



SMES AND APPLICATION OF COMPETITION LAW IN INDIA: AN ANALYSIS

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Abstract

SME production makes up 35–40% of India's GDP and is crucial for the development of the labour force, long-term growth, and the abolition of poverty. This industry is not very organised, which leaves it vulnerable to changes in the outside business environment. Conversely, cooperative agreements among SMEs assist them to compete with larger enterprises. Smaller SMEs are more vulnerable to anti-competitive behaviour by larger organisations, such as the abuse of a dominant position. The 2002 Competition Act covers anti-competitive agreements and the abusive exploitation of a dominating position, among other things. Under the Indian Competition Act, size and type are irrelevant. This study looks at recent antitrust lawsuits that affect India's small and medium-sized companies.

Keyword- SMEs, Competition Law, anti-competitive, large corporations

1.1 Introduction

It was necessary to replace the phrase "small scale industries" due to the expansion of India's service sector, which accounts for 63% of the country's GDP. With the passage of the Micro, Small and Medium (MSMED) Act of 2006, the term "SME" was formally defined to encompass businesses in the service sector in addition to those in the manufacturing sector (Small and Medium Scales Enterprises).

Any business, corporation, or other entity engaged in the production of goods for any of the industries specified in the first schedule of the Industries (Development and regulation) Act of 1951 is considered an "enterprise" for the purposes of this Act. The Central Government will formally notify the public of the entity's status as a "society," "cooperative," "partnership," "business," or "undertaking," depending on the preferred nomenclature. As per a recent revision to the Micro, Small, and Medium-Sized Enterprises Development Act of 2006, the following qualify as MSMEs in the manufacturing sector:

Important elements in the RBI Credit Policy 2005-2006 urge commercial banks to offer a platform for enhanced communication between their branches and SIDBI. The announcement highlighted a strategy for a strategic alliance that would address a number of concerns, including boosting co-financing with commercial bank branches and renaming the current SIDBI branches as Small Enterprise Financial Centers (SEFCs).

Micro enterprise: Where the investment in plant and machinery does not exceed Rs. 25 lacs.

A small enterprise: where the investment in plant and machinery is more than Rs. 25 lacs but does not exceed Rs. 25 crores.

Medium Enterprise: where the investment in plant and machinery is more than Rs. 5 crores but does not exceed Rs. 10 crores.

When it comes to businesses that offer or perform services. This contained:

1. Small road and transportation businesses with a maximum fleet size of ten vehicles.
2. Small businesses with original cost prices for business-related equipment that do not exceed Rs. 20 lacs
3. Professionals and self-employed people with borrowing limits under Rs. 10 lacs, of which no more than Rs. 2 lacs should be allocated for working capital needs.
4. Medical professionals with appropriate training who opening practises in semi-urban and rural locations are should not borrow more than Rs. 15 lacs, with an additional Rs. 3 lacs set aside for operating capital needs.

Definition of SMEs in service sector is as follows:

1. A micro enterprise is a business where the equipment investment is less than Rs. 10 lacs.
2. A small business is one where the equipment investment is greater than Rs. 10 lac but less than Rs. 2 crores.
3. "A medium-sized business is one that invests more than Rs. 2 crores in equipment but not more than Rs. 5 crores."

The price of industrial safety equipment, research and development, pollution control measures, or any other specifically listed things shouldn't be taken into account when determining investment in plant and machinery.¹

1.1.1 Growth of SMEs in India

Large-scale corporations became more crucial to India's industrialization after it gained independence. While advocating for the growth of small scale enterprises, Mahatma Gandhi focused more on the development of rural areas through craft and cottage industries, which would enable Indian villages to become self-sufficient and address the issue of migration.

The Second Five Year Plan promoted small scale industry (SSI) as a source of consumer products for those working in the large-scale sector, and Prof. Mahalanobis is to blame for this. For a very long time, small firms relied on antiquated technologies and faced little competition.

To aid in the development of rural and underdeveloped areas, the Industrial Policy of 1985 placed a strong emphasis on small-scale and ancillary businesses. It made slight adjustments, such as raising the investment ceilings for small scale industries (SSI) and ancillaries to Rs. 3.5 million and Rs. 4.5 million, respectively.

The SME sector underwent a dramatic transformation between 1990 and 2007 for a variety of reasons. When the Liberalization process was started in 1991, India's protected businesses were up against fierce competition. It was followed by the World Trade Organization's directives for policy implementation to begin in 1995.

