arrangement or understanding or action in concert— (i) whether or not, such arrangement, understanding or action is formal or in writing; or (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
5. Restructuring in the simple term can be defined as, "A significant modification made to the debt, operations or structure of a company. This type of corporate action is usually made when there are significant problems in a company, which are causing some form of financialharm and putting the overall business in jeopardy. The hope is that through restructuring, acompany can eliminate financial harm and improve the business."
6. "Corporate restructuring is one of the means that can be employed to meet the challenges and problems which confront business. The law should be slow to retard or impede the discretion of corporate enterprise to adapt itself to the needs of changing times and to meet the demands of increasing competition. The law as evolved in the area of mergers and amalgamations has recognised the importance of the Court not sitting as an appellate authority over the commercial wisdom of those who seek to restructure business."
7. 'undertaking' relates to the entire business although there may be separate ingredients or items of work or assets in the undertaking. The undertaking therefore is the entire integrated organization consisting of all property, movable or immovable, and the totality of undertaking is one concept which is not divisible into components or ingredients,
8. merger means two or more companies blending to form a new third entity. This explanation speaks about the formation of new entity will attract the term mergers. merger is an arrangement whereby the assets of two companies become vested in or under the control of one company (which may or may not be one of the original two companies), which has all or substantially all the shareholders of the two companies
9. It refers to amalgamation as an act where two or more companies merge into any existing company (Absorption) or these companies merge for the creation of a new company (formation of new company). This definition uses

the term merger with reference to the act of an amalgamation. “amalgamation”, in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that— (i) All the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation; (ii) All the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation; (iii) Shareholders holding not less than [three-fourths] in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation, otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company

10. “acquisition” means, directly or indirectly, acquiring or agreeing to acquire— (i) shares, voting rights or assets of any enterprise; or (ii) control over management or control over assets of any enterprise;

On perusal of these key concepts, it appears that, all of them are having dynamic meanings. In the case of mergers and acquisitions, first, it's needs to be very clear that, whose mergers will be there or whose acquisitions can be possible under the legal framework provided in India. Accordingly, the definitions provided under the Competition Act, is of the ***person***, which shows that there are various categories of small-scale industries, including individual, Hindu undivided family or firm or any company registered or local authority within jurisdiction or outside jurisdiction of the India. These definitions provides that, while working as the regulatory body Competition Commission has to see interest and role of these persons specified under section 2(l) of the Competition Act, on the competition in the market whether it is positive or adverse.Simultaneously the Competition Act 2002 also elaborated the term ***enterprises*** which specifically connotes that, it has covered various activities regarding production, storage, supply and distribution about good or the services, whether government or private are brought under the domain of jurisdiction of the competition commission.

Certainly, as we have seen above that, between whom mergers or acquisition has to be performed, it also has to be seen that, how it has to be performed. In reference to this Competition Act has provided the definition of the ***agreement*** which prima facie Converse means that, there is no necessity of legal enforceability in the agreements of mergers and acquisitions, when it comes under the Competition Acts and purview of the Commissions jurisdiction. Mere agreement between two persons as defined about or two enterprises which maybe oral or in writing, is having recognition under Competition Act. As per Contract Act section 10, it is not necessary that, this particular agreement shall become legal contract and be enforceable by law. It shows that, competition Act has very vide jurisdiction over the pieces of agreement which may be oral or in writing, dealing with the persons or enterprises mentioned above, which mayaffect adversely on the competition.

