DETERRING CARTEL IN INDIA: A HALF (UN) DONE JOB?

Mausam[1]

I. Introduction

Globalisation basically argues for free market for development. The idea behind free market is that firms competing with each other provide economic efficiency and consumer welfare. Thus competition can be regarded as engine of free market. But 'cartel' makes this engine to cease, causing enormous damages to domestic as well as global economy. Therefore, controlling cartel activities has been top priority of competition law in every jurisdiction. But its regulation is not easy job for enforcement authority. Same is true with respect to Competition Commission of India (hereafter referred as CCI). Absence of direct evidences and non-availability of witnesses are main concerns of CCI. Further, its inconsistent and contradictory opinions have created more complexions in cartel enforcement in India. But main problem is absence of right level of deterrence of monetary penalty, which is found insufficient in cartel cases. This is high time for India to give more teeth, such as criminal sanction, to its cartel enforcement mechanism.

Considering the importance of its strict enforcement, this article attempts to explore cartel regulation in India. The first section of this article explains cartel, its modus operandi, and its effect on economy and consumers. Second section of this article explains the legal framework of cartel regulation in India. Third section of this article provides a rough comparison about detection of cartel in India and United States. This section also highlights the use of circumstantial evidences in cartel regulation. Fourth section provides some illustrations of inconsistent appraisal of evidences and contradictory opinions. Fifth section deals with unreasonable amount of fines in cartel cases. Next section explores the possibility to criminalize the cartel activities in India. Finally, the article conclude with the remark that any system or arrangement can work only if guilty is brought to the justice.

What is Cartel?

Under anti-trust laws, good understanding of cartel is very important for its successful prevention. A cartel is a group of firms that seeks to

[1] Ph.D Scholar (Competition Law) and UGC JRF Recipient at Faculty of Law, University of Delhi, she can be contacted at: mausam8280@gmail.com

increase profits by restricting price and output competition among themselves[2]. The Supreme Court of India in *Union of India v. Hindustan Development Corporation*[3] defined cartel as "an association of producers who by agreement among themselves attempt to control production, sale and prices of the product to obtain monopoly". Cartels are generally found in the form of horizontal anti-competitive agreements. Horizontal agreements are agreements between two or more enterprises that are at the same stage of production chain and in the same market[4]. The term 'in the same market' implies the fact that the parties to the agreement must be both producers, or retailers or wholesalers[5]. Basically cartel involves the element of collusion. Cartel is a common feature in those sectors or industries where competition is very high and entry of a new player in the market is very tough. Normally, those industries where products are 'homogenous' are prone to cartel. When there is no substitute of any product or substitute is rarer than original product and demand remains constant despite increase of price, probability of cartelization becomes very high. For instance, cement, there is no substitute of cement for construction, therefore cement industry is highly prone to cartelization. Similarly, oil, people will continue to purchase oil for multiple uses irrespective of price increase, which makes it highly probable of cartelization. Under basic economic theory cartels are unstable, i.e, they are not "self-enforcing"[6]. According to this theory collusion can occur and it is unlikely to last forever. Collusion occurs with substantial frequency and duration which makes its enforcement very costly[7].

The Cartel of businessmen prevents the market forces from competing with each other and thus denying the benefits to the consumers. Cartel adopts various methodologies to create monopoly like condition in the market such as increasing prices of goods or services, or by cutting production of goods or reducing supply to create scarcity in the market. In short, presence of cartel is not a good sign for the health of a particular sector as well as for the state economy. It creates obstacles for economic growth of any country and hammers the process of improvement of levels of living of the people. According to OCED report[8]:

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2 Keith N. Hylton, *Antitrust Law: Economic Theory & Common Law Evolution*, p.68, 2003, Cambridge University Press.

3 (1994) CTJ 270 (SC) (MRTP).

4 Abir Roy and Jayant Kumar, *Competition Law in India*, p. 68, 2008, Eastern Law House

5 Id

6 Supra note 2.

7 Supra note 2.

8 Hard Core Cartels: Recent Progress and Challenges Ahead, OCED Report, (2003) 8.

> "Cartels harm consumers and have pernicious effects on economic efficiency. A successful cartel raises prices above the competitive level and reduces output. Consumers (include businesses and governments) choose either not to pay the higher price for some or all of the cartelized product that they desire, thus forgoing the product, or they pay the cartel price and thereby unknowingly transfer wealth to the cartel operators. Further, a cartel shelters its members from full exposure to the market forces, reducing pressures on them to control costs and to innovate. All of these effects harm efficiency in a market".