¹Reena Apurva, "Study of corporate social responsibility practiced by SMEs in India" (2010) available at-<https://shodhganga.inflibnet.ac.in/handle/10603/110037>

When domestic economic policies had to be altered to keep up with the process of liberalisation and globalisation, the Indian market underwent its final transformation. All of these contribute to the country's tough competition, which forces SMEs to adapt to the country's dynamic and ever-changing business climate. The influx of FDI into India increased between 1991 and 2005, affecting all industries. As a result, the cost of transportation and communication significantly fell. For the domestic SME sector, this made the influx of commodities, services, knowledge, and capital quite simple. Due to the low cost of labour, which maintains production prices relatively competitive among other industrialised nations of the world, competitiveness in the country has expanded along with the influx of FDI, and it is possible that more and more outsourcing jobs will be sent to India. In order to undermine the protection given to the SME sector from participating in the open market until 1990, the government steadily decreased the number of goods kept as protected for SMEs, from 842 in 1991 to 675 in 2003. The list was further cut to 358 items in 1999. To improve their efforts at globalisation, reservations for items were gradually replaced with promotional support. SMEs who have a solid technological foundation, a global perspective on business, a competitive spirit, and the willingness to restructure themselves will be able to overcome the current obstacles and emerge victorious so they can contribute to the Indian economy on their own.²

1.1.2 Competition Act 2002

In order to "avoid practises having a detrimental effect on competition, to promote and preserve competition in markets, to defend the interests of consumers, and to ensure freedom of trade carried on by other players in markets," the Competition Act of 2002 states four key objectives.

Section 3 of the Act forbids any horizontal or vertical anticompetitive arrangements. Section 3 of the Act states that "No agreement with regards to the production, deliver, dispersion, collection, acquisition or control of products or the provision of services shall be entered into by any enterprise or association of enterprises or by any person or association of persons that causes or is likely to cause an appreciable adverse effect on competition within India" (1). Section 3(3) in particular discusses horizontal agreements. Any agreement made "between enterprises or associations of enterprises or persons or associations of persons or between any individual and an enterprise, practise made by any organisation of industries or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, or decision made by any such association or person," is stated in the clause, which –

- a. directly or indirectly determines purchase of 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.

²Kitimaporn Choochote, "An analysis of knowledge management process for SMEs in developing countries a case study of SMEs in India" (2010) available at- <https://shodhganga.inflibnet.ac.in/handle/10603/92470>

Once it has been determined that an agreement of any kind breached Section 3, it is the responsibility of the alleged violators to show that the agreement had no discernible adverse effect on competition (3).

To put it simply, cartels are groups of businesses that work together to reduce market competition by doing things like maintaining artificially high pricing, limiting supply, or limiting access to the market. The term "cartel" is defined as follows under Section 2(c) of the Act: Inquiries may begin independently, as a consequence of information from an informant, or as the result of a referral by the government or a statutory agency, according to Section 19(1). Section 19 states that the CCI must evaluate any anti-competitive agreements while taking into account a number of factors, including cartels (3). The steps that must be taken during such a search are laid out in Section 26.

Associations of companies in the same trade or industry typically provide a productive and reliable venue for commercial communication and the application of antitrust rules. Although forming an industry association is not illegal in and of itself, companies may nonetheless face legal implications if the association is used to impose cartel regulations on its members. Trade organisations are prone to anti-competitive behaviour due to their very nature, despite having many pro-competitive effects. Under the Competition Act of 2002, trade groups are given the same consideration as corporations when it comes to anti-competitive behaviour. If all of an association's members come from the same market sector, that association is more likely to break antitrust rules. Associations provide their members with many opportunities to socialise and discuss pertinent topics; during these get-togethers, casual discussions about the state of the market and prices might lead to price fixing and supply restrictions. There are instances where organisations knowingly abuse their authority and coerce their members into joining cartels.³

The CCI's opposition to trade associations across all sectors demonstrates how heavily it relies on direct and indirect evidence, such as statements made by stakeholders, minutes of trade association meetings, circulars released by members, and resolutions passed in accordance with the relevant trade association's charter documents. These trade associations frequently expressly mandated anti-competitive behaviour in their charter agreements. Despite the association's charter articles making no mention of such restrictions, circumstantial evidence showed that the members were frequently engaging in boycott and market restriction acts. An analysis of trends shows that the standard of the data utilised in CCI practise has remained largely stable throughout time.

