

Competition Act, 2002

Chapter 6 - Penalties

²[42. Contravention of orders of Commission.--

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

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

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

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

1. Substituted by the Competition (Amendment) Act, 2007 [Act No 39 of 2007]. Prior to substitution it read as:

"42. Contravention of orders of Commission.--

(1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

(2) The Commission may, while making an order under this Act, issue such directions to any person or authority, not inconsistent with this Act, as it thinks necessary or desirable, for the proper implementation or execution of the order, and any person who commits breach of, or fails to comply with, any obligation imposed on him under such direction, may be ordered by the Commission to be detained in civil prison for a term not exceeding one year unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs."

2. Effective date:20th May 2009- notified vide Ministry of Corporate Affairs Notification No S.O.1241(E) dated 15.05.2009.

Section 42A - Compensation in case of contravention of orders of Commission

¹[42A. Compensation in case of contravention of orders of Commission.--

Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under sections 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.]

1. Inserted by the Competition (Amendment) Act, 2007 [Act No 39 of 2007].

Section 43 - Penalty for failure to comply with directions of Commission and Director General

²[43. Penalty for failure to comply with directions of Commission and Director General.--

If any person fails to comply, without reasonable cause, with a direction given by --

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

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

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

1. Substituted by the Competition (Amendment) Act, 2007 [Act No 39 of 2007]. Prior to substitution it read as:

"43. Penalty for failure to comply with directions of Commission and Director General

If any person fails to comply with a direction given by--

(a) the Commission under sub-section (5) of section 36; or

(b) the Director General while exercising powers referred to in sub-section (2) of section 41, the Commission shall impose on such person a penalty of rupees one lakh for each day during which such failure continues."

2. Effective date:20th May 2009- notified vide Ministry of Corporate Affairs Notification No S.O.1241(E) dated 15.05.2009.

Section 43A - Power to impose penalty for non-furnishing of information on combinations

¹[43A. Power to impose penalty for non-furnishing of information on combinations.--

If any person or enterprise who fails to give notice to the Commission under sub-section (2) of section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one per cent, of the total turnover or the assets, whichever is higher, of such a combination.]

1. Inserted by the Competition (Amendment) Act, 2007 [Act No 39 of 2007].

Section 44 - Penalty for making false statement or omission to furnish material information

If any person, being a party to a combination,--

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

(b) omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission.

Section 45 - Penalty for offences in relation to furnishing of information

²¹[(1) Without prejudice to the provisions of section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information,--

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

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

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

such person shall be punishable with fine which may extend to rupees one crore as may be determined by the Commission.]

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

1. Substituted by the Competition (Amendment) Act, 2007 [Act No 39 of 2007]. Prior to substitution it read as:

"(1) Without prejudice to the provisions of section 44, if any person, who furnishes or is required to furnish under this Act

any particulars, documents or any information,--

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

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

(c) willfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, the Commission shall impose on such person a penalty which may extend to rupees ten lakhs."

2. Effective date:20th May 2009- notified vide Ministry of Corporate Affairs Notification No S.O.1241(E) dated 15.05.2009.

Section 46 - Power to impose lesser penalty

⁴[The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as it may deem fit, than leviable under this Act or the rules or the regulations:

¹[Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure:]

Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who ²[has] made the full, true and vital disclosures under this section:

³[Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to cooperate with the Commission till the completion of the proceedings before the Commission.]

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

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

(b) had given false evidence; or

(c) the disclosure made is not vital, and thereupon such producer, seller, distributor, trader or service provider may be tried for the offence with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.]

1. Substituted by the Competition (Amendment) Act, 2007 [Act No 39 of 2007]. Prior to substitution it read as:

"Provided that lesser penalty shall not be imposed by the Commission in cases where proceedings for the violation of any of the provisions of this Act or the rules or the regulations have been instituted or any investigation has been directed to be made under section 26 before making of such disclosure:"

2. Substituted by the Competition (Amendment) Act, 2007 [Act No 39 of 2007] for the word "first".

3. Inserted by the Competition (Amendment) Act, 2007 [Act No 39 of 2007].

4. Effective date:20th May 2009- notified vide Ministry of Corporate Affairs Notification No S.O.1241(E) dated 15.05.2009.

Section 47 - Crediting sums realised by way of penalties to Consolidated Fund of India

¹[All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.]

1. Effective date:20th May 2009- notified vide Ministry of Corporate Affairs Notification No S.O.1241(E) dated 15.05.2009.

Section 48 - Contravention by companies

¹[(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.]

1. Effective date:20th May 2009- notified vide Ministry of Corporate Affairs Notification No S.O.1241(E) dated 15.05.2009.