Additionally, as we have seen terms person,enterprises, agreement we should know what does mean by restructuring between them.Whenever there is a company or a firm or a person or an enterprise work, they work on some kind of funds and investment.They do have particular memorandum to act upon while working.When they restructure or modified it, that is under the domain of restructuring, whereas the corporate restructuring is one of the means to address challenges and problems coming under the restructuring process of the persons or enterprises. No doubt when we see the definition of person or enterprises, these appears to be the vast definitions. On the other hand, the key concepts about this paper are mergers, amalgamations and acquisitions. But coincidentally there is no typical definition of itis provided under Indian legal framework. Whereas, it is being gathered from the provision or the legal dictionary meaning and practices of formation of the enterprises into new entities. As we all know mergers means when two companies come together and forms new entity and they gets merged into each other are the example of merger. Whereas amalgamation means when two or more entities get absorbed in existing company, its amalgamated into the existing company. Its assets get absorbed into the existing company which results into the stronger entity or enterprises or person in the market which maybe sometime beneficial or sometimes adverse to the competition in the market. Similarly, the acquisition which is defined under Competition Act certainly related with the shares, voting rights and assets of an any enterprises which give one of the enterprises controls over the other. Here two enterprises won't have that equal opportunities to protect their

own interest and create new entity. Whereas in the case of acquisition one company will always be in a position to absorb or to control over another enterprises, then only it becomes acquisition. Certainly, this kind of acquisition has to be in adherence to the Competition Act as well as the rules provided there under.Otherwise, it will be brought under the domain of the commission established under Competition Act 2002.

PART B – Background of the Competition Act 2002-

India is the country which has seen many ups and down pertaining to the rulers and administration and has dynamic culture. It has a dynamic history about it. No doubt each of the rulers who ruled over India had their own objects and purposes which may be beneficial or not to the common man. Certainly, during this particular period India was and is an agricultural economy. The income arose out of the fundamental business of Indians that is agriculture produce was subjected to many taxes. It was no doubt, was one of the very important factors which impacted on the development of the Indian economy. While dealing with the particular background we have to firstly analyse pre-independence and there after the post-independence era of the development of the Indian economy and how these particular developments open doors for mergers and Takeovers in the Indian market. As we have already discussed, in the pre-independence era no doubt the economy of India was developing but certainly in the veil of various selfish purposes of different rulers. But when Indians could have managed their own government, it results in various industrial policies to achieve equal distribution of the Wealth. It resulted into various industrial policies. It further resulted into the privatization and globalization. It opened its arms to the takeovers and Mergers. It reflected insufficiency of the Monopolistic Restrictive Trade Practices Act. It was the era where healthy competition ambiance was required for the development of the Indian economy. It leads to the enactment of the Competition Act 2002.

Part C - Provision of the Competition Act 2002. –

Soul of any Act lies in its Object. The object of the Competition Act 2002 is

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

This object itself prima facie is clear on the point that, in view of economic development, to prevent adversely effecting practices on the competition, and to promote competition, in the interest of the consumers and to assignedfreedom of the market, it was necessary to have regulatory body and it is established under this Act.

Further, in reference to the present part of this research paper some of the significant provisions of the Competition Act 2002 needs to be considered and those provisions are noted down as follows as the ready reckoner-

Section 5 - Regulation of Combinations –

The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if— (a) any acquisition where— (i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,— (A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or (B) 7 [in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or] (ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,— (A) either in India, the assets of the value of more than rupees four thou sand crores or turnover more than rupees twelve thousand crores; or (B) 8 [in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or] (b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if— (i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,— (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or (B) 9 [in India or outside India, in aggregate, the assets of the value of more than five hundred

million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or] (ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,— (A) either in India, the assets of the value of more than rupees four thou sand crores or turnover more than rupees twelve thousand crores or (B) 10[in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or] (c) any merger or amalgamation in which— (i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,— (A) either in India, the assets of the value of more than rupees one thou sand crores or turnover more than rupees three thousand crores; or (B) 11[in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or] (ii) the group, to which the enterprise remaining after the merger or the enter prise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,— (A) either in India, the assets of the value of more than rupees four-thou sand crores or turnover more than rupees twelve thousand crores; or (B) 12 [in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees Fifteen Hundred Crores in India Explanation.— For the purposes of this section,— (a) "control" includes controlling the affairs or management by— (i) one or more enterprises, either jointly or singly, over another enterprise or group; (ii) one or more groups, either jointly or singly, over another group or enterprise; (b) "group" means two or more enterprises which, directly or indirectly, are in a position to — (i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or (ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or (iii) control the management or affairs of the other enterprise; (c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout- design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