Therefore its strict regulation is very important. Some of orders of CCI illustrate the seriousness of the issue in India. In *Cement Cartelization Case*[9], the CCI imposed more than 6307 crore rupees penalty on 11 leading cement manufacturers in India for indulging in cartel activities. This was first order of CCI in which it inflicted such huge amount as penalty. This order also sent massage to India Inc. that this authority is here for business. Further in *DLMW Cartelization Case*[10] the CCI imposed a penalty of 2% of the average turnover of the company on the each of the contravening companies for violating Section 3(3) of the Act. These companies were found guilty for indulging in bid rigging. In *International Cylinder (P) Ltd. v. CCI*[11] the COMPAT upheld order of penalty by the CCI on LPG cylinder operators for involving in cartel.

II. Legal Framework for Regulation of Cartel in India

To maximise their profit, many MNCs and domestic firms indulge into cartel activities. India adopted a new competition law in 2002 as a response to and consequence of economic reforms initiated in late 1990's. The obvious reason was the sharp increase in number of MNCs and domestic conglomerates in India after economic reforms. Indian competition regime, thus, is relatively very young. Therefore, it is important to begin with a sound and strong anti-cartel enforcement to develop an effective competition culture in our country. The Competition Act, 2002, clearly defines cartel under Section 2(c) in following words

> "Cartel includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the

[9] Case No. 29/2010, Date of Order 20.06.2012
[10] Suo moto Case No. 03 of 2012, decided on Feb 5, 2014
[11] Appeal No. 21 of 2012, COMPAT.

> production, distribution, sale or price of, or, trade in goods or provision of services".

Again, Section 3 of the Competition Act, 2002 regulating cartel behaviours in India broadly declares 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".

Further, Section 3(2) says that any such agreement entered shall be void. Section 3(3) of the Act expressly mentions that if cartel or other similar groups enter any agreement mentioned under this sub-section, such agreement shall be presumed to have an appreciable adverse effect on completion in India[12]. These agreements include (a) agreements determining purchase or sale prices, (b) agreements limiting or controlling production, supply, markets technical development, investment or provision of services, (c) agreement to share the market, or sources of production or provisions of services by way of allocation of geographical markets or type of goods or services or number of customers in the market, and (d) bid rigging or collusive bidding[13].

One of the prominent features of the Section 3(3) is that it made cartel behaviour subject to 'shall presume rule', which is different from 'per se rule'. This is mark difference between Indian law and United States's law. The principal of 'shall presume' used in Section is very similar to what has been explained by the Indian Supreme Court in *Sodhi Transport Co. v. State of U.P*[14], where the court observed that:

> "the word 'shall presume' have been used in the Indian judicial lore for over a century to convey that they lay down a rebuttable presumption in respect of matter with reference to which they are used and not laying down a rule of 'conclusive proof'…a presumption is not in itself evidence but only makes a prima facie case for the party in whose favour it exists. It indicates the person on whom the burden of proof lies. But when it is rebuttable, it only points out the party on lies the duty of going forward on the evidences on the fact presumed, and when that party has produced evidence fairly and reasonable tending to show that the real

[12] Section 3(3) of the Competition Act, 2002.
[13] Section 3(3) of the Competition Act, 2002.
[14] AIR 1980 SC 1099.

> fact is not as presumed, the purpose of presumption is over". Thus, according to above rule, in the case of horizontal agreement listed in Section 3(3), once it is established that such agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition; the burden of proof would then shift to the defendant[15].

III. Detection of Cartel

Cartels pose serious challenges for competition law enforcement authority. Since they originate and operate in secret, therefore founding any direct evidence of their operation is almost impossible. In absence on direct evidences investigating authority and courts of all jurisdictions heavily rely on indirect or circumstantial evidences. Like other jurisdictions, detecting cartel in India is difficult task for the enforcement authority. In absence of direct evidence, authority relies upon circumstantial evidences, which are usually found in form of economic evidences. These evidences, such as similar pattern of price increase, pattern of production and supply, are very crucial in cartel detection.

