
UNIT 7 CORPORATE LAWS - II

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7.0 OBJECTIVES

After studying this unit, you should be able to:

- explain the provisions of the Industries (Development and Regulation) Act, 1951 with regard to licensing of, and investigation into, scheduled industries and regulating prices, supply and distribution of their products;
- enumerate the provisions of MRTP Act, 1969 with regard to monopolistic, restrictive and unfair trade practices;
- discuss the provisions of the Competition Act, 2002 relating to prohibition of anti-corruption agreements, abuse of dominant position and regulation of combinations;
- describe the protection available to consumers under the Consumer Protection Act, 1986 and procedure to be followed for claiming relief; and
- Explain the provisions of Essential Commodities Act, 1955 for the control of production, supply and distribution etc. of essential commodities and the role of the central government in respect thereof.

7.1 INTRODUCTION

Companies have to operate within the parameters of various legislations. These may well be called corporate laws. In unit 6, you learnt about the provisions of the Companies Act and the Sick Industrial Companies (Special Provisions) Act. In this unit, you will learn about the other important corporate laws, namely, the Industries (Development and Regulation) Act, 1951, the Monopolies and Restrictive Trade Practices Act, 1969, the Competition Act, 2002, the Consumer Protection Act, 1986, and the Essential Commodities Act, 1955, which regulate the various activities of corporate sector in India and safeguard long run interests of the public.

7.2 INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

The Industries (Development and Regulation) Act [IDRA] 1951, was enacted with a view to control and regulate the process of industrial development in the country and bring under central control a number of important industries, the activities of which affect the country as a whole. The Act came into force on May 8, 1952. The objectives the Act sought to accomplish were: (i) regulation of industrial investment and production according to plan priorities and targets, (ii) protection of small entrepreneurs against competition from large units, (iii) prevention of monopoly and concentration of ownership of industries, and (iv) balanced regional development with a view to reducing disparities in the levels of development in different regions of the economy. It was hoped that, through the instrument of industrial licensing, the Government would be able to direct investment in most important areas, correlate demand and supply in the domestic market, and ensure optimum utilisation of social capital in the country.

In the initial stages, 37 industries (specified under the Act) were brought under the purview of the Act which was later extended to 70 industries. Of these, the Act was applicable to only those units (factories) which employed 50 or more workers if worked with the aid of power or employing 100 or more workers if worked without the aid of power. In 1960, all industrial units having fixed assets of Rs. 10 lakh or less were exempted from licensing procedure. This exemption limit has been revised upwards from time to time and, as at present, only projects involving an investment in fixed assets of more than Rs. 75 crore if located in centrally declared backward areas and Rs. 25 crore if located in non backward areas require industrial license under the Act. Not only that, as a consequence of liberalisation of industrial licensing policy through the 80's, the Government delicensed 28 broad categories of industries and various concessions were granted to MRTP and FERA Companies. In line with the liberalisation measures adopted during 80's, the Government announced a New Industrial Policy on July 24, 1991 to deregulate the industrial economy in a substantial manner. The industrial licensing was abolished for all but 18 industries and with time the number has been reduced further and licensing is compulsory for only 6 industries. The threshold limit of assets in respect of MRTP and dominant industrial undertakings was also scrapped so that these firms do not require prior approval from the Government for investment in delicensed industries.

The important provisions of the Act relate to :

- 1 Registration and licensing of industrial undertakings;
- 2 Investigation into scheduled industries and industrial undertakings;
- 3 Take-over of management of industries undertakings;
- 4 Regulation of price, supply, distribution, etc.; and
- 5 Constitution of authorities concerned.

Let us now have a brief idea about these provisions.

Registration

Section 10 requires the owner of every existing industrial undertaking (not being Central Government) to register the undertaking in the prescribed manner and within the prescribed period. Where an industrial undertaking is so registered, it is issued a certificate of registration containing the productive capacity of the industrial undertaking and such other particulars as may be prescribed. It an industrial undertaking which requires registration but has not been registered, its owner is liable under Section 24 of the Act with imprisonment upto 6 months or fine that may extent upto Rs. 5,000 or with both.

Registration of an industrial undertaking will not be necessary if the undertaking (i) is a small scale industrial undertaking; or (ii) is otherwise exempt from the licensing/ registration provisions of this Act; or (iii) where the undertaking concerned is not satisfying the definition of the term 'factory' under the Act.

Licensing

Under the provisions of the Act, a licence is necessary under the following circumstances:

- 1 Establishing a new industrial undertaking : As stated earlier, licensing is no more compulsory except in the case of six industries as given in Schedule II as per Notification dated 25-7-1991. These are :
 - (i) Distillation and brewing of alcoholic drinks
 - (ii) Cigars and cigarettes of tobacco and manufactured tobacco substitutes
 - (iii) Electronic aerospace and defence equipment: all types
 - (iv) Industrial explosives, including detonating fuses, safety fuses, gun powder, nitrocellulose and matches
 - (v) Hazardous chemicals
 - (vi) Drugs and Pharmaceuticals (according to Drug Policy);
- 2 Taking up the manufacture of a 'New Article' in the existing licensed industrial undertaking;
- 3 Licence for substantial expansion of licensed industrial undertaking;
- 4 A registrable undertaking not registered;
- 5 Carrying on the business of an existing industrial undertaking to which licensing provisions of the Act did not originally apply on account of an exemption order issued by the Government and became applicable thereafter as a result of cancellation of the exemption order and under certain other circumstances as provided in the Act;
- 6 In the case of industrial undertaking the registration in respect of which has been revoked under Section 10A and which cannot carry on the business of the undertaking after the revocation and
- 7 Changing the location of the whole or any part of an industrial undertaking which has been registered,

An industrial licence under the Act will not be necessary in the following cases:

- (a) If the item of manufacture does not relate to the scheduled industries;
- (b) If the proposed manufacture is to be carried on in a factory which does not come under the definition of factory as per Section 3(c);
- (c) If the item of manufacture does not fall within the definition of new article;
- (d) If the proposed expansion to an existing unit does not fall within the guidelines defining 'substantial expansion';
- (e) In case of small scale units and ancillary units even for activities subject to compulsory licensing provided their investment in fixed assets and plant and machinery whether held on ownership terms or on lease or on hire-purchase, does not exceed Rs.1 crore and relate to articles exclusively reserved for small scale /ancillary;
- (f) Projects involving an investment in fixed assets upto Rs.25 crores if they are located in lion-backward areas or upto Rs.75 crores if they are located in centrally declared backward areas; and
- (g) Industrial units exempted from licensing provisions (including MRTP /FEMA companies) subject to certain locational limit provided the article (s) of manufacture do not form part of Schedule I (reserved for public sector) and Schedule II (subject to compulsory licensing).

It may be noted that in respect of new project for manufacture of articles not covered by compulsory licensing or their substantial expansion the only requirement is that the industrial undertaking shall file a memorandum called Industrial Entrepreneur Memorandum (IEM) in prescribed form to the Secretariat for industrial Approvals (SIA) in the Ministry of Industry and obtain an acknowledgement. Such memorandum will also have to be filed by industrial undertakings engaged in non-scheduled industries. This requirement does not apply to small scale and ancillary units.

7.2.2 Investigation into Scheduled Industries or Industrial Undertakings

The Act empowers the Central Government to conduct a full and complete investigation into the circumstances of the case of a scheduled industry or industrial undertaking (a) if there has been or is likely to be a substantial fall in the volume of production, or a marked deterioration in the quality or a rise in price in respect of any article or class of articles related to that industry or manufactured in the industrial undertaking for which there is no justification, or (b) if any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

Further, where a company owning an industrial undertaking is being wound up or is under the supervision of the High Court, and business of such company is not being continued, the Central Government can investigate into the possibility of running or re-starting the industrial undertaking after getting permissions from the High Court.

Section 16 provides that if after investigation the Central Government is satisfied that further action is desirable, it may issue such directions to the industrial undertaking or undertakings concerned for all or any of the following purposes.

- 1 regulating the production of any article or class of articles by the industrial undertaking or undertakings and fixing the standards of production.
- 2 requiring the industrial undertakings or undertakings to take such steps as the Central Government may consider necessary to stimulate the development of the industry to which the undertaking or undertakings relate;

- 3 prohibiting the industrial undertaking or undertakings from resorting to any act or practice which might reduce its or their production capacity or economic value; and
- 4 controlling the prices or regulating the distribution of any article or class of articles which have been the subject matter of investigation.

