Approaching the CCI

Why in news?

The Competition Commission of India's (CCI's) order has dispelled the ambiguity over who can approach it.

What is the ambiguity?

- There was an ambiguity about who can approach the CCI against anti-competitive practice by an enterprise that breaches the Competition Act.
- This issue has often been raised in debates.
- The accused parties, in their defence, use this as a preliminary ground for dismissal of the case at the very threshold.
- The Commission has not accepted this defence.

What did the NCLAT rule?

- The National Company Law Appellate Tribunal (NCLAT) made a ruling in the appeal case of Samir Agarwal v. CCI.
- It ruled that, to have the locus standi to file information before the CCI, a person must be one who has suffered an invasion of their legal rights as a consumer.

What is the concern that the NCLAT express?

- It said that any other interpretation would make room for people to rake issues of anti-competitive agreements or abuse of dominant position targeting some enterprises with oblique motives.
- The restrictive ruling of the NCLAT has dismayed many students and experts of competition law.
- It amounted to severe circumscribing the opportunities to unravel alleged violations of the Competition Act.

What is the objective of the Competition Act?

- The objective of the Competition Act is to provide for the establishment of a Commission to prevent practices having bad effect on competition.
- It aims to promote and sustain competition in markets.
- It also wants to protect the interests of consumers.

- It aims to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith.
- In pursuit of this objective, the Act duly empowers the Commission to inquire into and penalise such practices.

Why competition should be maintained?

- Competition is sought to be maintained for its considerable benefits for consumers and for the economy on the whole.
- Countries across the world have discarded state-directed policies and monopolies in favour of market-contest.
- Competition offers choice and freedom to consumers, lowers the prices, incentivises innovation and enhances efficiencies of various kinds.
- Most countries have also enacted competition/anti-trust laws to punish practices that suppress competition.

What did the CCI clarify in its recent order?

- The CCI recently, in an order in Harshita Chawla vs Whatsapp and Facebook, clarified the legal position in respect of locus standi.
- The CCI's order asserted the point that violations of the Act are offences in rem and not in personam.
- [In rem - Applies to "all the world"
- In personam - Meaning "against a particular person"]
- The CCI said that the proceedings before it are inquisitorial in nature.
- It said that the locus of the informant is not as relevant in deciding whether the case filed before the CCI should be entertained or not.
- If the matter reported to the CCI involves anti-competitive issues falling within the ambit of the Act, the CCI can proceed with the matter.
- The CCI is entitled to proceed suo motu or on any reference being made by the Governments or any Statutory Authority.

What are CCI's amendments?

- The Commission's role as an overarching market regulator also finds its foundational footing in the amendments.
- It amended the provisions of Section 19 (1) (a) by **substituting the words** "receipt of a complaint" with "receipt of any information".
- This amendment reflected the legislative intention of emphasising the inquisitorial nature of the proceedings of the Commission.
- Further, there are several other amendments, as also the other provisions of the Act, which reverberate this inquisitorial scheme.
- This approach is evident from the powers available to the CCI.

- It can direct investigation and hold inquiries against entities or persons who are suspected to be involved in an anti-competitive conduct.

What is the conclusion?

- The CCI is more concerned with the facts and allegations highlighted in the information rather than the locus of the person who provided it.
- Given the order of the CCI, no informant requires a locus to approach the CCI, this issue is conclusively settled.
- Now, the parties will not be able to stymie an inquiry on this ground.

Source: Financial Express

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