In United States, regulation of cartel is century old under classic Sherman Act of 1890. Section 1 of this Act provides "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with the foreign nations, is declared to be illegal". The most striking feature of this section is declaring cartel as illegal. But collecting evidences to prove cartel was tough job for enforcement authority. Therefore in United States, courts used circumstantial evidences to discourage cartels. But it is not an easy task either for enforcement agency or for the court. In United States competition authority uses almost all modern technology from surprise raids, to seizure or copying of evidences, compulsory interviews, phone taps and electronic eavesdropping to gather evidences[16]. Further Department of Justice frequently takes help from well trained FBI agents in collecting evidences. So far as the approach of court is concerned, in United States, courts have heavily relied upon circumstantial evidences and interpreted evidences often very liberally. In *Interstate Circuits v. United States*[17] it was observed by Supreme Court of United States that:

> "[a]cceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary

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[15] Vinod Dhall, 'Competition Law: Concepts and Practices Relevant for India', p.503, [2007]

[16] OCED, Hard Core Cartels: Recent Progress and Challenges Ahead, 23 – 27, 2003.

[17] 306 U.S. 208 (1939).

> consequences of which, if carried out, is restraint of commerce, is sufficient to establish an unlawful conspiracy under the Sherman Act".

Further in *American Tobacco Co. v. United States*[18], it was laid down that: "No formal agreement is necessary to constitute an unlawful conspiracy. Often crimes are matter of inference deduced from the acts of the person accused and done in pursuance of a criminal purpose…The essential combination or conspiracy in violation of the Sherman Act may be found in a course of dealing or other circumstances as well as in an exchange of words".

In *Matsushita Electric Industrial Co. v. Zenith Radio Corp*.[19] position was made clearer. In this the Court announced the following propositions:

"a. Conduct equally consistent with permissible competition and illegal conspiracy does not, without more, support even an inference of conspiracy.

b. The plaintiff must present evidence which tends to exclude the possibility that the alleged conspirators acted independently.

c. The plaintiff must show that the inference of conspiracy is reasonable in light of competing inferences."

On the other hand in India, it is strange that the CCI is reluctant to exercise its power in full capacity (given under Section 41 of the Competition Act) to conduct 'dawn raids' for collection of evidence. CCI conducted its first ever 'dawn- raids' at the premises of M/s JBC India Ltd., an Indian subsidiary of a UK based construction company (JBC) in relation of abuse of dominance position[20], much latter after getting power of search and seizure. Further, the Competition Act empowers CCI to take reciprocal help from the other sectoral regulators[21], for proper investigation, but unfortunately, there is often clash rather cooperation between CCI and other regulators. However, the CCI's approach towards circumstantial evidences is shinning line. In Cement Cartel Case, the CCI said that:

> "…in absence of any documentary evidence of existence of an agreement, it is appropriate, correct and logical to inquire into cases of anti-competitive agreements on the basis of existence of evidences which establish that particular set of

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[18] 328 U.S. 781 (1946)

[19] 475 U.S. 574 (1986).

[20] MM Sharma, 'India: Dawn Raids – When CCI (India) Comes Knocking?', www.mondaq.com.

[21] Section 21 of the Competition Act, 2002.

> act and conduct of the market participants cannot be explained but for some sort of anticompetitive agreement and action in concert among them…'*parties to an anti-competitive agreement will never come out in the open and reveal their identities to be punished by the competition agencies*".

Similar observation was made by the CCI in *Shoe Cartel Case*[22]

> *…there is rarely a direct evidence of action in concert and the Commission has to determine whether those involved in such dealings had some form of understanding and were acting in co-operation with each other. In the light of the definition of the term 'agreement', the Commission has to find sufficiency of evidence on the basis of benchmark of 'preponderance of probabilities'*

IV. Inconsistent Appraisal of Evidences

Uniformity in appraisal of evidences is also very important. The *Cement Case* and *Tyre Case*[23] are good examples of inconsistent appraisal of evidences by the CCI. In *Tyre case* active industry association conducted regular meetings regarding price, production and supply. In *Cement Case* and *Tyre Case*, plant capacities were much higher than what was being produced by manufacturers. Further, tyre manufacturers were also being accused of not sharing benefits of excise duty reduction with the customers. In short, there were clear prior consultations among parties, capacity under-utilisation, production and supply parallelism and similar pattern of price increase which were ground for liability in *Cement case*. Yet, in *Tyre case* the Commission was of the view that in the absence of a more "specific pattern" between the parties, such evidence was itself, not enough to infer guilt. The journey of the CCI from *Cement Case* to *Tyre case* presents an interesting point in appraisal of evidences in cartel cases.