In reference to the provisions of the Competition Act firstly the term ***combination*** has to be dealt with as per section 5 of the Competition Act 2002. Meaning of the combinationis divided into three categories as per this section, first where acquisition of one or more enterprises or persons or mergers or amalgamation of such enterprises, or in combination in any acquisition, acquire control share, voting rights and jointly have, turnoverwithin India more than 3000 crore or outside India turnover more than 1500 crores. Second part deals with the group of the enterprises which acquires control over the shares, assets and voting rights of the other enterprises and will jointly have in India turnover more thanRs 12000 crores and outside India turnover more than 1500 crores. Similarly this section further provides that acquiring control over others business directly or indirectly will happen if enterprises over which control has been acquired along with the enterprises over which the acquire already has direct or indirect control jointly have turn over more than 3000 crores in India or turn over more than 1500 crores outside India. Here again group is having the similar kind of thresh hold which isdescribed above regarding groups that is more than 12000 crores in India and more than 1500 crores outside India. Thirdly, it provides that, by virtue of any merger or amalgamation, any entity coming into existence will have turnover in India more than 3000 crores or outside India more than 1500 crores.The group pertaining to the mergers and amalgamation is also describe in the same manner that is turnover within India more than 12000 crores and outside India more than 1500 crores.

Now on perusal of this particular provision, it is very much clear that, here at the first instance they have described individual or enterprises relations and existing future entities turnover. Further in case groups of enterprises are acquiring shares or control accordingly so what will be there join turnover in India or outside India. Similarly in the acquisitions where two enterprises joints each other and the acquiror already had some kind of existing entity in the market, then jointly created venture plus existing entity of the acquiror and its turnover in India and outside India, regarding groups also the same kind of threshold is provided and at the last of this

particular section the legislature spoke about mergers and amalgamation and newly created entity out of it,is in India not more than 3000 and outside India not more than 1500 crores. The same rule is applicable to the mergers and amalgamations in reference to the group or joint entities created out of that. The combination which has been created under the particular section appears to be the targeting new entities plus existing entities and their turnovers in Indian market and outside of the Indian market.So that the other competitors should also get time to breath in the market.

Basically, this section deals with the control of one enterpriseorthe person over the another and in case they come together and acquires together or get amalgamated together what will be their position in the market after that particular merger amalgamation or acquisition and whether this new entity will dominate the entire market or will adversely affect the entire market that has to be taken care of by the competition commission of India. The threshold given under section 5 about the combination is the red signal where the individual person or the enterprises has to take precautions whether they have to proceed in the domain of competition commission or they have to do the business without affecting the rights of the other businessman and the competitors in the market.

Section 3 - Prohibition of agreements Anti-competitive agreements -

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

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

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

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

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

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

(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition: Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services. Explanation.—For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section

(3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

(6) (a) tie-in arrangement; (b) exclusive supply agreement; (c) exclusive distribution agreement; (d) refusal to deal; (e) resale price maintenance, shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India. Explanation.—For the purposes of this sub-section,— (a) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods; (b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person; (c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods; (d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought; (e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(5) Nothing contained in this section shall restrict— (i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be

conferred upon him under— (a) the Copyright Act, 1957 (14 of 1957); (b) the Patents Act, 1970 (39 of 1970); (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999); (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999); (e) the Designs Act, 2000 (16 of 2000); (f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000); (ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

