

CHAPTER - II

ORGANISATIONAL SET UP AND FUNCTIONS

Organisational Set-up

2.1.1 The Ministry has a three-tier organisational set-up, namely, the Secretariat at New Delhi, the Regional Directorates at Mumbai, Kolkata, Chennai and NOIDA and the office of Registrars of Companies in States and Union Territories, and Official Liquidators attached to the High Courts functioning in the country. The set-up at the Headquarters includes the Company Law Board headed by a Chairman with Principal Bench at New Delhi and an additional Principal Bench for Southern Region at Chennai. Four Regional Benches of the Board are located at New Delhi, Mumbai, Kolkata and Chennai. The organisation at the Headquarters also includes two Directors of Inspection and Investigation with a complement of staff, an Economic Adviser for Research and Statistics and other officials providing expertise on legal, accounting, economic and statistical matters. The list of names and telephone numbers of the Minister and officials of the Ministry is given at **Annexure-I**.

2.1.2 The four Regional Directors, who are in-charge of the respective regions, comprising a number of States and Union Territories, inter-alia, supervise the working of the Offices of Registrars of Companies and the Official Liquidators working in their regions. They also maintain liaison with the respective State Governments and the Central Government in matters relating to the administration of the Companies Act, 1956. Certain powers of the Central Government under the Companies Act, 1956 have been delegated to the Regional Directors to be exercised by them within their respective regions. They have also been declared as Heads of the Department and have accordingly been entrusted with appropriate administrative and financial powers. An Inspection Unit is also attached to the office of every Regional Director

for carrying out inspection of the books of accounts of companies under section 209A of the Companies Act.

2.1.3 Registrars of Companies appointed under Section 609 of the Companies Act, covering various States and Union Territories, are vested with the primary duty of registering companies floated in the respective States and the Union Territories and ensuring that such companies comply with the statutory requirements under the Act. Their offices function as registry of records relating to the companies registered with them. The list of Regional Directors and Registrar of Companies, along with their addresses, is given at **Annexure-II**. The organisational chart of the Ministry is given in **Annexure –III**, and the Major Functionaries in **Annexure IV**.

2.1.4 The Official Liquidators are officers appointed by the Central Government under Section 448 of the Companies Act and are attached to various High Courts. The Official Liquidators are under the administrative charge of the respective Regional Directors who supervise their functioning on behalf of the Central Government. In winding up of the affairs of the companies, however, Official Liquidators act under the directions of the High Courts.

Company Law Board

2.2 The Central Government constituted an independent Company Law Board vide Notification S.I.NO. 364 dated the 31st May, 1991. The Board is a quasi-judicial body which exercises some of the judicial and quasi-judicial powers which were earlier being exercised by the High Court or the Central Government. The Board is not subject to the control of the Central Government and has the powers to regulate its own procedures and act in its own discretion. The Board has its Principal Bench at New Delhi, an additional Principal Bench for southern States at Chennai and four Regional Benches at Delhi, Mumbai, Kolkata and Chennai.

The Monopolies and Restrictive Trade Practices Commission

2.3 An important organ of the Ministry of Company Affairs is the Monopolies and Restrictive Trade Practices Commission (MRTP Commission), which is a quasi-judicial body. The MRTP Commission established under Section 5 of the Monopolies and Restrictive Trade Practices Act, 1969, discharges functions as per the provisions of the Act. The main function of the MRTP Commission is to enquire into and take appropriate action in respect of unfair trade practices and restrictive trade practices. In regard to monopolistic trade practices, the Commission is empowered under Section 10(b) to enquire into such practices (i) upon a reference made to it by the Central Government or (ii) upon its own knowledge or information and submit its findings to Central Government for further action.

Director General of Investigation and Registration

2.4 The Director General of Investigation and Registration functions in terms of Section 8 of the MRTP Act for making investigations for the purpose of the Act, for maintaining a register of agreements subject to registration under the Act and also for performing such other functions assigned to him under the Act.

Competition Commission of India

2.5.1 The Competition Act, 2002, was enacted “to provide, keeping in view 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 the consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto”.