In *Cement Case* the CCI failed to look into changes in market share during cartelization period. Changes in market share generally negate the presence of cartel in any industry or sector. But this was corrected by the CCI in *Soda Ash Case*[24] where changes in market share were regarded as

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[22] Case No. 01 of 2012.

[23] In re All India Tyre Dealers' Federation vs Tyre Manufacturers, MRTP Case: RTPE No. 20 of 2008.

[24] Case No. 66 of 2011.

negating factor of cartel[25]. Similar approach was adopted by the CCI in *Tyre Cartel Case*. Further in *Cement Case* the CCI observed that high concentration in the market results into oligopolistic nature of market which strongly indicates presence of cartel in the industry. But in *Soda Ash Case* the CCI acknowledged that oligopolistic market may result into interdependence of the parties and such interdependence does not indicate collusion among the parties[26]. Another interesting point to be noted here is that in *Cement Case* the CCI found under utilisation of plant capacity as strong evidence of cartelisation in cement industry, without any detailed study into other factors which might be responsible for the low utilisation. Such factors include increase in price of basic resources, fall in demand, difficulties in supply, new government rules etc. Taking lesson from its past experiences, the CCI in *Tyre Case*, did very extensive research and reached to the conclusion that decrease in utilisation of plant capacity is due to fall in demand. Economic recession badly hit demand during such period[27]. The order of CCI in *In Re: Alleged Cartelization by Steel Manufacturers*[28], is very important here. This case was brought under MRTP Act on the basis of an article published in the Financial Express in which sudden increase in price of steel was alleged against SAIL and RINL. It was alleged that there was average increase in the price of steel by 10% between April 2007 and January 2008, which is adversely affecting other industries such as construction and automobile. The case was transferred to the CCI under Section 66(6) of the Act. During investigation DG found that the steel producers have violated the provisions of Section 3(3)(a) and (b) of the Act. But CCI concluded that pricing policies of the parties did not indicate any agreement in this respect, though market was oligopolistic. Some important principles emerging from this order are as follows:

a. Profit margin is an important indicator of price fixing strategies. This can be indicative of whether there is an agreement among the participants in the market;

b. Price parallelism by itself is not indicative of cartels or cartel-like behaviour unless there is additional evidence such as proof of conscious parallel behaviour;

c. Since circumstantial evidence would be relied upon, the material gathered should lead one to the conclusion that there is more than

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[25] Samir R Gandhi, Fadi Metanies, Shanshank Sharma, 'India : Cartels', globalcompetitionreview.com/review/69/section/235/chapters/2750/india-cartels/.

[26] Id.

[27] Id.

[28] RTPE No. 09 of 2008, initiated under MRTP Act and disposed off under the Competition Act, 2002.

mere parallelism and firms have crossed the 'line' thereby violating the Act. But *Steel Manufacturers cartel* order was not followed by the CCI in later cases. However, recent approach of CCI indicates that it is moving from 'beyond reasonable doubts' standard. But there is need to lower the standard a little more as well as to bring uniformity. A strong cartel enforcement mechanism requires clarity in functioning.

V. Unreasonable Fines

Another issue raised by this article is the unpredictability of and uncertainty in amount of fines imposed by the CCI. In India, under the Competition Act, the penalty must not exceed three times the profits or 10% of turnover of each year of infringement, whichever is higher for indulging in cartel activities[29]. It is also stipulated under the Act that the CCI may impose upon cartel members "a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover for each year of the continuance of such agreement, whichever is higher"[30]. But the penalty inflicted by the CCI in the *Cement Case*, though made headlines, was far below the ceiling provided under the law. It was only 0.5 times of the profits for 2009 to 2011. Similar decisions of inconsistent and unreasonable penalty without any reason can be seen in other case. The twin primary objectives of punishment are to prevent a person who has committed wrong from repeating it and to prevent others from committing similar wrong. Any punishment must at the least achieve both of the above objectives. The punishment of fine can have no meaning when it bears no or least relation with the profit that the wrongdoer can Soft-sentencing justice is gross injustice where many innocents are the potential victims. In the European Union, the basic amount of fine is determined by a specific percentage (the maximum limit is 30%) of the value of sales during the last year of the infringement[31]. The percentage of fines depends upon the gravity and duration of the cartel[32]. In the case of serious or hard core cartels, the percentage is generally at higher end of the scale[33]. On the other hand, US law allows for fines up to US$ 100 million[34], twice the gross or twice the gross loss suffered[35]. Further US sentencing guidelines permits

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29 Section 27 of the Competition Act, 2002.

