

THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES
(AMENDMENT) ACT, 1982

No. 30 OF 1982

[7th August, 1982.]

An Act further to amend the Monopolies and Restrictive Trade Practices Act, 1969

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Monopolies and Restrictive Trade Practices (Amendment) Act, 1982.

(2) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

54 of 1969.

2. In section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the principal Act),—

(a) in clause (d),—

(i) for the portion beginning with the words “dominant undertaking” means’ and ending with the words “rendered in India or any substantial part thereof.”, the following shall be substituted, namely:—

“dominant undertaking” means—

(i) an undertaking which has all the following three features, that is to say,—

(ai) it is an undertaking within the purview of the Industries Act;

(bi) it has a licensed capacity for the production of goods of any description; and

(ci) its licensed capacity for the production of such goods or the aggregate of its licensed capacity and of the licensed capacity of inter-connected undertakings for the production of such goods is not less than one-fourth of the total installed capacity in India for the production of such goods; or

¹18-8-1982: vide notification No. S.O. 572 (E) dated 17-8-1982, Gazette of India, Extraordinary, Pt. II, Section 3(ii).

Short
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Amend-
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section 2.

(ii) an undertaking which has all the following three features, that is to say,—

(a) it is an undertaking within the purview of the Industries Act;

(b) it, by itself or along with inter-connected undertakings produces, supplies, distributes or otherwise controls not less than one-fourth of the total goods of any description that are produced, supplied or distributed in India or any substantial part thereof; and

(c) it has no licensed capacity for the production of such goods; or

(iii) an undertaking which has both the following features, that is to say,—

(a) it is not an undertaking within the purview of the Industries Act; and

(b) it, by itself or along with inter-connected undertakings produces, supplies, distributes or otherwise controls not less than one-fourth of the total goods of any description that are produced, supplied or distributed in India or any substantial part thereof; or

(iv) an undertaking which provides or otherwise controls not less than one-fourth of any services that are rendered in India or any substantial part thereof;'

(i) in the proviso, for the words "this clause", the words, brackets and figures "sub-clauses (i) and (iii) of this clause" shall be substituted;

(ii) in *Explanation I*, for the words "not less than one-third of", the words "the licensed capacity of inter-connected undertakings for the production of any goods is not less than one-fourth of the installed capacity for the production of such goods or not less than one-fourth of" shall be substituted, and for the words "any service", the words "any service, as the case may be," shall be substituted;

(iv) for *Explanation III*, the following *Explanation* shall be substituted, namely:—

Explanation III.—The question as to whether any undertaking, either by itself or along with inter-connected undertakings, produces, supplies, distributes or controls one-fourth of any goods or provides or controls one-fourth of any services may be determined according to any of the following criteria, namely, value, cost, price, quantity or capacity of the goods or services.";

(v) in *Explanation IV*, for the words "In determining", the words, brackets and figures "In determining with reference to the features specified in sub-clause (i), (iii) or (iv), as the case may be," shall be substituted;

(b) after clause (e), the following clause shall be inserted, namely:—

'(ee) "goods of any description" in relation to an undertaking within the purview of the Industries Act, means any article which falls under an item in the First Schedule to that Act;';

(c) after clause (f), the following clauses shall be inserted, namely:—

'(ff) "Industries Act" means the Industries (Development and Regulation) Act, 1951, and includes any rules, notifications or orders thereunder;

(fff) "installed capacity" means installed capacity as recognised under the Industries Act or any returns thereunder;';

(d) after clause (g), the following clause shall be inserted, namely:—

'(gg) "licensed capacity", in relation to goods of any description and with respect to an undertaking within the purview of the Industries Act, means the licensed or productive capacity of such undertaking in relation to such goods, in accordance with the certificate of registration, licence, letter of intent or permission granted to it under the Industries Act and includes any increase in such capacity as may be approved by Government under that Act;';

(e) after clause (l), the following clause shall be inserted, namely:—

'(ll) "produce" includes manufacture and all its grammatical variations and cognate expressions shall be construed accordingly;';

(f) after clause (v), the following clause shall be inserted, namely:—

'(vv) "undertaking within the purview of the Industries Act" means an undertaking pertaining to a scheduled industry as defined in that Act;';

3. In section 21 of the principal Act,—

(a) in sub-section (2), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

Explanation.—For the purposes of this section, an undertaking shall be deemed to expand substantially in any manner if, as a result of such expansion,—

(a) in the case of an undertaking within the purview of the Industries Act and having a licensed capacity for the production of goods of any description, there would be an increase of such licensed capacity by not less than twenty-five per cent. thereof;

(b) in the case of an undertaking to which clause (b) of section 20 applies but to which clause (a) of this *Explanation* does not apply, the production, marketing, supply, distribution or control of any goods or the provision of any

Amendment of section 21.

services would increase by not less than twenty-five per cent. of the goods produced, marketed, supplied, distributed or controlled, or services provided, by it immediately before such expansion;

(c) in the case of any other undertaking,—

(i) it would have additional assets of a value of not less than twenty-five per cent. of the value of its assets immediately before such expansion; or

(ii) the production, marketing, supply, distribution or control of any goods or the provision of any services would increase by not less than twenty-five per cent. of the goods produced, marketed, supplied, distributed or controlled, or services provided, by it immediately before such expansion.”;

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

‘(4) Nothing in this section shall apply to any undertaking in so far as the expansion is effected by the replacement, renovation or modernisation of the whole or any part of the machinery or other equipment of the undertaking or by the installation of any balancing equipment.

Explanation.—For the purposes of this sub-section “balancing equipment” means any equipment or device needed for removing any production bottle-neck, and includes the installation of any equipment or device in the tool room, ancillary services or inspection department where such installation has a bearing on the quantum and quality of production to be achieved.’

Amend-
ment of
section 22.

4. In section 22 of the principal Act, in sub-section (1), for the words, brackets, letter and figures “to which clause (a) of section 20 applies”, the words “to which this Part applies” shall be substituted.

Insertion
of new
section
22A.

5. After section 22 of the principal Act, the following section shall be inserted, namely:—

Power to
exempt.

‘22A. (1) The Central Government may, by notification in the Official Gazette, direct that subject to such terms and conditions as may be specified in the notification all or any of the provisions of section 21 or section 22 shall not apply to any proposal—

(a) in respect of an industry or service specified in the notification:

Provided that no industry or service shall be so specified unless the Central Government is satisfied having regard to all relevant factors that it is of high national priority;

(b) for the increase in the production of and goods or the provision of any services which are meant exclusively for export outside India; or

(c) which relates to an undertaking established or proposed to be established in a free trade zone.

Explanation.—In this sub-section, “free trade zone” has the same meaning as in clause (i) of the *Explanation* to section 10A of the Income-tax Act, 1961.

43 of 1961.

(2) Every notification issued under sub-section (1) shall have effect for such period not exceeding five years at a time as may be specified in the notification.

(3) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.’