Section 3 of the Competition Act does not recognise any agreement which will adversely affect on the competition within India, it is considered to be void. Sub section 3 of this section also specifies that what kind of agreement are presume to have an appreciable adverse effect on competition. It gives parameter like any agreement which directly indirectly determines purchase or sale prices, limits or controls production or supply in market, technical development, investment or provision of service, allocate geographical areas of market to the particular types of good or enterprises or directly indirectly results into bid ragging are anti-competitive agreements. This shows that, section 3 of prevents anti-competitive agreements, and has tried to elaborate what kind of conduct will be considered as the anti-competitive. But certainly,it is also provided in provision that, nothing is considered to be the anti-competitive agreement in case it is entered into by way of joint venture to increase efficiency production supplied distribution storage acquisition or control of good or provision of service. Further it provides that the agreements which are entered by the enterprises at the different stages or levels of the production chain in different market related with time agreement exclusive supply agreement exclusive distribution agreement refusal to deal resale price maintenance are considered to be anti-competitive agreement so while using this particular section has tried to bring under the picture what can be considered as the anti-competitive agreements. But the fundamental of this section appear that the competition in the market shall not get adversely affected in any manners what so ever.But this section does not affect the rights of the individual person or enterprises to impose their own conditions and requirement in the agreement. It clearly indicates that this provision has not imposed restriction on the fundamental right of an individual to carry out business but has given the parameter that other individuals fundamental rights should not get affected at any cost.

Section 4 - Abuse of dominant position

(1) No enterprise or group shall abuse its dominant position.]

(2) There shall be an abuse of dominant position 4 [under sub-section (1), if an enterprise or a group].—- (a) directly or indirectly, imposes unfair or discriminatory— (i) condition in purchase or sale of goods or service; or (ii) price in purchase or sale (including predatory price) of goods or service. Explanation.— For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

(b) limits or restricts— (i) production of goods or provision of services or market therefor; or (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access 5 [in any manner]; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.—For the purposes of this section, the expression— (a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to— (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour. (b) "predatory price" means the sale of goods or provision of services, at a. price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Similarly in the section 4 is one of the significant section which speaks about abuse of dominant position. Here the dominant position's meaning is significant which is given under the explanation of this particular section itself. It means that anything or any position is dominant in case, the enterprises in relevant market in India operate independently with competitive force prevailing in the relevant market or affect its competitor or consumers or the relevant market in its future. It shows that the giantess of one enterprise in the market its roots in the market which makes it survivable without the help of other make it in dominant position. In India there are many Ventures

like Reliance or Tata which are having their own rule in turning out the shape of Indian economy. These are always considered to be in the position of domination. Contrary, the new ventures or newborn babies in business cannot have position or the assets in front of these kinds of giant industries but they also do have the right to stick up in the competition and sell out theirproducts to the consumers.In such situation this particular section 4 comes into the picture and prevents that the persons who are already stronger in the market should not create any third entity by way of merger or amalgamation or acquisition which may be hazardous to the other small or mediocre industries. Because in market all have the equal rights to get established their own business and use mergers, amalgamations or acquisitions as one of the medium to get stronger but not the means to create Monopoly in the entire market.

On perusal of theseprovisions, it got clear that this particular act has refined the combinations anti-competitive agreements and abuse of dominant position which makes this Act fairer and more Constitutional about the application and giving an opportunity to all enterprises or persons in the market to survive as per their own calibre. It gives significance to the merit and healthy competition therefore it is the burden on the competition to balance healthy competition in the market and avoid adverse effecting practices in view of section 3 to 5 given under Competition Act 2002.

Role of the Competition Commission of India in regulating the Mergers and acquisitions

in view of implementing provisions under section3 to 5, the Competition Act, has provided and established Competition Commission of India under section 7 to 17. It provides establishment, its members, qualification of them, administration, appointment, resignation etc of the Competition Commission of India. Whereas from the section 18 onwards, this Act elaborate the powers and duties of Competition Commission of India, while regulating the combinations given under section 5 of the Act.On prima facie perusal of these provisions that is section 18 to 21, it appears that, it specifically creates or speaks about What the Competition Commission of India has to see at the first instance, what will be the combinationswhich will adversely affect in the market. For ascertaining the same, specific provision and procedure is provided under this Act, which provides financial threshold for the emergence of jurisdiction of the Competition Commission of India in any sort of combination this threshold is as follows:-