30 Id.

31 European Commission Guidelines on the method of setting fines imposed pursuant to Article 23(2) of Regulation No 1/2003 (2006 Penalty Guidelines).

32 Id.

33 Id.

34 15 USC s 1, 3, Antitrust Criminal Penalty Enhancement and Reform Act of 2004.

35 18 USC s 3571(d)(2004 & Supp IV, 2004).

that in cases of price fixing cartels the fine shall be calculated on the basis of 20% of the volume of affected commerce[36].

The practices of European Union and United States make it clear that in serious cases of cartel higher penalty is imposed; giving consideration to the gravity and duration of the cartel. But in the *Cement Case*, without knowledge of the actual duration, the authority calculated the fine on the basis of two years of infringement. The optimum penalty should be whether more or less must depend upon the actual duration of the cartel. Therefore, there is a need of clarity on computation of amount of penalty.

In *M/s. Excel Crop Care Limited v. Competition Commission of India & Ors*[37], though COMPAT accepted the ruling on merits of CCI in this case but it modified the CCI order on imposition of penalty. In this case, COMPAT held:

> "While arriving at a conclusion about the relevant turn over it would be open to the authorities like CCI to rely on the general principles expressed in those guidelines regarding the method of calculation etc… However, it should be an endeavour of the authorities to apply those principles not mechanically or blindly but after carefully considering the factual aspects. Such factual aspects could include the financial health of the company, the necessity of the product, the likelihood of the company being closed down on account of unreasonable harsh penalty etc. At the same time the authorities would be well advised in considering the general reputation and the other mitigating factors like the first time breaches as also the attitude of the company. This list is certainly not exhaustive and the authority can and should consider all the relevant factors while considering the relevant turn over as also considering the extent of penalty on that basis. It should also be reiterated at this stage that there should be proportionality in the award of penalty, which principle has been enshrined in several judgments of the Apex Court"[38]. Similar observation was made by COMPAT in *Aluminium Phosphide Cartel Case*[39], where it criticised the decision of the CCI of imposing penalty of 9 percent of average turnover for the previous three years on each parties to the cartel. COMPAT observed that the while imposing higher penalty CCI should give

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[36] United States Sentencing Commission, Guidelines Manual, (2005) 2R 1.1(d)(1).
[37] Appeal 79 of 2012, Order dated October 29, 2013.
[38] Id, para 63.
[39] In re Aluminium Phosphide Tablets Manufacturers, Suo Moto Case, 02/ 2011

reasons for doing so and it should take into account all other relevant factors. Monetary penalty has its limitation; its deterrence cannot be stretched to fit in all size. Looking into the state of India companies, higher amount of penalty is not a good option. On the other hand, lesser penalty is not sufficient to discourage cartel. This situation presses to look for better option than fines.

VI. Case for Criminalisation of Cartel in India

Some kind of cartel receives criminal sanctions in United States under **Sherman Act, 1890**. Today, criminal sanction for cartel activities has found place in more than 100 jurisdictions around the globe. Many developing countries such as South Africa, Brazil are adopting criminal provisions for cartel. The fundamental reason behind making cartel illegal is that an economic offence like cartel is committed with cool calculated and deliberate design with an eye on personal gain regardless of the harms done to the community and to the health of the economy of the state. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to the book. Thus, looking into the increasing number of cartel activities in the country, can India afford not to have criminal sanctions for cartel?