2.5.2 In pursuance of Section 7 of the Act, the Central Government, through a notification, established the Competition Commission of India w.e.f. 14th October, 2003. The Central Government also vide a notification dated 14th October, 2003 notified the appointments of a Chairperson and a Member.

2.5.3 However, some of the provisions of the Act and the Selection Rules framed therein were challenged in the Madras High Court and the Supreme Court. The

Supreme Court in its order dated 31.10.2003 had stayed the judicial functioning of the Commission and the operation of Rule 3 of the Competition Commission of India (Selection of Chairpersons and other Members of the Commission) Rules, 2003. In view of this, no further recruitments of Chairpersons and other Members have been made and the Commission is working with only one Member, undertaking only administrative and advocacy functions.

2.5.4 Since the judicial activity has not been started so far due to legal restraints, the Commission has limited itself to advocacy and capacity-building functions. The work being undertaken by the Commission includes:-

- i) Competition advocacy and public awareness.
- ii) Capacity building including trainings, seminars and workshops, and
- iii) Activities relating to administration, establishment, budget and accounting.

2.5.5 The Commission has undertaken intensive work relating to competition advocacy, public awareness and training. The commission has set up an Advisory Committee for Competition Advocacy consisting of experts to advise it in this work.

2.5.6 The Commission has been interacting with numerous academic institutions for inclusion of competition law and policy in their curriculum; a number of institutions have done so. The Commission has initiated steps to prepare model curriculums for different academic disciplines with the intention of making these available to academic & other institutions. These institutes are: (i) Institute of Chartered Accountants of India, (ii) Institute of Cost and Works Accountants of India, and (iii) Institute of Company Secretaries of India. In addition, efforts are being made to include this subject in the MBA curriculum of the Indian Institute of Management, Ahmedabad, and the LLB curriculum of Delhi University

2.5.7 The Commission has also undertaken activities to persuade the State Governments to pursue more pro-competition policies and practices, with the objective of promoting economic growth and enhancing consumer welfare. At the suggestion of the Competition Commission, several State Governments have designated nodal departments/officers for competition issues.

2.5.8 In respect of professional work, a Competition Forum has been set up where eminent experts are invited to talk and discuss on competition issues and related matters. Amongst those who have addressed/participated in the Competition Forum

are international competition experts, economists, legal professionals, consumer representatives, industry representatives and organizational experts. The Competition Forum is a useful platform for capacity building as well as for competition advocacy.

2.5.9 The Commission has initiated action for undertaking economic and market research studies. These studies/research projects are to be undertaken through reputed academic research institutions/experts. Some of the studies approved by the Competition Commission Advisory Committee on Research Projects/Studies are as under:-

- i) Study of market structure of foodgrains in northern region of the country.
- ii) Study of market structure of foodgrains in eastern region of the country.
- iii) Cartelization in the trucking industry in and around Mumbai
- iv) Competition Policy in the telecommunications sector
- v) Assessing the state of competition in India's manufacturing sector; and
- vi) A study of State Policies affecting competition in passenger transportation sector.

2.5.10 The Commission has undertaken steps for preparation of its draft regulations. The Commission undertakes continuous interaction with experts/professionals.

2.5.11 A number of Committees consisting of experts/professionals for selected areas of activities have been set up. These Committees meet as and when required. The following Committees have been set up:-

- Competition Commission Advisory Committee on Competition Advocacy;
- Competition Commission Advisory Committee on Regulations;
- Competition Commission Advisory Committee on Economic Information;
- Competition Commission Advisory Committee on Predatory Pricing and Determination of Costs;
- Competition Commission Advisory Committee on Research Projects/Studies; and
- Competition Commission Advisory Committee on Academic Curriculum.

National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT):

2.6 The institutional structure relating to NCLT/NCLAT was provided for in the Companies (Second) Amendment 2002. The NCLT was proposed to continue the functions and powers currently discharged by the Company Law Board, the Board of Industrial and Financial Reconstruction (BIFR) and the High Courts in respect of liquidation and winding up, amalgamation and mergers. However, the constitution of NCLT/NCLAT was challenged in the Madras High Court which gave its ruling in April 2004. Thereafter, an SLP was filed by the Central Government in the Supreme Court, where the matter is presently under consideration. Consequently, the operationalisation of this institutional structure is not yet notified.