7.2.3 Takeover of Management of Industrial Undertakings

The Act has made elaborate provisions for take-over of the management of industrial undertakings in certain cases. These include:

- 1 Takeover **after** investigation : The Central Government can order takeover of management of the whole or any part of the industrial undertaking if (a) an industrial undertaking does not follow directions issued under Section 16; or (b) an undertaking is being managed in a manner which in the opinion of the Central Government is highly detrimental to the scheduled industry concerned or public interest. Such order can be issued for any period but not exceeding five years. It can be extended for two years at a time, but the total period in no case can exceed 12 years after the expiry of the initial period of five years.
- 2 **Takeover** without investigation – Central Government can order take-over even without investigation if it is of the opinion that (a) the person in charge is making reckless investments or creation of encumbrances on assets or diversion of funds which will affect production and that immediate action is necessary; (b) the unit has been closed for more than three months and such closure is prejudicial to the industrial undertaking and that it is possible to re-start the undertaking in public interest. . However, unit being wound up under supervision of High Court cannot be taken over under this section.
- 3 Takeover by **an** Act of Parliament – Industrial undertaking can be taken over directly by an Act of Parliament. Such law is protected under Article 31 A of the Constitution.

After issue of takeover order, all persons holding office of directors or manager shall be deemed to have vacated the office. The authorized person taking over management will takeover charge and control of properties of company and he alone will be entitled to exercise all the powers of directors. He will take necessary steps for managing the business of the industrial undertaking under control of Central Government, irrespective of the Memorandum of Association or Articles of Association, but subject to the provisions of the Companies Act.

7.2.4 Regulation of Price, Supply, Distribution, etc.

With a view to securing an equitable distribution and availability at fair prices of any article or articles relating to any scheduled industry the Central Government may by a notification, provide for :

- 1 Controlling the prices at which any such article or class thereof may be bought or sold;
- 2 Regulating by licenses, permits or otherwise the distribution, transport, disposal, acquisition, possession, use or consumption of any such article or class thereof;
- 3 Prohibiting the withholding from sale of any such article or class thereof ordinarily kept for sale;
- 4 Requiring any person manufacturing, producing or holding in stock such article or class thereof to sell the whole or part of the articles to such person or class of persons and in such circumstances as may be specified in the order;
- 5 Regulation or prohibiting any class of commercial or financial transactions relating to such article or class of articles thereof which are likely to be detrimental to public interest;

- 6 Requiring persons engaged in the distribution and trade and commerce in any such article or class thereof to exhibit the prices and stock at some easily accessible place;
- 7 Collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; and
- 8 Any incidences or supplementary matter including, in particular, the grant or issue of licenses, permits, or other documents and the charging of fees thereof.

7.2.5 Authorities under the Act

The Act empowers the Central Government to establish and constitute (a) Central Advisory Council to advise it on matters concerning the development and regulation of 'scheduled industries', and (b) Development Councils for any scheduled industry or a group of scheduled industries. Let us discuss their composition and functions.

Central Advisory Council : It consists of a chairman and such other members, not exceeding 30 in number, all of whom must be appointed by the Central Government from among persons who are, in its opinion, capable of representing the interests of (a) owners of industrial undertakings in scheduled industries; (b) persons employed in industrial undertakings in scheduled industries; (c) consumers of goods manufactured or produced by scheduled industries; and (d) such other class of persons including primary producers as, in the opinion of the Central Government, ought to be represented on the Advisory Council. The number of members, their functions, and their term will be as prescribed by the Central Government. The Central Government may consult it on any matter connected with administration of IDRA.

Development Councils : It shall consist of the members representing (a) owners of industrial undertakings in the scheduled industry or group of scheduled industries, (b) persons having special technical knowledge relating to such undertakings, (c) employees of such undertakings, and (d) consumers of the goods produced by such undertakings. The number of members, their functions, and their term will be as prescribed by the Central Government. By virtue of this Act, every Development Council shall be a body corporate and will have a name. Thus it acquires a separate legal entity and thereby may purchase, hold and transfer property in its own name, and can sue and be sued by that name. It shall prepare and submit a report to the Central Government annually. The report shall include duly audited accounts of the Development Council.

A Development Council shall perform such functions of a kind specified in the Second Schedule as may be assigned to it by the Central Government. As per the Second Schedule, the functions which may be assigned to Development Council include: (i) recommending targets for production, coordinating production programmes and reviewing progress from time to time; (ii) suggesting norms of efficiency with a view to eliminating waste, obtaining maximum production, improving quality and reducing costs; (iii) recommending measures for securing the fuller utilization of the installed capacity and for improving the working of the industry particularly of the less efficient units; (iv) promoting arrangements for better marketing and helping in the division of a system of distribution and sale of the produce of the industry which would be satisfactory to the consumer; (v) promoting standardization of products; (vi) assisting in the distribution of controlled materials and promoting arrangements for obtaining materials for the industry; (vii) promoting or undertaking enquiry as to materials and equipment for production, management and labour utilization; (viii) promoting training of persons; (ix) promoting the re-training in alternative occupations; (x) promoting or undertaking scientific and industrial research; (xi) promoting improvements and standardization of accounting and costing methods and practice; (xii) promoting or undertaking the collection and formulation of statistics; (xiii) investigating possibilities of decentralizing stages and processes of production; (xiv) promoting the adoption of

measures for increasing the productivity of labour; (xv) advising on any matters relating to the industry, and (xvi) making arrangements for relaying of information obtained to the industry.

Besides the above functions, a Development Council shall also perform such other functions as it may be required to perform by or under any other provisions of this Act.

Check Your Progress A

- 1 State whether the following statements are True or False:
 - (a) Setting up any new industrial undertaking included under First Schedule to IDRA, 1951 requires a licence.
 - (b) Small scale unit means an industrial undertaking in which the investment in fixed assets and plant and machinery does not exceed Rs. 3 crore.
 - (c) A small scale unit or an ancillary unit shall require a licence to manufacture any item which is subject to compulsory licensing.
 - (d) Central Government can take-over the management of an industrial undertaking in public interest.
 - (e) By virtue of IDRA the Central Advisory Council set up by the Central Government is a body corporate.
 - (f) Under IDRA, the term 'factory' refers to a manufacturing unit employing 50 or more workers if worked with the aid of power or employing 100 or more workers if worked without the aid of power.

- 2 When is registration of an industrial undertaking not necessary ?

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- 3 State the objectives sought to be accomplished by the IDRA.

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7.3 MONOPOLIES AND RESTRICTIVE TRADE PRACTICES (MRTP) ACT, 1969

The Mahalanobis Committee in 1964 and the Monopolies Enquiry Commission in 1965 revealed the tendencies of increasing concentration in the industrial sector through the monopolistic power and restrictive trade practices by large business houses. To curb these tendencies, the Government of India passed the Monopoly and Restrictive Trade Practices (MRTP) Act in 1969 and set up the MRTP Commission in 1970. The preamble to the Act described it as "An Act to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto." In 1984, a new chapter on unfair trade practices was added. Thus, primarily, the objectives of the Act have been as follows :

- (a) to prevent concentration of economic power to the common detriment and control of monopolies;
- (b) to prohibit monopolistic trade practices; and
- (c) to prohibit restrictive trade practices and unfair trade practices.

The MRTP Commission acts as the administrative authority for the MRTP Act. It has the power to enquire and recommend action to the Central Government in case of monopolistic trade practices, and can enquire as well as take action in case of restrictive trade practices and unfair trade practices.

7.3.1 Applicability of the Act

MRTP Act is applicable to all undertakings except:

- (i) undertakings situated in the State of Jammu and Kashmir (since MRTP Act does not extend to Jammu and Kashmir);
- (ii) trade unions and other associations of workmen or employees formed for their own reasonable protection as such workmen or employees;
- (iii) undertakings owned or controlled by a government company or the government and engaged in the production of specified items of defence and atomic energy; and
- (iv) industrial units under the Currency and Coinage division of Ministry of Finance.

It may be noted that initially the Act did not apply to public sector undertakings. But the Central Government, vide its notification dated 27-9-1991, extended the provisions of the Act also to government undertakings (with a few exceptions), cooperative societies and financial institutions so that if a concern like Indian Airlines indulges in any monopolistic, restrictive or unfair trade practice, it can be proceeded against under the MRTP Act in the same way as Jet Airlines or Sahara Airlines.