THRESHOLDS FOR FILING NOTICE				
		Assets		Turnover
Enterprise Level	India	More than INR 2500 crore	OR	More than INR 7500 crore
	Worldwide with India nexus	More than USD 1.25 billion With at least INR 1250 crore in India		More than USD 3.75 billion With at least INR 3750 crore in India
OR				
Group Level	India	More than INR 10000 crore	OR	More than INR 30000 crore
	Worldwide with India nexus	More than USD 5 billion With at least INR 1250 crore in India		More than USD 15 billion With at least INR 3750 crore in India

Providing notice under section of the competition act following fees makes to be paid by the enterprises-i. where the notice is filed in Form I, the fee payable shall be Rs. 20,00,000,ii. where the notice is filed in Form II, the fee payable shall be Rs. 65,00,000.

After getting notified about these kinds of combinations whatCompetition Commission of India does significant. The Competition Commission of India not only has powers to inquire under section 19 or to investigate under section 29 but also it has the power to make reference to the statutory authority to crosscheck this kind of combinations, whether they are adversely affecting on the market or not. The sections from 19 to 29 have given

various kinds of parameters on the basis of which the Competition Commission of India has to inquire upon or make reference upon or to investigate upon, but the fundamental of these all kind of investigation, inquiry or the reference is to see that, weather the purpose of the Competition Act 2002 is fully achieved or it getting defeated. In such kind of occasion appear that, Competition Commission of India has powers to impose penalties in view of section 43a to 46. so that adverse effect of these combinations on the market be prevented. The Competition Commission of Indiahas to take all the efforts to make healthy competition in the businessman of each cadre in the market. In view of contravention Competition Commission of India, can and had penalized many enterprises few of the penalties example imposed by the Competition Commission of India is as follows-

1. Penalty of ₹ 6,715 crore on 11 cement companies: CCI passed an order in August 2016 imposing a penalty of over ₹ 6,700 crore on 11 cement companies as well as their trade association Cement Manufacturers Association (CMA) for cartelisation. The companies that are penalised include ACC, Ambuja Cement, Binani Cement, Century Cement, Shree Cements,India Cements, JK Cements, Lafarge, Ramco, UltraTech and Jaiprakash Associates.CCI said the action of the cement companies and CMA was found to be detrimental to the interests of the consumers as well as the whole economy.According to CCI, the cement companies used the CMA platform and shared details relating to prices, capacity utilisation, production and dispatch and thereby restricted production and supplies in the market. It was also found that the companies were acting in “concert in fixing prices of cement" which contravenes competition norms.

2. Penalty of ₹ 2,554 crore on 14 car companies: CCI passed an order in August 2014 imposing a penalty of ₹ 2,554 crore on Maruti Suzuki India Ltd, the nation’s biggest car maker, and 13 other car makers for failing to sell spare parts in the open market, violating competition law. The other companies include Mahindra and Mahindra, Tata Motors, Toyota Motor, Honda Motor, Volkswagen, Fiat, Ford Motor India, General Motors, Nissan, Hindustan Motors, Mercedes and Skoda.The anti-trust regulator found that the companies, which were found to be dominant for their respective brands, abused their dominant position under section 4 of the Act and affected around 20 million crore car consumers.Car companies denied access to branded spare parts and diagnostic tools to independent repairers, hampering their ability to repair and maintain certain car models. The monopolistic control over the spare parts and diagnostic tools markets allowed these companies to charge arbitrary and high prices. The competition regulator, hence, directed the car companies to “cease and desist from indulging in conduct which has been found to be in contravention of the provisions of the Act".

3. Penalty of ₹ 1,773 crore on Coal India: CCI had imposed a ₹ 1,773 crore fine on Coal India Ltd (CIL) and three of its subsidiaries for misusing their monopoly to supply poor quality coal and fixing prices. In December 2013, CCI found CIL and its three units—Mahanadi Coalfields Ltd, Western Coalfields Ltd and South Eastern Coalfields Ltd—guilty of abusing their dominant positions for supplying non-coking coal and having unfair fuel supply contracts.The Competition Appellate Tribunal (Compat) in May 2016 quashed the decision of CCI to penalise CIL and its subsidiaries. Compat sent the case back to CCI to be heard again within two months.

