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[2025] 179 taxmann.com 224 (Article)[©]Date of Publishing: **October 9, 2025****The CCI vs. KFEF Judgement: Fortifying Regulatory Arsenal and Redefining Executive Accountability****CS RAHUL SAHASRABUDHE**

Independent Director & Designated Partner, SPRS & Co. LLP, Company Secretaries

"The ecosystem of the Competition Act is sufficient notice to the violator that the regulating body has vast discretion... Providing a back and forth between the regulator and the person in breach to arrive at an appropriate penalty can defeat the purpose of the Act."

– Supreme Court of India, in *CCI v. Kerala Film Exhibitors Federation* [2025] 178 taxmann.com 649 (SC)

This potent observation from the Supreme Court's landmark judgement is not merely a legal conclusion; it is a clarion call to India's corporate leadership. The Court's ruling in *Kerala Film Exhibitors Federation (supra)* delivered on September 26, 2025, fundamentally recalibrates the balance of power between regulators and corporations. It affirms the Competition Commission of India's (CCI) authority to impose significant behavioural remedies on individuals and underscores that procedural fairness does not necessitate a drawn-out, multi-stage hearing process. For boards, company secretaries, and in-house counsel, this judgement is a stark reminder that personal liability for anti-competitive conduct is not an abstract threat but a tangible and potent reality.

Deconstructing the Court's Rationale: From "Toothless" to Empowered Regulator

At its core, the case involved a classic anti-competitive boycott. The Kerala Film Exhibitors Federation (KFEF) and its office-bearers were found to have threatened distributors to prevent them from supplying films to a non-member theatre, Crown Theatre. The CCI, invoking Sections 3 (anti-competitive agreements) and 48 (liability of individuals) of the Competition Act, 2002, imposed a 10% monetary penalty on the turnover/income of both the association and its President and General Secretary. Crucially, it also issued behavioural remedies, barring the two individuals from associating with the federation's affairs for two years.

The Competition Appellate Tribunal (COMPAT) upheld the findings on contravention but set aside the penalties on the individuals, citing a violation of natural justice as no separate notice was issued specifically on the *proposed* penalty. The Supreme Court's reversal of this finding is the crux of this precedent.

The Court meticulously analysed the statutory scheme of the Competition Act, contrasting it with its "toothless" predecessor, the MRTP Act. It held that the Act's architecture is designed for expeditious disposal. The single, comprehensive hearing—where parties are given the Director General's (DG) report, an opportunity to file replies, and an oral hearing—constitutes sufficient compliance with natural justice. The Court reasoned that the notice is to answer the *contravention* itself; a second notice detailing the proposed quantum of penalty is not mandated. This "rolled-up" hearing process, as the Delhi High Court had earlier termed it, provides adequate safeguards.

Beyond the Verdict: Operational Hurdles for Compliance Officers

For practitioners, this judgement introduces both clarity and complexity.

- **The End of the "Second Notice" Shield:** The most immediate impact is procedural. The defence that the CCI must issue a separate show-cause notice for penalty has been unequivocally rejected. This streamlines the CCI's process but places a heavier onus on respondents to address all aspects—both liability and potential repercussions—during their initial response to the DG report. A defensive, legalistic reply focused only on denying contravention will no longer suffice.
- **Behavioural Remedies as the New Norm:** The Court's endorsement of behavioural remedies (like debarment from management) and its discussion of structural remedies signal a significant expansion of the CCI's toolkit. The CCI is no longer limited to monetary penalties. It can now surgically target the individuals it deems responsible, effectively altering the corporate governance structure of the offending enterprise. This principle, while applied here to an association, is equally applicable to companies. Imagine a scenario where the CCI, finding a company guilty of cartelization, bars its Managing Director or key sales heads from holding office in any company in the sector for a specified period. The disruptive potential is enormous.