7.3.2 Prevention of Concentration of Economic Power

Prevention of concentration of economic power has been one of the key objectives of the Act. It covered two types of monopolies, viz., national monopolies and product monopolies. National monopolies were covered by Section 2(g) of the Act and were either 'single large undertakings' or groups of interconnected undertakings (large houses) which had assets of at least Rs. 100 crore (prior to 1985 this limit was Rs. 20 crore). Product monopolies were covered under Section 2(d) and called dominant undertakings which controlled at least one fourth of production or market shares of a product and had assets of at least Rs. 3 crore (prior to 1985 this limit was Rs. 1 crore). By the end of March, 1990, 1854 undertakings were registered under the Act, of these, 1787 belonged to large industrial undertakings/houses and the remaining 67 were dominant undertakings. As a consequence of 1991 amendments the concept of dominant undertakings is no longer relevant. Not only that the new industrial policy of 1991 has scrapped the assets limit for MRTP companies. In fact, with the initiation of market economy and the consequent liberalisation of economic policy, this objective has been substantially diluted. The MRTP (Amendment) Act, 1991 has removed provisions regarding Central Government's permission for substantial expansion, establishment of a new undertaking, mergers, takeovers, etc. Establishments, howsoever big or small, are free to expand, or establish new undertakings, or effect mergers. Consequently, strategic alliance between Godrej Soaps and Proctor and Gamble could not be questioned. Likewise, merger of TOMCO with Hindustan Lever, though objected by certain quarters including the employees of TOMCO, was allowed by the Supreme Court.

However, checking concentration of economic power still remains as one of the objectives of the MRTP Act but only in so far as a large undertaking is likely to indulge

in monopolistic, restrictive or unfair trade practice(s) prejudicial to public interest. Sections 27 and 27A of the Act in such cases empower the Central Government to order division of an undertaking or severance of inter-connection between undertakings. The order for severance or interconnection is made by the Central Government on a recommendation by the MRTP Commission after due inquiry in this regard.

7.3.3 Monopolistic Trade Practices

As per Section 2 (i) of the MRTP Act, 1969 any trade practice shall amount to a monopolistic trade practice when it leads, or is likely to lead, to any of the following effects:

- (i) Unreasonably high price
- (ii) Unreasonably high cost of the production of goods or the provision of services
- (iii) Unreasonably high profits
- (iv) Prevention or reduction of competition
- (v) Limited technical development
- (vi) Limited capital investment
- (vii) Deterioration in the quality of goods

It is significant to note that the definition of Section 2 does not confine monopolistic trade practices merely in relation to the supply and distribution of goods or the provision of services but is also applicable to the reduction in the quantum of production, i.e., underutilisation of production capacity with a view to restrict the output or supply of goods. Likewise, it also embraces practices like increasing the prices by taking undue advantage of the market situation or by limiting the technical development or capital investment to the common detriment or deteriorating the quality of goods or preventing or reducing competition by adopting unfair methods or unfair or deceptive business practices.

Control of Monopolistic Trade Practices : The role of the MRTP Commission in regard to control of monopolistic trade practice is investigatory and advisory. The Commission, on initiation of an inquiry, merely investigates into the practice on a reference made to it by the Central Government or suo motu (on its own knowledge or information) and submits its report to the Central Government. It is only the Central Government which is vested with the power to pass an appropriate order on receipt of the report from the Commission.

If the report of the Commission contains a finding that the owner of any undertaking is, or the owners of two or more undertakings are, indulging in any monopolistic trade practice, or that monopolistic trade practice prevails in respect of any goods or services, and the Central Government is satisfied that it is necessary to take steps to remedy or prevent any mischief which results or may result from such monopolistic trade practice, and that such monopolistic trade practice does not fall within any of the exceptions specified in Section 32, it may, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, make such orders as it may deem fit,

- (a) prohibiting the owner of the concerned undertaking or the owners of the concerned undertakings, as the case may be, from continuing to indulge in such monopolistic trade practice; or
- (b) prohibiting the owners of any class of undertaking or undertakings generally, from continuing to indulge in any monopolistic trade practice in relation to such goods or services.

It may also make such other orders as it may deem fit to remedy or prevent any mischief which results, or may result, from the continuation of monopolistic trade practices in relation to the goods and services aforesaid.

Apart from taking the above-mentioned actions, the Central Government has the power to take any specific action which may include the following:

- (i) regulation of the production, storage, supply, distribution, or control of any goods by the undertaking, or the control or supply of any service by it and fixing the terms of sale (including the price) or supply thereof;
- (ii) prohibiting the undertaking from resorting to any act or practice, or from pursuing any commercial policy, which prevents or lessens, or is likely to prevent or lessen, competition in the production, storage, supply, or distribution of any goods, or the provision of any services;
- (iii) fixing standards for the goods used or produced by the undertaking;
- (iv) declaring the making or carrying out of the specified agreement as unlawful;
- (v) requiring any party to the specified agreement to determine or modify the agreement in the specified manner;
- (vi) regulating the profits earned from the production, storage, supply, distribution or control of goods or from the provision of any services; and
- (vii) regulating the quality of any goods produced or service provided.

While passing the order in a matter relating to any monopolistic trade practice, the Central Government enjoys the general power to impose such conditions, limitations and restrictions, as it may deem fit. However, no order in respect of any monopolistic trade practice can be passed with respect to (i) any condition(s) imposed by a patentee; (ii) any condition(s) attached to a licence granted by a patentee; and (iii) export of goods, to the extent the monopolistic or restrictive trade practice relates exclusively to the production, supply, distribution, or control of goods for such export (Section 15).

Appeal against Government order: The final order passed by the Central Government in monopolistic trade practice is subject to an appeal before the Supreme Court. The appeal can be filed within 60 days from the date of the order on one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908.

Exceptions to MTP being prejudicial to public interest: Section 32 of the Act provides that for the purposes of this Act, every monopolistic trade practice shall be deemed prejudicial to the public interest, except where (a) such trade practice is expressly authorised by any enactment for the time being in force, or (b) the Central Government being satisfied that any such trade practice is necessary.

- (i) to meet the requirements of defence of India or any part thereof, or for the security of the state; or
- (ii) to ensure maintenance of supply of goods and services essential to the community; or
- (iii) to give effect to the terms of any agreement to which the Central government is a party; and by a written order permits the owner of an undertaking to carry on any such trade practice order.

7.3.4 Restrictive Trade Practices

As per Section 2(o), restrictive trade practice means a trade practice which has or may have the effect of preventing, distorting or restricting competition in any manner and in particular (i) which tends to obstruct the flow of capital or resources into the stream of production; or (ii) which tends to bring about manipulation of prices or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions.

Section 33 of the MRTP Act, describes the various types of restrictive trade practices. These are :

- 1 Refusal to deal, i.e., 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. In the case of The Director General (I & R) vs. M/s Nalli Silk Traders, Madras (1987), the respondent advertised a reduction sale for a period of 4 days and prescribed an entry fee of Rs. 25 per individual during the period of sale which amount was to be adjusted only against the purchase of articles and not otherwise refundable. This was prima facie found to be a restrictive trade practice under Sections 33(1) (a) and 2(o) of the MRTP Act
- 2 Tie-up sales and full-line forcing, i.e., any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods. This relates to what is popularly known as 'tying arrangement'. When a manufacturer of pressure cookers required the purchasers of pressure cookers, as a condition of such purchase, to purchase containers/separators along with the pressure cooker, it was held to be a restrictive trade practice [re. T.T. (P) Ltd.].
- 3 Exclusive dealing, i.e., 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. Normally, an authorised dealer for BPL products may stock L.G. or Samsung products also but not permitting him to so do shall amount to a restrictive trade practice. However, its adverse effect on competition will have to be proved to hold it as such.
- 4 Collective agreement, i.e., where buyers or sellers syndicate themselves with a view to coerce and thereby seek an unreasonable bargain. Jewellers unions or transporters unions often resort to this kind of practice. Madras Jewellers and Diamonds Merchants Association had passed resolutions to the effect that the members of the Association engaged in the trade of jewellery were not to sell jewellery at a price lower than the daily rates announced by the Association. Based on a complaint, the MRTP Commission concluded that such a clause would amount to a restrictive trade practice.
- 5 Discriminatory dealings, i.e., the practice of granting of concessions or benefits including allowing of discounts or rebates on a discriminatory basis. However, quantity discounts which are small and do not discourage competition to any material degree may not be anti-competitive and hence allowed. [DGIR vs. Bajaj Tempo Ltd. (1996)]. Similarly, giving different discounts to different classes of buyers like Government, dealers, etc. is not a restrictive practice as it does not affect competition.
- 6 Re-sale price maintenance, i.e., an agreement between producers and dealers stipulating the price at which the dealer must resell the goods to his customers by (i) suggesting a minimum price, or (ii) recommending a particular price without specifically permitting the dealer to sell at a lower price, or (iii) though suggesting the price to be the maximum retail price but insisting that the goods shall not be sold at a price less than the suggested maximum retail price. In Godrej & Boyce's case, it was held that in price lists issued by manufacturers it must be clearly stated that the prices slated in the list are the maximum prices and that the dealers are free to charge lower prices than those, otherwise it shall be treated as a restrictive trade practice.
- 7 Territorial restriction/restricting or withholding of output or supply, i.e., any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area of market for the disposal of the goods.