4. Penalty of ₹ 630 crore on DLF: In 2011, CCI imposed a ₹ 630 crore penalty on DLF for abusing its dominant position with respect to three projects in Gurgaon.DLF was penalized by the competition regulator for allegedly abusing its dominant position by imposing “unfair and discriminatory" terms on its buyers through buyers’ agreements. CCI had imposed the fine on DLF for alleged unfair practices in the Belaire project in Gurgaon, which the company had challenged in the Supreme Court. Also, the Competition Appellate Tribunal had upheld the penalty of ₹ 630 crore. Subsequently, the Supreme Court asked DLF to deposit the penalty amount in tranches, pending the final order. DLF has finally deposited the amount of ₹ 630 crore with the SC.

5. Penalty of ₹ 420 crore on Hyundai: CCI passed an order in July 2015, levying a penalty of ₹ 420.26 crore on car manufacturer Hyundai Motor India Ltd for violating anti-trust laws in the supply of genuine spare parts and diagnostic tools. CCI also found Mahindra Reva Electric Vehicles Pvt. Ltd, a subsidiary of Mahindra and Mahindra Ltd, and Premier, promoted by Doshi Holding Pvt. Ltd, in violation of competition laws. While Hyundai was penalized 2% of its annual turnover in India for three years—2009-10, 2010-11 and 2011-12—Reva and Premier were exempted from penalties.The regulator held that the three companies had entered agreements that adversely affected market competition and abused their dominant position in the supply of spare parts which affected services of independent mechanics to compete with authorised service stations.

6. Penalty of ₹ 72.96 crore on Lupin: CCI passed an order in August 2016, imposing a penalty of ₹ 72.96 crore on Lupin, which had refused to supply drugs to Maruti & Co., a drug wholesaler in Karnataka, on the ground that the drugmaker did not have a no-objection certificate (NoC) from the Karnataka Chemists and Drugs

Association (KCDA). The regulator also fined KCDA ₹ 8.6 lakh for indulging in the anti-competitive practice of restricting supply of drugs to pharmaceutical companies in Karnataka. Maruti & Co., which filed the petition, had contended that KCDA barred pharmaceutical companies from appointing new stockists in Karnataka unless an NoC was obtained from KCDA. It alleged that Lupin, on this ground, refused to supply drugs to Maruti & Co.

The penalties shows that how the Competition Commission of India has taken role as regulatory body of combinations in the market. Government also has taken some steps to prevent implementation or application of the Competition Act. It has given exemption to some enterprises combinations from the application of the Competition Commission of India. It is as follows –

1. Amalgamation of Regional Rural Banks:On 10 August 2017, the Central Government granted exemption to amalgamation of 'Regional Rural Banks' as per section 23A(1) of the Regional Rural Banks Act, 1976, from the application of sections 5 and 6 of the Competition Act, for a period of 5 years from the date of notification in official gazette.

2. Reconstitution, transfer and amalgamation of nationalised banks:On 30 August 2017, the Central Government granted exemption to all cases of reconstitution, transfer and amalgamation of nationalized banks, under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, from the application of sections 5 and 6 of the Competition Act, for a period of 10 years from the date of notification in official gazette.

3. Banking Company in respect of which the Central Government has issued a notification under Section 45 of the Banking Regulation Act, 1949.A notification dated 11 March 2020 issued by the Central Government exempts a 'banking company' whose business has been suspended under section 45 of the Banking Regulation Act, 1949, from the application of sections 5 and 6 of the Competition Act, for a period of 5 years from the date of notification in official gazette.

4. Combinations involving Central Public Sector Enterprises in the oil & gas sectors:On 22 November 2017, the Central Government exempted all cases of combinations involving Central Public Sector Enterprises including their wholly or partly owned subsidiaries, operating in the Oil and Gas sectors, under the Petroleum Act, 1934 or under the Oilfields (Regulation and Development) Act, 1948, and rules made under these two laws, from the application of sections 5 and 6 of the Competition Act, for a period of 5 years from the date of notification in official gazette.