Section 4 of the Act forbids ownership of a dominant position but does not forbid abuse of a dominant position in the market. Abuse of dominance can take the form of predatory pricing, margin compression, or price discrimination, for instance. But abuse cannot happen unless power has already been established. Businesses who engage in the aforementioned actions but do not control a dominating portion of the market are immune from the application of competition laws. It is extremely unlikely that SMEs will be found to have abused their dominant position given how uncommon it is for a SME to have total control over the relevant market. It is possible, nonetheless, for certain SMEs to band together, grab power, and then abuse their advantage.

³Viswanath Pingali, "Competition law in India" (2016) available at- https://www.researchgate.net/publication/304184152_Competition_Law_in_India_Perspectives

One of the main features of the system is that India's competition legislation is size and type neutral, meaning that there are no explicit prohibitions protecting particular types or sizes of enterprises. All businesses are treated similarly in the eyes of the law, unlike other jurisdictions where SMEs or other types of businesses have specific (albeit limited) protection under the appropriate competition rules.

In the case, *M/s Shivam Enterprises v. Kiratpur Sahib Truck Operators*, The opposing party assumed a position of control and forbade anybody besides its members from providing freight transport services in the area, according to Cooperative Transport Society Limited and Kiratpur Sahib Truck Operators Members of Cooperative Transport Society Limited. Additionally, the charges established were inflexible and unchangeable. In addition, its members have obstructively denied the market by forcibly preventing other truck owners from fulfilling their obligations. The CCI determined that the opposing party had acted in an anti-competitive manner and misused its dominant position in light of these findings (sections 3 and 4), and it assessed each party a fine based on their combined average annual revenue for the previous three financial years.

In the case of *Kerala Cine Exhibitor's Association (Informant) vs. Kerala Film Exhibitors Federation and Others*. The informant was a group of 171 theatre owners in Kerala, all of whose members held permits to operate theatres and show movies. Due to anti-competitive behaviour by the Kerala Film Exhibitors Federation, Film Distributors Association (Kerala), and Kerala Film Producers Association, the informant's member theatres were not receiving new releases. The three got together to form a cartel and forbade Kerala cine exhibitors from showing new movies in their theatres. This behaviour also prevented new movies from being seen by moviegoers in remote places where only the Informant members have theatres. The commission determined that the associations had violated their legal bounds by engaging in collective decision-making to restrict and control the screening of movies in theatres other than those owned by the opposition's members and that there was no valid reason for this behaviour⁴.

1.2 Problem of the statement

1. There is no exact information available regarding the SMEs and application of competition law in India.
2. Many Problems faced by Implementation of Competition Law in India.
3. Lack of new information related to SMEs and implementation of competition law in India.
4. New information about the advantages and disadvantages of SMEs and implementation of competition law in India.
5. There have been no new studies for a long time regarding SMEs and the implementation of competition law in India.

⁴Mahadeb Mukhopadhyay, "Effect of Competition Law on SMEs in India" (2021) available at- <https://www.ijlmh.com/wp-content/uploads/Effect-of-Competition-Law-on-SMEs-in-India.pdf>

1.3 Objectives of the study

Considering the need for research, the objectives for the proposed research are identified as below:

1. To examine management practices of SMEs and Competition Law in India
2. To determine impact of Anti-Competitive Agreements as Per the Competition Act of 2000 on SMEs.

2.1 Literature Review

Girish Kumar (2022)⁵the gross domestic product of rising nations like India is significantly impacted by small and medium-sized businesses (SMEs), both directly and indirectly. Adopting Industry 4.0 in MSMEs can lead to the development of a financially and socially stable intelligent manufacturing system. The study's goal is to catalogue and categorise the most pressing obstacles that Indian SMEs face when trying to implement Industry 4.0. Following a review of the available literature and some heated discussion amongst experts, a questionnaire was distributed to the upper echelons of small and medium sized enterprises (SMEs) and specialists in production, information technology, business, and other relevant sectors. To rank the difficulties, we employ techniques from Multi-Criteria Decision Making (MCDM) like TOPSIS, VIKOR, and PROMETHEE. Fear of job loss, a lack of IT skills, a poor IT infrastructure, and other similar problems were identified to be the primary obstacles preventing Indian SMEs from embracing Industry4.0. Managers can assess risks related to manufacturing, supply chains, and company operations using the ranking of each barrier as a reference to help them create risk mitigation measures. Industrial businesses might find this report useful.