- 8 **Controlling** manufacturing process, i.e., any agreement not to employ or restrict the employment of any method, machinery or process in the manufacture of goods. In *RRTA vs. Bata India Ltd. (1975)*, Bata entered into agreement with small-scale manufacturers for supply of footwears which prohibited these manufacturers from purchasing raw material and components from parties other than those approved by Bata. The Commission held these conditions imposed by Bata as restrictive trade practice and prejudicial to the public interest.
- 9 **Boycott**, i.e., any agreement for the exclusion from any trade association of any person carrying on or intending to carry on, in good faith, the trade in relation to which the trade association is formed. The object of such an agreement is to restrict the membership of the association to a few persons for mutually sharing the benefits which may arise from the membership.
- 10 **Predatory pricing**, i.e., any agreement to sell goods at such prices as would have the effect of eliminating competition or competitors. All cases of collective price fixing, price agreements which have the effect of reducing the extent of the market or eliminating certain competitors, are covered by this clause.
- 11 Restriction on **class/number of suppliers** from whom goods may be bought, i.e., any agreement restricting in any manner, the class or number of wholesalers, producers or suppliers from whom any goods may be bought. This clause was inserted by the MRTP (Amendment) Act, 1984.
- 12 Abstinance from bids in auction, i.e., any agreement as to the bids which any of the parties thereto may offer at an auction for the sale of goods or any agreement whereby any party thereto agrees to abstain from bidding at any auction for the sale of goods. Such agreements are referred to as 'knock-out' agreements since these have the effect of knocking out the competition.

In addition to the aforesaid agreements, the Central Government may, by notification in the Official Gazette, specify for the time being as being one relating to a restrictive trade practice within the meaning of this sub-section pursuant to any recommendation made by the Commission in this behalf.

Control of Restrictive Trade Practices

Every agreement falling into the provisions of Section 33 shall be registered with the Director General of Investigation and Registration (DGIR) within 60 days from the date of agreements (Section 35). However, referring to the various provisions of MRTP Act, one may notice that the following agreements shall be exempted from being registerable:

- (i) agreements which take place in the State of Jammu and Kashmir;
- (ii) agreements by undertakings exempted under Section 3 of the MRTP Act (for details, see provisions under Applicability of the Act);
- (iii) restrictive trade practice necessary to safeguard the rights of patentees in regard to certain infringements and in regard to conditions they may lay down in licences;
- (iv) restrictive trade practices relating exclusively to the production, supply, distribution or control of goods for export;
- (v) restrictive trade practice as a result of any agreement between buyers relating to goods bought by them for consumption and not for resale;
- (vi) restrictive trade practices which are expressly authorised by the law;
- (vii) restrictive trade practices which are approved by the Central Government;
- (viii) agreements to which Central Government is a party; and

- (ix) trade agreements having no substantial economic significance, if exempted by the Director General.

Section 37 of the MRTP Act empowers the MRTP Commission to conduct an enquiry into any restrictive trade practice, whether registered or not. The Commission may conduct such enquiry either on its own initiate or upon or reference made to it by the Central or State Government or on a complaint by DGIR or in response to specific complaint by the consumers or consumers association. The purpose of the inquiry is to ascertain whether the said trade practice comes under the definition of the restrictive trade practice and if so, whether the practice is prejudicial to public interest. If the Commission concludes that the practice is prejudicial to public interest, it may direct that (a) the practice should be discontinued or should not be repeated (cease or desist order), and (b) the agreement relating to the said practice shall be void and stand modified in such manner as may be specified in the order.

Presumptions as to Public Interest (Gateways)

Every restrictive agreement falling under Section 33 is deemed to be a restrictive trade practice prejudicial to public interest. However, Section 38 lists the circumstances under which certain restrictive trade practices are justified in public interest. These gateways are as follows:

- 1 Protection of **the public against** injury: Where the restriction is reasonably necessary, having regard to the character of the goods to which it applies to protect the public against injury (whether to persons or to premises) in connection with the consumption, installation, or use of those goods. Restricting the supply of insulin to listed wholesale dealers competent to handle insulin in a proper manner can be said to be in the interest of the public as far as the consumption of insulin is concerned.
- 2 Specific **and** substantial **benefits** to the public: Where the removal of the restriction would deny to the public as purchasers, consumers or users of any goods, other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them resulting from the agreement. In *Olympia Electronics Ltd., In re* (1993), 'Sony' appointed Olympia Electronics as their authorised repairers. They were not allowed to engage in any similar business without the consent of Sony. It was held that products of Sony are sophisticated and of high reputation. Hence the restriction was permitted.
- 3 Defensive action against restrictions of another: Where the restriction is reasonably necessary to counteract measures taken by a person who is not party to the agreement with a view to preventing or restricting competition in trade or business in which the persons party thereto are engaged. Under this clause restriction has to be justified to enable smaller concerns in a trade to compete effectively with a large concern in that trade which itself is resorting to restrictive trade practice.
- 4 Negotiating fair **terms** with a large supplier or producer: Where the restrictions is reasonably necessary to enable the persons to the agreement to negotiate fair term for the supply of goods to, or for acquisition of goods from, any person who controls a dominant part of the trade or business of those goods.
- 5 Adverse **effect** on unemployment: Where, the removal of the restriction is likely to have a serious and persistent adverse effect on the general level of unemployment in an area, or in areas taken together, in which the industry to which the agreement relates is situated.
- 6 Reduction in export earnings: Where, the removal of the restriction is likely to cause a reduction in the volume or earnings of the export business which is

substantial either in relation to the whole export business of India or in relation to the whole business (including export business) of the said trade or industry

- 7 Ancillary **permissible restriction**: The restriction, which is ancillary to any of the main restrictions, is allowed as a gateway to support the main restriction. In *DGIR vs. Mahindra & Mahindra Ltd.* (1999), there was a restriction on agent that he shall not manufacture or alter product of principal or any spare parts without prior consent of the principal. Held that, the restriction was reasonable as an agent cannot become competitor of his own principal.
- 8 Restriction **not affecting competition** materially: This clause may be invoked where it is not possible to justify the restriction on any of the stated grounds although restriction is such as can be shown either as one which does not restrict or discourage competition or as one which may in the long run promote competition.
- 9 Authorised by the **Central Government**: Where such restriction has been expressly authorised and approved by the Central Government. Foreign collaboration agreements approved by the Central Government can pass through this gateway.
- 10 **Defence requirements or security of State**: Where such restriction is necessary to meet the requirement of the defence of India or any part thereof, or for the security of the State.
- 11 **Maintenance of supply of essential goods**: Where the restriction is necessary to ensure the maintenance of supply of goods and services essential to the community. This clause may apply to distribution of essential commodities like foodgrains, sugar, kerosene, vegetable ghee, etc. covered by the Essential Commodities Act, 1955 and orders issued there under from time to time.

7.3.5 Distinction between MTP and RTP

On going through the definitions of 'monopolistic trade practice' and 'restrictive trade practice', one may find the two terms identical. The similarities between these two trade practices had been duly recognised by the Monopoly Enquiry Commission, but it insisted on maintaining the distinction and observed, "while monopolistic trade practice would also be a restrictive trade practice, we shall confine the words 'restrictive trade practice' to mean practices other than those pursued by monopolies which obstruct free play of competitive forces or impede free flow of capital resources into the stream of production or of finished goods in the stream of distribution at any point before they reach hand of the ultimate consumers."

On analysis of the two practices, the following points of distinction come to the fore:

MTP	RTP
(a) Authority to pass orders is the Central Government.	Authority to pass orders is the MRTP Commission.
(b) It may be referred by Central Government, DGIR or MRTP Commission (suo moto).	It may be referred by Central Government, State Government, DSIR, MRTP Commission (Suo moto), consumer association or any consumer.
(c) Action can take the form of cease and desist order, awarding compensation, regulation of production, supply, etc., fixing standards, declaring any agreement unlawful, and prohibiting any commercial policy.	Action can take the form of cease and desist order and / or awarding compensation.