These entire factor of theCompetition Commission of India shows that, the Competition Act has at the first instance brought under the purview of it is the combination and given various fair and constitutional parameters to adjudicate these combinations and to avoid adversely affecting combination in the market. But the question arose that whether this particular Act itself is sufficient or has some lacunas or silent factors. In view of it the recent press release is significant. It is as follows-

"Competition Commission of India (CCI) will soon come out with a new set of merger regulations, giving effect to competition law amendments enacted last year, its chairperson Ravneet Kaur said on Monday. Kaur said CCI has been engaged in the last one year in preparing a regulatory framework under the Competition (Amendment) Act, 2023, which brought in global best practices for dealing with the emerging challenges to competition in the market. The new regulations issued include those relating to negotiated settlements with businesses on anti-competitive practices, regulating mergers and acquisitions based on the deal value and an expanded scheme on leniency meant to encourage cartels to come clean. The next in the pipeline is merger regulations. "We are now in the process of notifying the new merger control regulations," Kaur added.A person informed about the watchdog's work explained that the proposed regulations will clarify how to assess the value of a transaction for the purpose of deciding whether it requires CCI approval or not. The regulations will also explain how CCI will speed up merger regulation by cutting down the maximum allowed time for a decision on a transaction from 210 days to 150 days, a provision that was also introduced in the law last year, explained the person, who spoke on condition of anonymity. The regulations are expected after the model code of conduct is lifted after the polls as the government has to notify certain provisions of the amended law. As per amendments introduced to the competition law last year, CCI approval is needed for any transaction if the value of it is more than ₹2,000 crore, even if the deal does not otherwise meet the asset and sales threshold for merger regulations. The amendments also said CCI has to make a first impression of a deal within 30 days, failing which it will be deemed to be approved. Kaur also explained that the emergence of new-age markets has led to a revamp in competition laws around the world, as digital economy adds to the complexities. "In fact, the digital economy has

challenged traditional competition law frameworks worldwide. Countries and economic blocks have responded by either adapting domestic lows or introducing new regulations specifically targeting digital markets. There has been a marked increase in scrutiny of digital technology companies around the world," Kaur said.In line with these, the ministry of corporate affairs is now working on a Digital Competition Bill that would bring in a set of dos and don'ts for systemically important digital economy firms. Public consultation on a draft bill is over and inter-ministerial consultations will happen over the next few months before it is taken to parliament."

This press release clearly shows that, no doubt the Competition Commission of India is performing one of the significant authorities to regulate the combinations in the market in the form of mergers or takeover but certainly it needs modification as per the changes in the society.

Part D- Conclusion and Suggestions -

Further the researcher has found out few significant silent factors of this Act.These are as follows-

1.The entire Competition Act deals with the competition but it has nowhere defined what does **Competition** mean which is very much required in view of the application of this Act.

2.Further the Act also has not defined what does mean by **adversely affecting competition.** It completely makes the combination subjective and uncertain about whether they are adversely affecting or not. No doubt the Act has brought most of the parameter which are Constitutional and are based on the Natural Justice but certainly it's being the specific Act and the special Act, it would have been very substantial in defining the key terms.

3. researcher found that,**the agreement** is the foundation of combination. Whereas the term which has been referred under the definition of agreement is that, it not necessarily be legally enforceable. It is bit self-contradictorythat; at the one instance you created this law for specific purpose and it has not given any legally enforceability to the fundamental document of it. Further it has recognised oral agreements also. The competition commission of India is dealing with the crores of rupees which is in the market and which will decide the fate of the common man. Buthas given recognition to the oral agreement also which will be the ground of uncertainty in implementation or deciding the factor that the combinations are anti-competitive or not.

Thus, the researcher has found that, no doubt the Competition Act is one of the significant piece of legislation while regulating the mergers and acquisitions in the market but certainly it needs fundamental changes so that, it can achieve maximum object of the Act itself.

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