Nibedita M (2021)⁶SMEs make up a considerably larger portion of the economy than any other size of business, and as a result, they are under much more stress in India's rising economy from competition. The text that follows attempts to define SMEs in the first section and provide readers a quick overview of the scope of Indian competition legislation. The second section explains how the Competition Act of 2000's rules and programmes are used to support SMEs. The final portion will discuss the impact of the 2000 Competition Act on SMEs and anti-competitive agreements. The role of the federal, state, and local governments in addition to the CCI will be covered in the fourth section. The paper's conclusion, which reflects my own perspective on how the Competition Act of 2000 is helping SMEs, is covered in the fifth and final section of the essay. This section summarizes the entire analysis and research and includes all conclusions. The paper compares the regulations outlined in the Act of 2000 with other competition laws from other countries, such as those of the United States and the European Union. It also covers a number of examples and case studies pertaining to competition in India.

⁵ Girish Kumar, "Analyzing Industry 4.0 Implementation Barriers in Indian SMEs" (2022) available at- <https://www.worldscientific.com/doi/10.1142/S2424862221500020>

⁶ Nibedita M, "Effect of Competition Law on SMEs in India" (2021) available at- <https://www.ijlmh.com/wp-content/uploads/Effect-of-Competition-Law-on-SMEs-in-India.pdf>

Dipak Kumar Das (2021)⁷Micro, Small, and Medium-Sized Enterprises (MSMEs) account for around 45% of India's industrial output, about 45% of exports, and about 30% of its GDP (GDP). They might properly be called the "Backbone of the Indian economy." MSMEs have made a substantial contribution to the growth of the Indian economy and to the socioeconomic development of India. It aims to create employment opportunities and enhance the rural, underdeveloped sections of the nation.

Bagale et.al, (2021)⁸Recent research indicates that small and medium-sized enterprises (SMEs) can greatly benefit from adopting digital transformation in order to boost their productivity and efficiency (SME). Thankfully, there is only a shred of evidence suggesting that using digitalization to lessen the impact of catastrophic disasters like COVID-19 is counterproductive. According to the study, the number of SMEs has increased dramatically. Both the process and the outcome are automated in this approach, all thanks to the growth of digital technology (DT), which increases demand and enhances quality. The SME sector in India still has a lot of room for the adoption of new digital technology given the enormous potential for higher expansion. The primary challenges that SMEs in India face and their contribution to GDP are covered in this essay. A brief summary of how SMEs use CRM software and electronic payment systems is also provided in the research.

Palakh Jain et.al. (2020)⁹Small and medium-sized firms (SMEs), which make up 35–40% of India's GDP, are essential for the development of the economy, the eradication of poverty, and the creation of new employment opportunities. Considering how little this sector organised is, it is susceptible to changes in the broader economic environment. Comparatively, SME's are able to compete with their larger counterparts because of agreements made between themselves. Anti-competitive behaviour, such as the abuse of a strong position, is especially harmful to smaller, more vulnerable SMEs. Abuse of a dominating position and anti-competitive agreements are two of the many issues that were addressed by the Competition Act of 2002. The Indian Competition Act makes no distinction between large and small businesses. This research looks into whether or not small and medium-sized enterprises (SMEs) engage in anti-competitive behaviour. This research analyses recent antitrust cases involving small and medium-sized enterprises (SMEs) in India, and from those cases, a typology of anticompetitive behaviour, abuse of dominance strategies used by large firms against SMEs, and anticompetitive behaviour that SMEs may engage in is constructed.