7.3.6 Unfair Trade Practices

Section 36A of the MRTP Act defines an 'unfair trade practice' to mean a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts any unfair method or unfair or deceptive practice including any of the following practices and thereby causes a loss or injury to the consumers of such goods and services, whether by eliminating competition or otherwise.

- 1 Misleading Advertisement and False Representation: This includes:
 - (i) falsely representing that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - (ii) falsely representing that the services are of a particular standard, quality or grade;
 - (iii) falsely representing that the rebuilt, second-hand, renovated, reconditioned or old goods are new goods;
 - (iv) representing that goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits they do not have;
 - (v) representing that the seller or the supplier has a sponsorship, approval, or affiliation he does not have;
 - (vi) making false or misleading representation concerning the need for, or the usefulness of, any goods or services;
 - (vii) making a representation to the public in the form of a warranty or guarantee of the performance, efficacy or length of life of a period or of goods that is not based on an adequate and proper test that the proof of which lies upon the person making the representation;
 - (viii) making a representation to the public in a form that purports to be (a) warranty or guarantee of a product or of goods or services; or (b) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result; if such form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out;
 - (ix) making a materially misleading representation to the public concerning the price at which a product or like products or goods have been, or are ordinarily sold; and
 - (x) making false or misleading representation of facts disparaging the goods, services or trade of another person.
- 2 Bargain Sale, Bait and **Switch** Selling: This includes advertising for supply, at a bargain price, goods or services that are not intended to be offered for supply at price, for a period that is and in quantities that are reasonable, having regard to (i) the nature of market in which business is carried on, (ii) the nature and size of business, (iii) the nature of the advertisement. Thus, offering discounts upto 50 per cent whereas most of the items carry a discount of 10 to 15 per cent shall constitute an unfair trade practice. Similarly, offering a product(s) at very heavy discounts whereas the original price is actually less than the discounted price is an unfair trade practice.
- 3 **Offering** Gifts or Prizes with the intention of not providing them and conducting Promotional **Contests** : This includes:

(i) offering gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole. For example, the price of the product is first raised to cover the cost of the gift either wholly or partially.

(ii) conducting any contest, lottery, game or chance or skill, for the purpose of promoting directly or indirectly, the sale of a product or any business interest.

4 **Product Safety Standards** : This includes supplying goods that are intended to be used or are of a kind likely to be used by consumers, being goods which do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, construction, finishing or persons using the goods. For example, selling helmets without ISI mark or without meeting the BIS (Bureau of Indian Standards) specifications.

5 **Hoarding or Destruction of Goods** : This comprises hoarding or destruction of goods or refusal to sell the goods, or to make them available for sale, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise the cost of those or other similar goods.

Control of Unfair Trade Practices : Under Section 36B, the MRTP Commission is empowered to enquire into any unfair trade practice in the following circumstances:

- (a) upon receiving a complaint of facts which constitutes such practice from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not; or
- (b) upon a reference made to it by the Central Government or a State Government; or
- (c) upon an application made to it by the Director General; or
- (d) upon its own knowledge or information.

In *Hindustan Lever Ltd. vs. Colgate Palmolive India Ltd.* (1999), it was held that even a trader's complaint against competitor can be maintained under Section 36B. Again, in *AS Hotels Ltd. vs. Delhi Vidyut Board* (1999), it was held that even if complainant is not consumer, his complaint can be taken as 'information' and inquiry be conducted.

In respect of any unfair trade practice of which complaint is made, the Commission may, before issuing any process requiring the attendance of the person complained against (other than an inquiry upon an application by the DGIR) cause a preliminary investigation to be made by the Director General, in such manner as it may direct, for the purpose of satisfying itself that the complaint requires to be enquired into. Thereafter, the Commission may inquire into any unfair trade practice and if, after such inquiry, the Commission is of the opinion that the practice is prejudicial to the public interest, or to the interest of any consumer or consumers generally, it may, by order, direct that -

- (a) the practice shall be discontinued or shall not be repeated (that is, pass a 'cease and desist' order)
- (b) any agreement relating to such unfair trade practice shall be void or shall stand modified in respect thereof in such manner as may be specified in the order;
- (c) any information statement or advertisement relating to such unfair trade practice shall be disclosed, issued or published, as the case may be, in such manner as may be specified in the order.

The Commission may, instead of making any order as aforesaid, permit any party to carry on any trade practice, if it so applies and takes such steps within the time specified by the Commission as may be necessary to ensure that the trade practice is no longer prejudicial to the public interest or to the interest of any consumer generally,

and, in any such case, if the Commission is satisfied, that necessary steps have been taken within the time so specified, it may decide not to **make** any order under this Section in respect of that trade practice.

Check Your Progress B

- 1 Fill in the blanks.
 - (a) Tie-up sale is a _____ practice.
 - (b) Fixing price at unreasonably high level is a _____ practice.
 - (c) Selling goods at prices less than the cost is called _____
 - (d) Stating price to be charged on the goods, without use of the words 'price not to exceed' amounts to _____
 - (e) The restriction which is _____ to any of the main restrictions is allowed as a gateway, to support the **main** restriction.
- 2 State whether the following are unfair trade practices. Say 'Yes' or 'No'.
 - (a) Allowing differential discounts based on the quantity
 - (b) Conducting promotional contests
 - (c) Offering free gifts
 - (d) Under-utilization of capacity
 - (e) Offering discounts upto 50 percent whereas most of the items carry a discount of 10 to 15 percent
- 3 What are the undertakings to which MRTP Act 1969 is not applicable.

- 4 Define 'restrictive trade practice'.

7.4 COMPETITION ACT, 2002

After the adoption of economic reforms programme since 1991, the MRTP Act lost its relevance. It was felt that only large companies could survive in the new liberalised and competitive scenario, and that there was need to shift focus from curbing monopolies to promoting competition. In view of this, the Government appointed a committee under the chairmanship of SVS Raghvan which submitted its report in May, 2000. It proposed doing away with the MRTP Act and enactment of a competition law. Accordingly, the Competition Bill, 2001 was introduced in Parliament and passed in December, 2002. It is called the Competition Act, 2002.

7.4.1 Objectives of the Act

As per Preamble to the Act, the Competition Act is: (i) to provide for the establishment of a Commission to prevent practices having adverse effect on competition; (ii) to

promote and sustain coinpetition in markets; (iii) to protect the interests of consumers; (iv) to ensure freedom of trade carried on by other participants in markets, in India; and (v) to provide for matters connected or incidental to the aforesaid objectives.

7.4.2 Prohibition of Anti-competition Agreements, Abuse of Dominant Position and Regulation of Combinations

Chapter II of the Competition Act comprising of Sections 3 to 6 constitutes the core of the law which provides for three steps through which it plans to achieve the above objectives can be summarised as follows :

Prohibition of Anti Competitive Agreements : Section 3 provides that 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. Any agreement entered into in contravention of this provision shall be void.

It is clarified that any agreement entered into between competitors 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; and (d) directly or indirectly results in bid rigging or collusive bidding; shall be presumed to have an appreciable adverse effect on competition. This also includes the following agreements :

- (a) tie-in arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal; and
- (e) resale price maintenance.

The provisions relating to anti-competitive agreements do not apply to:

- (a) 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 relating to (i) 'copyright' under the Copyright Act, 1957, (ii) 'patent' or 'exclusive right' granted under the Patents Act, 1970, (iii) 'design' registered under the Designs Act, 2000, and (iv) 'layout-design' registered under the Semi-conductor Integrated Circuits Layout Design Act, 2000; and
- (b) 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.

Prohibition of Abuse of Dominant Position : Section 4 provides that no enterprise shall abuse its dominant position. There shall be an abuse of dominant position if an enterprise

- (a) directly or indirectly imposes unfair or discriminatory (i) condition in purchase or sale of goods or services; or (ii) price in purchase or sale (including predatory price) of goods or service; or
- (b) limits or restricts (i) production of goods or provision of services or market therefore 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; 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.

In this context, the term 'dominant position' means a position of strength enjoyed by an enterprise in the relevant market, whether in India or outside 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,

Regulation of Combinations : Section 5 defines the term 'combination'. It states that the acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be treated as 'combination' of such enterprises and persons or enterprises in following cases:

- (a) acquisition by large enterprises,
- (b) acquisition of enterprise having similar goods and services,
- (c) acquiring enterprises having similar goods and services by a group,
- (d) merger of enterprise, and
- (e) merger in group company.

Thus, broadly, 'combination' can be formed either by acquisition of, or merger in, one enterprise or an enterprise which belongs to a group. Various limits of assets/turnover have been fixed for the combination, depending on whether the enterprise being acquired/merged, has similar product/services or dissimilar product/services, and whether they jointly have these assets / turnover in India or outside India.