Key Considerations for Practitioners:

- **Treat the DG Report with Utmost Seriousness:** The response to the DG report is now the primary, and often the only, opportunity to present a holistic defence on both facts and potential mitigation.
- **Proactively Present Mitigation:** Do not wait for a separate penalty hearing. If a contravention is likely, proactively present evidence of compliance programs, lack of knowledge, due diligence exercised, and the proportionality of any potential penalty.
- **Document Everything:** The Court reinforced that individuals can escape liability under Section 48(1) by proving the contravention was without their knowledge or that they exercised all due diligence. This makes meticulous documentation of board discussions, dissent notes, and compliance approvals absolutely critical.

A Boardroom Perspective: Rethinking Governance Protocols

This judgement must resonate in every boardroom. The notion that liability for a company's anti-competitive actions can be a "cost of doing business," payable from the corporate treasury, is now dangerously obsolete. The CCI, armed with this precedent, can directly target the personal finances and professional futures of the individuals "in charge of, and responsible for" the conduct of the business.

This echoes the heightened accountability seen under SEBI regulations and the Companies Act, 2013, but with a crucial difference: the CCI's powers extend beyond fiduciary failures to core commercial decisions that distort the market. A sales strategy that inadvertently crosses into collusion, or a distribution policy that excludes competitors, can now have career-ending consequences for the executives involved.

Actionable Guidance for Boards:

1. **Elevate Competition Law Compliance:** Move competition law from a legal checklist item to a core strategic risk management issue. Regular, detailed training for the board and senior management is non-negotiable.
2. **Clarify Roles and Responsibilities:** Ensure that reporting lines and decision-making authorities for pricing, market strategy, and interactions with competitors are clearly defined and documented.
3. **Institute Robust Compliance Frameworks:** Implement and regularly audit a robust antitrust compliance program. This program should include clear protocols, whistle-blower mechanisms, and mandatory legal vetting for high-risk commercial decisions.
4. **Foster a Culture of Compliance:** The board must champion a top-down culture where compliance is valued as much as profitability. A director's note of dissent in a meeting where a questionable strategy is proposed could be their saving grace under Section 48.

The Ripple Effect on Future Litigation and Regulatory Trends

The Supreme Court's ruling will have far-reaching consequences:

- **Aggressive CCI Enforcement:** The CCI is likely to be more confident and assertive in pursuing individuals, especially in repeat offence cases or hardcore cartels, using behavioural remedies as a potent deterrent. The Court itself noted that in the present case, the individuals were repeat offenders, making mere monetary fines ineffective.
- **Increased Scrutiny of Due Diligence Defenses:** The proviso to Section 48(1) will become a fiercely contested battleground. Courts will now see a surge in arguments around what constitutes "due diligence" and how an individual can prove a contravention occurred "without their knowledge."
- **Impact on M&A and Joint Ventures:** In cross-border transactions, foreign partners often seek comfort on compliance and liability issues. This judgement accentuates the need for thorough competition law due diligence on the target's management practices and any ongoing CCI investigations. The personal liability of key managers becomes a material consideration.
- **Unintended Consequence for Independent Directors?** A critical question remains: could an independent director, nominally "in charge," be held liable? While the court required proof of being a "key decision-maker," the line can be blurry. This may necessitate a more hands-on—yet carefully balanced—approach from independent directors in understanding the company's market conduct.

Conclusion: A Watershed Moment for Corporate India

The *KFEF (supra)* judgement is a watershed moment. It marks the maturation of India's competition law regime from one focused on penalizing entities to one capable of enforcing accountability at the individual level. It signals that the era of the CCI as a mere adjudicator is over; it is now a formidable regulator with a comprehensive arsenal to shape market behaviour.

For the Indian corporate sector, the message is unambiguous. Robust, internalized, and proactive competition compliance is no longer a best practice—it is a fundamental imperative for corporate survival and a critical shield for its leaders. The time to fortify your defences is now, before the CCI's notice under Section 26(1) lands on your desk.

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