Ravinder Kumar et.al. (2020)¹⁰There is increasing demand on companies of all sizes to adopt more sustainable and socially responsible production methods in the wake of the rise of Industry 4.0 and the circular economy. Some have speculated that as more companies implement industry 4.0 technologies, we will see a rise in the proportion of those that place a premium on CSR and environmental protection. While there has been a great deal of study into how giant corporations may put Industry 4.0 to use, far less has been done to examine how small and medium-sized businesses (SMEs) could use the same strategies to promote

⁷Dipak Kumar Das, "Role of Small, and Medium Enterprises (SMEs) in Economic Development of India" (2021) available at- <https://www.ijmre.com/publication/IJMRE-V1N9AI99.pdf>

⁸Bagale et al, "Small and medium-sized enterprises' contribution in digital technology" (2021) available at- <https://link.springer.com/article/10.1007/s10479-021-04235-5>

⁹Palakh Jain, "Msmes And Competition Law In India: Victims Or Perpetrators" (2020) available at- https://reviewsep.com/wp-content/uploads/2020/03/2_ALLAMRAJU-Arranged.pdf

¹⁰Ravinder Kumar et.al, "Application of industry 4.0 technologies in SMEs for ethical and sustainable operations: Analysis of challenges" (2020) available at- <https://www.sciencedirect.com/science/article/pii/S0959652620341081?via%3Dihub#!>

socially and environmentally conscientious corporate operations. Small and medium-sized enterprises (SMEs) have a hard time implementing the technologies of Industry 4.0 because of a wide variety of resource and capacity limits. When developing countries like India are taken into account, the situation becomes much more dire. This information was compiled via a survey sent to business leaders and academics. The collected data has been analysed using the DEMATEL method to determine the extent of influence and interaction between issues. Using this technique, information can be reorganised into more intuitive causal chains. Results from the DEMATEL process are verified by a sensitivity analysis. The authors state that the fundamental issue is the lack of interest in I4.0 solutions from both partners and customers. The overwhelming fear that I4.0 technology will fail is fueling competitors. The findings of this research will be useful to small and medium-sized enterprises (SMEs) as they work to implement Industry 4.0 technology in their operations in order to promote more ethical and ecologically responsible business practises.

Navneet Sharma et.al, (2017)¹¹ Cartels put customers at risk by unfairly increasing prices and unduly restricting supply, rendering some items and services unaffordable to some and unreasonably expensive to others. Agreements that have or are expected to have a Considerable Diminishing Effect on Competition in the production, distribution, storage, procurement, or control of commodities or the provision of services are prohibited under Section 3(3) of the Indian Competition Act (AAEC). Small and medium-sized enterprises frequently form collaboration agreements with one another to assure their survival and to solve structural challenges. Although cartels as a whole are illegal, those whose main goal is to reduce competition in the market are exempt. In this study, we examine the interplay between SMEs, the current antitrust procedures affecting SMEs in India, and the requirement of SME-specific lobbying on competition concerns.

Caroline Nicholas (2017)¹² A well-known illustration of how international economic law hinders governments' ability to enact domestic legislation in support of small and medium-sized businesses is the Walmart/Massmart merger and the related actions before South African competition authorities and the legal system (SMEs). The takeover's opponents pointed to the "public interest" clauses of the South African Competition Act, which specifically demand consideration of SME concerns, to claim that the merger would harm South African SMEs. The merging parties argued that doing so would go against what the nation was required to do under international law. This article examines the extent to which international investment law and World Trade Organization (WTO) regulations restrict national competition authorities' ability to forbid foreign takeovers because of concerns for SMEs or to set SME-friendly performance standards as a requirement for merger clearance. By utilising the pairing of Walmart and Massmart as an example, it demonstrates this.

Anshul Pachouri (2016)¹³ the competitiveness of any nation's industries and businesses is greatly influenced by innovation. A newfound interest in understanding innovation in developing economies has emerged, nevertheless, with the growth of emerging economies like India. Innovation often takes place in industrialised

¹¹Navneet Sharma et.al, "Do MSMEs Engage in Cartels? A Brief Anti-trust Perspective from India" (2017) available at <https://journals.du.ac.in/humsoc/pdf/4%20Article%2051-69.pdf>

¹²Caroline Nicholas, "SME Participation in Government Procurement Markets" (2017) available at <https://academic.oup.com/book/27720/chapter-abstract/197888596?redirectedFrom=fulltext>

¹³Anshul Pachouri, "Barriers to Innovation in Indian Small and Medium-Sized Enterprises" (2016) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2838109

countries. The current situation of innovation in India's small and medium-sized businesses will be examined and presented in this essay (SMEs). The study's objective is to highlight the considerable obstacles that SMEs must overcome in order to innovate within the constraints of current government regulations. India, a developing country, faces specific constraints and conditions that limit the ability of SMEs working there to innovate. Many of these issues are caused by governmental regulations, financial constraints, a lack of qualified research and development (R&D) staff, weak ties between institutions and businesses, among other things. The foundation for governmental policy and other components that encourage innovation among SMEs in India are also covered in the research. As policy recommendations to the government, it presents the main findings and suggestions while taking into account the significant opportunities and difficulties identified in the study.