Section 6 prohibits any person or enterprise to enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void. It may be noted that the combination in itself is not prohibited. It will be held void only if it adversely affects competition.

Any person or enterprise, who or which proposes to enter into a combination may, at his or its option, give notice to the Competition Commission of India (hereinafter referred to as CCI or Commission) and pay the fee which may be determined by regulations, disclosing the details of the proposed combination, within 7 days of (a) approval of the proposal relating to merger or amalgamation by the board of directors of the enterprises concerned with such merger or amalgamation, or (b) execution of any agreement or other document for acquisition or acquiring of control.

The Commission shall, after receipt of notice, deal with such notice in accordance with the provisions contained in Sections 29, 30 and 31 which deal with (i) procedure for investigation of combinations inquiry into disclosures, and orders of the Commission on certain combinations respectively.

The provisions of Section 6 shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement. However, they shall, within seven days from the date of the acquisition, file with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

With effect from such date as the Central Government may approve, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India" (hereinafter called 'Commission' or CCI). It shall consist of a Chairperson and not less than 2 and not more than 10 other members to be appointed by the Central Government. However, during the first year of the establishment of the Commission, the Central Government shall appoint the chairperson and only one member.

The chairperson and every other member shall be the persons of ability, integrity and standing, who (a) are, or have been, or are qualified to be, a judge of a High Court; or (b) have special knowledge of, and professional experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, may be useful to the Commission. The chairperson and other members shall be whole-time members and shall hold office as such for a term of 5 years from the date on which he enters upon his office and shall be eligible for re-appointment. However, no chairperson or other member shall hold office as such after he has attained (a) in the case of the chairperson, the age of 67 years; and (b) in the case of any other member, the age of 65 years

The Central Government has, in exercise of the aforesaid powers, established w.e.f. 14th October 2003, the Competition Commission of India having its head office at New Delhi [Vide Notification No. SO1198(E) dtd. 14.10.2003]

The Central Government may, by notification, appoint a Director-General and as many Additional, Joint, Deputy or Assistant Directors-Generals, as it may think fit, for the purpose of assisting the Commission in conducting (i) inquiry into contravention of any of the provisions of this Act and for the conduct of cases before the Commission, and (ii) for performing such other functions as are, or may be, provided by or under this Act.

Duties of Commission: Under Section 18, Competition Commission has been charged with the following duties:

- (a) to eliminate practices having adverse effect on competition,
- (b) to promote and sustain competition,
- (c) to protect the interests of consumers, and
- (d) to ensure freedom of trade carried by other participants in markets in India.

Powers and functions of Commission : With a view to perform the duties enumerated under Section 18, the Commission has been charged with certain obligations and conferred with certain powers. These obligations and powers are as follows:

- 1 Inquiry into certain anti competition agreements;
- 2 Enquire as to whether an enterprise enjoys dominant position;
- 3 Inquiry into combination;
- 4 Granting interim relief by way of temporary injunction;
- 5 Award compensation to any person who makes an application to the Commission 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 any contravention of the provisions of Chapter II (Sections 3 to 6); having been committed by such enterprise;
- 6 Regulate its own procedures; and
- 7 Review its own orders

The jurisdiction, powers and authority of the Commission may be exercised by benches thereof which shall be constituted by the chairperson, and each bench shall consist of not less than two members of which at least one shall be a judicial member who is, or has been, or is qualified to be a judge of a high court.

A detailed procedure has also been laid down in the Act for inquiry into the complaints relating to anti-competition agreements and abuse of domination position enjoyed by enterprises and investigation of combinations upon its own knowledge and information.

Execution of orders of Commission : Every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order-made by a High Court or the principal civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court within the local limits of whose jurisdiction the person is situated.

Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908. Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. However, no appeal shall lie against any decision or order of the Commission made with the consent of the parties.

It may be noted that the Competition Act has not yet been made fully operational. Only a few sections, viz., Sections 1, 2, 7, 17, 22, 23 36 and 49 to 65 have been brought into force. This has been done primarily to empower the Central government to constitute the Competition Commission of India and to appoint the Director General and other staff.

Check Your Progress C

- 1 Fill in the blanks:
 - (a) competition Commission of India shall have a chairperson and minimum of _____ and maximum of _____ members.
 - (b) Judicial member must have been or is qualified to be _____
 - (c) Chairperson of the Commission cannot continue after _____ years of age.
 - (d) Commission cannot make an inquiry into a combination after expiry of _____ from the date on which combination takes effect.
 - (e) Combination is held _____ only if it adversely affects competition.
- 2 State the main objectives for which the Competition Act has been enacted.

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- 3 What are the rights to which the provisions relating to anti-competition agreements do not apply ?

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The Consumer Protection Act, 1986 is described as a unique legislation of its kind ever enacted in India to offer protection to the consumers. The Act is claimed to have been designed after an in-depth study of consumer protection laws and arrangements in U.K., U.S.A., Australia and New Zealand. The main objective of this Act is to provide for better protection of the interests of consumers.

7.5.1 Salient Features of The Act

Unlike other laws which are punitive or preventive in nature, the provisions of this Act are compensatory in nature. The Act intends to provide simple, speedy and inexpensive redressal to the consumers' grievances. Other salient features of the Act are as follows

- 1 It applies to all goods and services unless specifically exempted by the Central Government;
- 2 It covers all sectors whether private, public or co-operative;
- 3 It envisages establishment of consumer protection councils at the Central, State and District levels whose main object shall be to promote and protect the rights of the consumers; and
- 4 The provisions of this Act are in addition to, and not in derogation of, the provisions of any other Act.

It may be noted that the Consumer Protection Act, 1986 has been substantially amended by the Consumer Protection (Amendment) Act, 1993 and again by the Amendment Act, 2002 which became effective from March 10, 2003.

7.5.2 Rights of Consumers

For the first time in the history of consumers legislation in India, the Consumer Protection Act, 1986 extended a statutory recognition to the rights of consumers. Section 6 of the Act recognizes the following six rights of consumers:

- 1 Right to safety, i.e., the right to be protected against the marketing of goods and services which are hazardous to life and property.
- 2 Right to be informed, i.e., the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices.
- 3 Right to choose. It means right to be assured, wherever possible, access to a variety of goods and services at competitive prices. In case of monopolies, say, railways, telephones, etc., it means right to be assured of satisfactory quality and service at a fair price.
- 4 Right to be heard. i.e., that the consumers' interests will receive due consideration at appropriate forums. It also includes right to be represented in various forums formed to consider the consumers' welfare.
- 5 Right to seek redressal. It means the right to seek redressal against unfair practices or restrictive trade practices or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumers.
- 6 Right to consumer education. It means the right to acquire the knowledge and skill to be an informed consumer.

7.5.3 Filing of Complaints

Who can file a complaint? As per Section 12(1) any of the following may file a complaint under the Act:

- 1 The consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided. In this context, the term 'consumer' means a person who buys any goods or hires or avails of any services for a consideration. It is however, not necessary that the consideration must have been paid. The term also includes (i) a buyer under any system of deferred payments; and (ii) any other user of goods or services provided such use is made with the approval of the buyer.
- 2 **Any recognized** consumer association, registered under the Companies Act, 1956 or any other law for the time being in force. It is not necessary that the consumer is a member of such association.
- 3 One or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested.
- 4 The Central or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

Every complaint filed shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

Limitation period : The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action had arisen. However, a complaint may be admitted after even the lapse of the said two years period if sufficient cause is shown. The admissibility of the complaint shall ordinarily be decided within twenty-one days.

What complaints may be filed? A complaint may relate to any one or more of the following:

- 1 an unfair trade practice or a restrictive trade practice adopted by any trader or service provider;
- 2 goods bought by him or agreed to be bought by him suffer from one or more defects;
- 3 services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- 4 a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price (a) fixed by or under any law for the time being in force; (b) displayed on the goods or any package containing such goods; (c) displayed on the price list exhibited by him by or under any law for the time being in force; or (d) agreed between the parties;
- 5 goods which will be hazardous to life and safety when used are being offered for sale to the public (a) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force; or (b) if the trader could have known with due diligence that the goods so offered are unsafe to the public; and
- 6 services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service-provider which such person could have known with due diligence to be injurious to life and safety;

- 1 If the value of the goods or services and the compensation, if any, claimed does not exceed rupees Rs. 20 lakh, the complaint can be filed in the District Forum within the local limits of whose jurisdiction the opposite party actually resides or carries on business or has a branch office or personally works for gain or where the cause of action, wholly or in part, arises.
2. If the value of the goods or services and compensation, if any, claimed exceeds Rs. 20 lakh but does not exceed Rs. 1 crore, the complaint can be filed before the State Commission.
- 3 If the value of goods or services and the compensation, if any, claimed exceeds Rs. one crore, complaint can be filed before the National Commission,

How to file a complaint? The complaint should be accompanied by such fee as may be prescribed. It may be filed by the complainant or his authorised agent in person. It can also be sent by post to the appropriate Forum/Commission.