Where behaviour of any person or group of persons cause significant damage or harm to the society, such behaviour should be stopped, and person responsible for those harms should be punished. Criminal sanctions are used as an important tool to regulate such harmful behaviours for very long time. The principal justification of criminal sanctions for cartel conduct is that this will provide more effective general deterrence than civil penalties[40]. Simple example is that jail sentences draw more attention of corporate personals than monetary sanctions. The thought of serving imprisonment in jail creates more fear than paying some amount of money[41]. Further a criminal conviction severely damages the guilty person's image and reputation. A criminal conviction's stigma creates negative publicity which outweighs inconvenience and embarrassment of an adverse decision in a civil proceeding[42]. Criminal sanctions also work as an inducement for lower level employee to testify against their senior and

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[40] Brenda Marshall, 'Criminalization of Cartel Conduct: Compelling Compliance with Anti-Collusion Laws'. www.austii.edu.au/au/journals/JIA LAW TA/ 2010/3.Pdf. visited on 15-01-2016.

[41] William Kolasky, 'Criminalizing Cartel Activity: Lesson from the US Experiences', (2004) 12 Competition & Consumer Law Journal, www.wilmerhal.com.

[42] Supra note 40.

employer. This reduces the burden of enforcement authorities in collecting evidences and makes their job much easier[43]. But most important argument placed in support of criminalization of hard core cartel is to provide right level of deterrence. According to Wouter P. J. Wils, "the minimum level of fine optimally to deter cartels would be in order of 150% of the annual turnover in the products concerned- a figure that is impossibly high"[44]. Therefore he suggested criminalization of cartel in EU[45]. There are other problems with respect to imposing large fines such as bankruptcy of the firm, consequently exist from the market. Ultimately, this will result into more concentrated market. This issue was highlighted in the OCED Second Cartel Report in following words:

> "Whether or not it is legally possible to impose an optimal organisational fine and practically possible to calculate it in a given case, actually imposing it might present problems. The optimal fine should simply be too large for the entity to bear, causing bankruptcy and possible exist from the market, which could itself diminish competition"[46].

Indian economy is developing; it requires good competition in the market. It can neither afford flourishing of cartel activities nor bankruptcy of the firms nor exist of the firms from the market. Therefore, the best available solution is to criminalize some serious cartel activities. One more interesting argument supporting criminalization of cartel is equal treatment of similar types of white collar crime. In India, similar kind of white collar crime, insider trading, attracts long term imprisonment. Under Companies Act, 2013, if person relating to an unregistered company found guilty of insider trading, he may be convicted of five years imprisonment[47]. In respect of registered companies Sebi may impose a very large fine for indulging in insider trading[48]. Apart from this, the number of potential victims and the enormity of damages of cartel are much bigger than insider trading. Therefore, the number, size and the repercussions of cartels on our country's economy and common people, present a strong case for criminalization of some hard core cartel.

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43 Supra note 41.

44 Wouter P. J. Wils, 'Is Criminalization of EU Competition Law the Answer?', (2005) 28 World Competition 117, 138.

45 Id.

46 OCED Second Hard Core Cartel Report, 54, 2003.

47 Section 195 of the Companies Act, 2013.

48 However, there are demands from business and legal community to make equal provisions for registered and unregistered companies for insider trading.

VII. Conclusion

Today, cartel is considered as ‘cancer’ for market, which is killing the very objectives of the market economy. India has to take care of a very big population with limited resources. Therefore it cannot afford to spread this disease. The Competition Commission of India is established with primary objective to regulate anticompetitive practices. Ensuring rules of fair play in business is responsibility of the CCI, which requires prudent exercise of the provisions of the Act. While exercising its powers CCI is required to bring clarity and consistency. The strict enforcement of the law will send a strong signal to the business community that CCI is here for its business. So far as the matter of improper fines is concerned, the impact of the cartel activities on consumer and state economy should be considered seriously while determining the amount of fine. But financial health of the company should not be ignored. In serious cases, fines should be on higher side of the scale.

Since India is a developing country, it cannot afford bankruptcy of firms or exits from the market. Such situation will result into concentrated market, which is not good for market based economy. Therefore, criminalizing some kind of cartel behaviour is better option than imposing higher fines. Today, government is seriously trying to create a supportive environment for ‘ease of doing business’ by making legal changes and relaxing procedural norms. Then, it is moral responsibility of the business community to not to violate law. Indulging in cartel activities is a serious violation of law; therefore, violator must be punished. In words of Chief Economic Adviser of Indian government, Arvind Subramaniam, “any economic system can only work, if who makes mistake must pay for that mistake”.