Abraham Osei et.al, (2016)¹⁴ Due to the crucial role they play in promoting wealth, growth, and innovation, small and medium-sized firms (SMEs) are still hailed as many countries' solution to their economic problems. Sadly, SMEs face significant challenges when trying to grow, including difficulties selling their products due to underqualified marketing staff, a lack of funding for marketing research, problems expanding internationally, and problems travelling to trade shows, among other problems. Because leaving most SMEs to deal with these difficulties on their own often results in a high rate of demise and poor development rate, the government and other multi-donor organisations support these SMEs in the areas of financing, market, and managerial capacity building, among other things. This study assesses the advantages of government support in the form of marketing assistance for a sample of selected retail SMEs in Ghana's ten regional capitals (staff training, access to overseas markets, trade shows and exhibits). According to findings from a firm data report, assistance for SMEs' participation in trade shows and exhibits had the most positive impact on their growth, followed by assistance for SMEs' access to the global market and assistance for SMEs' marketing staff training.

Ngui Thomas Katua (2014)¹⁵ the SME sector is largely regarded as the global catalyst for economic expansion and the fight against poverty. However, the definition of a SME has remained vary between nations and to various industries within a single nation. This article looks at how SMEs are defined in a few different nations. It goes into more detail about how SMEs contribute to economic growth and job creation in the chosen nations. The essay also briefly discusses the difficulties SMEs face and suggests some solutions to those problems.

Rajeshwar S Kadadevaramath (2014)¹⁶ This study looks into the factors that affect small and Medium-sized Enterprises' (SME) adoption of IT, lists the advantages that SMEs gain from implementing popular business applications, and comes up with a potential framework or method for SME IT adoption enhancement. It also makes suggestions on how to use analytics for business growth. Although SMEs in India are the primary focus of this work, the literature study also acknowledges and takes into account the information that helped

¹⁴Abraham Osei et.al, "The Impact of Institutional Support in SMEs Marketing, and Growth" (2016) available at-<https://www.scirp.org/journal/paperinformation.aspx?paperid=67927>

¹⁵Ngui Thomas Katua, "The Role of SMEs in Employment Creation and Economic Growth in Selected Countries" (2014) available at- <https://www.ijern.com/journal/2014/December-2014/39.pdf>

¹⁶Rajeshwar S Kadadevaramath, "A Study on Implementation of IT Tools in SME'S in India" (2014) available at-<https://www.hilarispublisher.com/open-access/a-study-on-implementation-of-it-tools-in-smes-in-india-2169-0316.1000135.pdf>

or encouraged SMEs in other nations to adopt IT to maintain their competitiveness and increase efficiency, which is also relevant in the Indian context.

3.1 Research Methodology

Qualitative research method will be used in the study. Since the overall objective of the present study is to examine management practices of SMEs and Competition Law in India. The research methodology has been designed to serve this main objective of the study. The material for the study will be collected from various secondary sources including relevant statutes, commentaries, texts, books, law journals, magazines, newspaper magazines, web sources etc. The major part of this research will be analytical, involving the application of pure and applied research to understand the nature and concepts and underlying problems.

4.1 Anti-Competitive Agreements as Per the Competition Act of 2000 and Its Impact on Smes

The country of India relies heavily on its small and medium-sized businesses, which account for 35-40% of the country's GDP (SMEs). They contribute significantly to economic growth, job creation, and poverty reduction, all of which are essential to a healthy and prosperous economy. Small and medium-sized enterprises (SMEs) contribute to reducing the outmigration of people from rural areas to cities by creating jobs and fostering the development of original ideas among locals. The tiny size of SMEs has both advantages and disadvantages.

The term "SMEs" is used in India to describe investments made in unique machinery and equipment for the manufacturing and service sectors, frequently without regard to the kind or type of business they are engaged in. An MSME is "an enterprise involved in the manufacture or production of items related to any industry mentioned in the First Schedule to the Industries (Development and Regulation) Act, 1951," according to the MSMED Act of 2006.