A complaint should contain the following information

- (a) the name, description and address of the complainant
- (b) the name, description and address of the opposite party or parties, as the case may be, as far as they can be ascertained;
- (c) the facts relating to complaint and when and where it arose;
- (d) documents, if any, in support of the allegations contained in the complaint;
- (e) the relief which the complainant is seeking.

The complaint should be signed by the complainant or his authorised agent. Minimum four copies of the complaint should be filed.

7.5.4 Powers of the District Forum

District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, as prescribed in Section 13 (4) of the Act.

- 1 the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
- 2 the discovery and production of any document or other material object producible as evidence;
- 3 the reception of evidence on affidavits;
- 4 the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- 5 issuing of any commission (i.e., authorising any other person or authority) for the examination of any witness; and
- 6 any other matter which may be prescribed.

Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and the District Forum shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

7.5.5 Reliefs Available to Consumers

If, after the necessary procedure as spelt out in Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the

services are provided, it shall issue an order to the opposite party directing him to do one or more of the following things.

- (a) To remove the defect pointed out by the appropriate laboratory from the goods in question,
- (b) To replace the goods with new goods of similar description which shall be free from any defect.
- (c) To return to the complainant the price, or, as the case may be, the charges paid by the complainant.
- (d) To pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party. The District Forum shall have the power to grant punitive damages in such circumstances as it deems fit.
- (e) To remove the defects in goods or deficiencies in the services in question.
- (f) To discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.
- (g) Not to offer the hazardous goods for sale.
- (h) To withdraw the hazardous goods from being offered for sale;
- (i) To cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature.
- (j) To pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently. The sum so payable shall not be less than five per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers. The amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;
- (k) To issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement.
- (l) To provide for adequate costs to parties.

The complaint should be decided by the forum, as far as possible within a period of three months, from the date of the notice received by the opposite party where complaint does not require analysis or testing of goods involved and within five months if it requires testing of the goods involved. It may be noted that any person aggrieved by an order of the Forum can appeal against such order to the State Council and the National Commission against the order made by the State Council.

7.5.6 Consumer Protection Councils

The Consumer Protection Act, 1986 as amended by the Amendment Act 2002 provides for the constitution of consumer protection councils at Central, State and District levels.

Central consumer Protection Council : The Central Government shall establish, by notification, a Council to be known as Central Consumer Protection Council (referred to as the Central Council) which shall consist of (a) the Minister in charge of the Consumer Affairs in the Central Government who shall be its chairman, and (b) such number of other official or non-official members representing such interests as may be prescribed, The term of the Council shall be 3 years.

The Council shall meet as and when necessary and at least one meeting of the Council shall be held every year. The objects of the Council shall be to promote and protect the rights of the consumers as contained in Section 6 of the Act. It shall give wide publicity to these rights, the consumer dispute redressal agencies and procedure for filing complaints to provide inputs to consumer movement in the country.

State Consumer Protection Councils : The State Government shall, by notification, establish a Council to be known as the Consumer Protection Council for the state (referred to as the State Council). It shall consist of (a) the Minister in charge of Consumers Affairs in the State Government who shall be its chairman, (b) such number of other official and non official members representing such interests as may be prescribed, and (c) such number of other official or non official members as may be nominated by the Central Government, not exceeding 10. The State Council shall meet as and when necessary but not less than 2 meetings shall be held every year. The objects of every state council shall be to promote and protect within the state the rights of the consumers laid down in Section 6 of the Act.

District consumer Protection Council : The State Government shall establish for every district, by notification, a Council to be known as District Consumer Protection Council (referred to as the District Council) consisting of (a) The Collector of the District (by whatever name called) who shall be its chairman, and (b) such number of other official and unofficial members representing such interest as may be prescribed by the State Government. The District Council shall meet as and when necessary but not less than two meetings shall be held every year. The objects of every district council shall be to promote and protect within the district the right of consumers as laid down in Section 6 of the Act.

Check Your Progress D

- 1 State whether the following statements are True or False.
 - (a) Where the value of goods and the compensation claimed exceeds Rs. 10 lakhs, complaint can be filed before the State Commission.
 - (b) A tailor who has purchased a sewing machine cannot file a complaint under the Consumer Protection Act.
 - (c) A complaint may be signed by an authorised agent of the complainant.
 - (d) A gifts a wrist watch to his daughter B, which has a defect. B can file a suit before the District Forum.
 - (e) The District Forum has the same power as are vested in a civil court while trying a suit in respect of matters prescribed in Section 13 (4) of the Consumer Protection Act.
- 2 Who other than the consumer can also file a complaint under the Consumer Protection Act?

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7.6 ESSENTIAL COMMODITIES ACT, 1955

The main purpose of the Essential Commodities Act, 1955 is to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce in, essential commodities.

7.6.1 Coverage

At present, only 18 essential commodities are covered under the Act. These are:

- (1) Cattle fodder, including oilcakes and other concentrates; (2) Coal including coke and other derivatives; (3) Component parts and accessories of automobiles; (4) Cotton and woolen textiles; (5) Drugs; (6) Foodstuffs, including edible oilseeds and oil; (7)

Iron and Steel, including manufactured products of iron & steel; (8) Paper, including newsprint, paperboard and strawboard; (9) Petroleum and petroleum products; (10) Raw Cotton either ginned or unginned, and cotton seeds; (11) Raw Jute; (12) Jute textiles; (13) Fertilizers, whether inorganic, organic or mixed; (14) Yarn made wholly from cotton; (15) Exercise Books; (16) Insecticides, fungicides, Weedicides and the like; (17) Seeds of food crops, seeds of fruits and vegetables, seeds of cattle fodder, and jute seeds; and (18) Onions.

7.6.2 Powers of the Central Government

Section 3 of the Act provides that if the Central Government is of opinion that it is necessary or expedient so to do for (1) maintaining or increasing supplies of any essential commodity, or (2) securing their equitable distribution and availability at fair prices, or (3) securing any essential commodity for the defence of India or the efficient conduct of military operations; it may, by order, provide for regulating, or prohibiting the production, supply and distribution thereof and trade and commerce therein. In particular, **an order may** provide:

- (a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;
- (b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;
- (c) for controlling the price at which essential commodity may be bought or sold;
- (d) for regulating by licences, permits or otherwise, the storage, transport, distribution, disposal, acquisition use or consumption of, any essential commodity;
- (e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;
- (f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity (i) to sell the whole or a specified part of the quantity held in stock or produced or received by him or (ii) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him, to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.
- (g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles which, in the opinion of the authority making the order, are, or, if unregulated, are likely to be, detrimental to the public interest;
- (h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
- (i) for requiring persons engaged in the production, supply or distribution of or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;
- (j) for the grant or issue of licences, permits or other documents, (i) the charging of fees therefor, (ii) the deposit of such sum, if any, as may be specified in the order as security for the due performance of the conditions of any such licence, permit or other document, (iii) the forfeiture of the sum so deposited or any part thereof for

contravention of any such conditions, and the adjudication of such forfeiture by such authority as may be specified in the order;

- (k) for any incidental and supplementary matters, including, in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals, and the seizure by a person authorised to make such entry, search or examination of (i) any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be, committed and any packages, coverings or receptacles in which such articles are found; (ii) any aircraft, vessel, vehicle or other conveyance or animal used in carrying such article, if such person has reason to believe that such aircraft, vessel, vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act; and (iii) any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts therefrom in the presence of an officer having the custody of such books of accounts or documents.

Where any person sells any essential commodity in compliance with an order made by the Central Government, there shall be paid to him the agreed, or controlled, or the market price in the absence of agreed or controlled price.

7.6.3 Confiscation of Essential Commodities

Where any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district in which such essential commodity is seized. The Collector, if he is satisfied that there has been a contravention of the order, may order confiscation of (a) the essential commodity so seized; (b) any package, covering or receptacle in which such essential commodity is found; and any animal, vehicle, vessel or other conveyance used in carrying such essential commodity. However, in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.