- a) A microbusiness, where the total capital expenditure on machinery and equipment is less than Rs. 25 lakh;
- b) A small company investing less than five crore rupees in plant and equipment, but more than 25 lakh rupees; or
- c) A medium-sized company with equipment investments of at least five crore rupees but not more than ten crore rupees.

However, our Competition Act from 2002 does not take into account things like a company's size, income, or number of employees. The final result must be undesirable and counter to sound business practise. As a result, we don't just focus on mega-corporations when conducting our research. When businesses engage in conduct that harms competition, they also fall under the purview of the Act.

As per the 'Competition Act of India', 'anti-competitive agreements' in India can be of the following typologies

1. Horizontal Agreement [Section- 3(3)] – Companies in the same industry, whether they're manufacturers, wholesalers, distributors, or retailers, can establish horizontal agreements with one another. Because of the defeatist tone of these pacts, they dampen competition. The four types of horizontal agreements are as follows;

- a. Fixation of price
- b. Production control/ output control
- c. Market sharing
- d. Bid rigging.

I want to be very clear that, while horizontal agreements are not inherently illegal, there is a good likelihood that their use may lead to legal issues before I give an example of how SMEs engage in and enter into them. Assume that B, C, and D Pvt Ltd are additional regional SME manufacturers in addition to SME A Pvt Ltd, which manufactures Ikkat sarees on a handloom. A horizontal agreement would result if A, B, C, and D agreed to set prices or control output. Even though there is a danger that these agreements could develop into cartels, they must be outlawed. Cooperation is only acceptable when it advances a certain objective, such as training, the efficient use of resources, etc.

2. Vertical Agreement [Section-3(4)] - Vertical agreements are contracts between companies that conduct business in different business sectors, such as those between manufacturers and wholesalers, etc.

When it comes to ensuring that competition remains healthy in the marketplace, businesses must adhere to the guidelines set forth in Section 4 of the Competition Act. The list supplied in Section 19(4) of the Act should be used to determine whether or not an abuse of dominance exists in a certain market. Keep in mind that the Act prohibits only absolute supremacy, not mere control.

There are times when SMEs must enter into partnership agreements in order to remain in business. Agreements between SMEs may occasionally counterbalance the economies of scale that a large company would experience. Regarding the partnerships between these SMEs, there are two schools of thought. Proponents of such agreements argue that they help sustain and grow a country's economy and competitive landscape by increasing the output of small and medium-sized enterprises (SMEs). Some claim that if they aid in the improvement of competitive structures, they may even be seen favourably from the standpoint of competition policy. The very nature of the partnership agreement frequently enables SMEs to compete with large corporations. SME agreements may therefore be justified on the grounds that SMEs boost market competitiveness. Cooperation is criticised for stifling free entrepreneurship.

Since anti-competitive behaviour typically leads in reduced consumer choice and price hikes, it impacts all income levels, but the poor and middle class particularly. The negative effects of these cartels are further made worse in developing nations like India, where the bulk of the population belongs to the lower middle class or the poor, and where they have an impact on basic products and services needed for daily survival. The market activity of small businesses as contrasted to that of larger enterprises may always foster healthy competition.

Cartels have a detrimental effect on SMES since they are unable to enter cartelized marketplaces, expand their enterprises, or even keep their already established small firms in the market. For instance, cartelists may try to make it harder for SMEs to enter a new market or they may rely more on them for the inputs needed to produce future output.¹⁷

5.1 Conclusion

In order to comprehend and determine whether SMEs are just victims of anti-competitive behaviour as defined by the Competition Act, 2002, or whether they are also perpetrators, this study reviewed current occurrences of CCI involving SMEs under sections 3 and 4. The cases indisputably show that SMEs are vulnerable because of their modest size. The study discovers that SMEs are compelled to form trade organisations as a result of their small size, which has functioned as a focal point and encouraged cartelization in India. A typical business strategy used by SMEs to ensure their survival, in addition to alliances, is bid manipulation or bid rotation. Recent CCI orders and cases serve as proof of this.

The majority of trade associations and SMEs are unaware that the long-standing business practises that have become commonplace to them are illegal because India's anti-trust laws are still in their infancy. The expanding collection of case law will help to change associations' perceptions and increase compliance in the future, along with the CCI's increased emphasis on outreach programmes.

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