Where the Collector is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may (i) order the same to be sold at the controlled price, if any, fixed for essential commodity under this Act or under any other law for the time being in force; or (ii) where no such price is fixed, order the same to be sold by public auction. But in case of foodgrains the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or the State Government, as the case may be, for the retail sale of such foodgrains to the public.

Any person aggrieved by an order of confiscation may, within one month from the date of the communication to him of such order, appeal to any judicial authority of the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

7.6.4 Offences by Companies

If the person contravening an order made under Section 3 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. However, the said person shall not be liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

Where an offence under this Act has been committed by a company and it is proved that the offence has been committed 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 offence and shall be liable to be proceeded against and punished accordingly.

It may be noted that for the aforesaid purpose 'company' means any body corporate, and includes a firm or other association of individuals; and 'director' in relation to a firm means a partner in the firm.

Where any company is convicted under this Act, it shall be competent for the court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the court may direct.

7.7 LET US SUM UP

Various corporate laws constitute the legal environment within which companies operate. Industries (Development and Regulation) Act, 1951 seeks to ensure planned industrial development by regulating, controlling and developing certain specified industries through the system of registration and licensing. Licence is required not only to establish a new undertaking but also for manufacturing new article and for substantial expansion with the exception of small-scale or ancillary units (i.e., where investment is fixed assets and plant and machinery is upto Rs.1 crore), and the projects located in backward areas with an investment upto Rs.25 crore. There is also a provision for the Central Government to takeover an industrial undertaking after investigation in certain cases and even without investigation in some cases.

The MRTP Act, 1969 was enacted with a view to prevent concentration of economic power and to prohibit monopolistic, restrictive and unfair trade practices. MRTP Commission is the chief executive arm of this enactment which is empowered to enquire into any complaint relating to monopolistic trade practice and recommend an appropriate action to the Central Government. In case of restrictive and unfair trade practices, the MRTP Commission is the sole authority to enquire into such practices as well as pass necessary orders including awarding compensation and cease and desist order.

The Competition Act, 2002 aims at providing for the establishment of Competition Commission of India with a view to prevent practices having adverse effect on competition and to promote and sustain competition in markets so as to protect the interests of consumers. These objectives are sought to be accomplished by prohibiting anti-competitive agreements such as bid-rigging, cartels, tie-in arrangements, exclusive dealership, re-sale price maintenance etc., checking abuse of dominant position by an enterprise, and regulate acquisitions and mergers that may adversely affect competition. Competition Commission of India is the chief vehicle of the Competition Act. To assist the Commission, the Central Government is also authorised to appoint a Director General and as many additional, joint, deputy or assistant Director-Generals, as it may think fit. Competition Commission is empowered to enquire into any anti-competitive agreement, dominant position or combination and make appropriate order including granting interim relief by way of temporary injunction or awarding compensation to the aggrieved party.

The Consumer Protection Act, 1986 is claimed to be a consumer specific legislation. It has conferred certain rights on the consumers including right to safety, right to be informed, right to choose, right to be heard, right to seek redressal and right to consumer education. Special Courts for deliverance of quick and inexpensive justice have been enacted at District, State and National level. Any consumer including a buyer of goods or services on credit as well as under hire-purchase system can claim relief for any defect in goods or for deficiency of service as well as with respect to restrictive and unfair trade practices. Complaint under the Act may be filed by a consumer or by a recognized consumer association or by the Central or State Government. The Reliefs available to the consumers include replacement of defective goods, refund of price, compensation for any loss or injury suffered, removal of defect, withdrawal of hazardous goods, issue of corrective advertisement, etc.

The Essential Commodities Act, 1955 provides, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce, in essential commodities. At present, the Act is applicable to only 18 commodities. In order to achieve the aforesaid objectives, Central Government is empowered to regulate production or manufacture of essential commodities; bring under cultivation any waste or arable land; control price; and regulate storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity. Central Government can also seize and confiscate any essential commodity.

7.8 KEY WORDS

Ancillary Unit : An industrial undertaking having investment in fixed assets and plant and machinery not exceeding Rs. 1 crore and which is engaged in the manufacturing or production of parts, components, sub-assemblies, tooling or intermediates, or the rendering of services and supplying and rendering not more than 50% of its products or services, as the case may be, to one or more than one other units for production of other articles.

Bid-rigging : A collusive agreement between persons or enterprises with a view to eliminate or reduce competition for bids.

Collective Agreement : An agreement whereby the buyers or sellers syndicate themselves with a view to seek an unreasonable bargain.

Gateways : The circumstances under which a restrictive trade practice shall not be deemed to be prejudicial to public interest.

Monopolistic Trade Practice : A trade practice which leads or is likely to lead to unreasonably high price, unreasonably high cost of production of goods or provision of services, unreasonably high profits, prevention or reduction of competition, limited technical development, limited capital investment, deterioration the quality of goods.

National Monopolies : Single large undertaking or group of interconnected undertakings (large houses) having assets of at least Rs. 100 crore. It is also called 'MRTP firm'.

Overseas Corporate Body (OCB) : A company, partnership firm, society and other corporate body owned, directly or indirectly, to the extent of at least 60% by non-resident Indians (NRIs).

Predatory Pricing : Offer of sale of goods below cost with the intention of wiping off competition.

Product Monopolies (Dominant Undertaking) : An undertaking which by itself or along with inter-connected undertakings, producers, suppliers, distributes or otherwise controls not less than $\frac{1}{4}$ th of the total goods that are produced, supplied or distributed in India, and has assets of at least Rs. 3 crore. It is also called 'dominant undertaking'.

Resale Price Maintenance : An agreement to sell goods to the dealers on the condition that the prices to be charged on resale to the consumers shall be the prices stipulated by the manufacturer.

Restrictive Trade Practice : A trade practice which has or may have the effect of preventing, distorting or restricting competition in any manner.

Small Scale Unit : An industrial undertaking in which the investment in fixed assets and plant and machinery whether held on ownership terms or on lease or on hire-purchase, does not exceed Rs.1 crore.

Trade Practice : Any practice relating to the carrying on of any trade, industry or profession relating to the production, supply distribution or control of goods or provision of services, and includes anything done by any person which controls or affects the price charged or the method of trading.

Typing Arrangement : Any agreement requiring a purchaser of goods as a condition of such purchase, to purchase some other goods.

Unfair Trade Practices : A trade practice which for the purpose of promoting the sale, use or supply of any goods or provision of any serviced adopts any unfair method or deceptive practice like misleading advertisement and false representation.

7.9 ANSWERS TO CHECK YOUR PROGRESS

Check Your Progress A

- A 1 (a) True (b) False (c) False (d) True (e) False (f) True
- B 1 (a) restrictive trade
(b) monopolistic trade
(c) predatory pricing
(d) re-sale price maintenance
(e) ancillary
- 2 (a) No
(b) Yes
(c) No
(d) No
(e) Yes
- C 1 (a) 2 and 10
(b) judge of a High Court
(c) 67
(d) one year
(e) void
- D 1 (a) False (b) False (c) True (d) True (e) True

7.10 TERMINAL QUESTIONS

- 1 State the composition of a Development Council under IDRA, 1951. What are its functions?
- 2 What is an industrial licence? Enumerate the circumstances under which it is necessary.
- 3 What are the circumstances, under which the Central Government can take over the management of an industrial undertaking? What are the effects of such take over?

- 4 What are the functions of Central Advisory Council and Development Council ?
- 5 What are the objectives of MRTP Act, 1969 ? State the provisions of the MRTP Act, 1969 with respect to checking of concentration of economic power.
- 6 What is meant by monopolistic trade practice? State the provisions of the MRTP Act with respect to checking of such practices.
- 7 Enumerate restrictive trade practices which are registrable with the Director-General, and state any five such practices that are exempt from registration.
- 8 State the circumstances under which restrictive trade practice shall be allowed.
- 9 Define 'unfair trade practice'. State the powers of the MRTP Commission with respect to unfair trade practices.
- 10 Write an explanatory note on anti-competitive agreements under the Competition Act, 2002.
- 11 State the provisions of the Competition Act, 2002 with respect to:
 - (a) checking of abuse of dominant position
 - (b) regulation of combinations
- 12 Describe the composition and functions of Competition Commission of India.
- 13 What are the rights conferred upon the consumers under the Consumer Protection Act, 1986? Explain.
- 14 What are the complaints that can be filed before a consumer forum? Also state the appropriate forum for filing of complaints.
- 15 Describe the powers of the Central Government to control production, supply and distribution of essential commodities under the Essential Commodities Act, 1955.

Note : These questions will help you to understand the unit better. Try to write answers for them, but do not submit your answers to the university for assessment. These are for your practice only.