



CRITICAL COMPETITION
COMPETITION LAW NEWSLETTER
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ENFORCEMENT ORDERS

1. APPEAL FILED BY SARASWATI CORPORATION REMANDED BACK TO THE COMPETITION COMMISSION OF INDIA (CCI) BY THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT) FOR RECONSIDERATION OF THE PENALTY IMPOSED.

The NCLAT vide its order dated 14.11.2022 in an appeal filed by M/s. Saraswati Sales Corporation (Saraswati Sales / Appellant) remitted the matter back to the CCI for reconsideration of the amount of penalty levied on the appellant involved in the contravention. The CCI in its order dated 04.04.2022 passed under Section 27 of the Competition Act (Act) in Suo Moto Case No. 01/2020 (CCI Order) had held Saraswati Sales, Satish Kumar Agarwal, Yash Solutions, Siddhi Vinayak and Sons and Austere Systems Pvt. Ltd. to be involved in bid rigging and cartelisation in 2017 and 2018 in the tenders invited by the Department of Agriculture, Government of UP for soil sample testing.

In the appeal filed before the NCLAT, Saraswati Sales submitted that the CCI while considering the turnover for computation of penalty has incorrectly considered the 'total turnover' whereas only the 'relevant turnover' was to be taken into account for the purpose of levying penalty. However, the NCLAT while acknowledging the presence of the cartel, held that since Saraswati Sales was providing cover for the success of another bidder, therefore, to

consider penalty arising out of relevant turnover would be erroneous and the CCI had not erred in computing the penalty based on total turnover considering the peculiarity of this case. However, taking into account the fact that the appellant was a proprietorship firm, NCLAT remitted the matter back to CCI to take a lenient view and reconsider the amount of penalty imposed.

2. NCLAT DIRECTED THE CCI TO RECONSIDER THE PENALTY IMPOSED ON CYLINDER MANUFACTURES FOR CONTRAVENTION OF SECTION 3 OF THE ACT.

The NCLAT vide its order dated 10.11.2022 remanded the order passed by the CCI for reconsideration of the penalty imposed on the appellants in Case No. 01/2014. The CCI in its order dated 09.09.2019 had imposed a penalty of over ₹ 39.75 Crores on 51 LPG cylinder manufacturers for contravention of Section 3(3) of the Act by way of bid rigging.

The NCLAT upheld the order of the CCI and noted that the appellants have acted in contravention of the Act by acting in concert and quoting similar prices as well as collectively withdrawing two bids floated by Hindustan Petroleum Corporation Ltd. (HPCL), respectively. However, it directed the CCI to take a lenient view and reconsider the penalty levied as the appellants penalised by CCI are SME's and MSME's and do have not much infrastructure to bid individually. In respect of the ground pertaining to the issue of the constitution of the CCI and the absence of a judicial member, the



NCLAT abstained from passing any order as the matter is currently sub-judice before the Supreme Court of India.

COMBINATION ORDERS

3. CCI APPROVED THE ACQUISITION OF OPTIONALLY CONVERTIBLE BONDS AND WARRANTS OF TRUSTROOT INTERNET BY LUXEMBOURG SPECIALIST INVESTMENT FUND, M&G FUNDS AND THE PRUDENTIAL ASSURANCE COMPANY UNDER THE GREEN CHANNEL ROUTE

The CCI under the Green Channel Route approved the proposed combination pertaining to acquisition of certain additional optionally convertible bonds (OCBs) and warrants issued by Trustroot Internet Private Limited (Trustroot) to Luxembourg Specialist Investment Fund (Luxembourg), M&G Funds Asia Pacific Ex Japan Equity Fund (Asia Pacific Fund) and the Prudential Assurance Company Limited (PAC). Upon conversion, these OCBs and warrants would amount to less than 5% of the share capital on a fully diluted basis. Luxembourg, Asia Pacific Fund and PAC, directly or indirectly, are within the ultimate beneficial ownership of M&G Plc. and are funds that invest in both public and private enterprises across the globe in a wide variety of sectors. Trustroot, through its affiliates in India, is involved in providing an online B2B e-commerce marketplace platform by the name of 'Udaan' for sale and purchase of goods.

4. CCI APPROVED 2452991 ONTARIO LTD'S ACQUISITION OF 30% EQUITY SHAREHOLDING OF MAHINDRA SUSTEN PVT. LTD. UNDER THE GREEN CHANNEL ROUTE

The CCI under the Green Channel Route approved the proposed combination pertaining to the acquisition of 30% equity shareholding in Mahindra Susten Private Limited (MSPL) from Mahindra Holdings Limited (MHL) by 2452991 Ontario Limited (Ontario). Besides, Ontario can acquire an additional shareholding of 9.99% in MSPL by 31 May 2023 if certain conditions are met. Ontario is an investment vehicle of Ontario Teachers' Pension Plan Board (OTPPB) and is involved in the administration of pension benefits and investment of pension plan assets. MSPL is a wholly owned subsidiary of MHL and is involved in setting up, acquiring, owning and operating renewable energy generation projects.

OTHER DEVELOPMENTS

KARNATAKA HIGH COURT REFUSES TO INTERVENE IN CCI'S PROBE AGAINST KARNATAKA CHEMISTS AND DRUGGISTS' ASSOCIATION (KCDA/PETIONER)

The Karnataka High Court dismissed the writ petition filed by KCDA praying to restrain the CCI from continuing with the proceedings in Case No. 06/2012. The petitioner, in the instant matter had challenged the notice issued by Director General, CCI (DG) directing the petitioner to provide certain information during an ongoing investigation, which was



initiated by the CCI on the basis of a complaint filed by All India Chemist and Druggist and Distributors Federation (AIOCD)'s President Kailash Gupta alleging that KCDA had indulged in anti-competitive unfair trade practices in violation of Section 3 and 4 of the Act. The High Court dismissed the writ as premature and held that the DG investigation is merely a fact-finding exercise and purpose of the notice is to collect and assimilate all the data and information necessary in order to render its findings. It furthermore held that the DG notice is just a show cause notice and not an order of conclusion and therefore does not warrant any interference of the High Court at this stage.

CCI TO EXCHANGE INFORMATION WITH THE ENFORCEMENT DIRECTORATE (ED) AS PER THE GOVERNMENT MANDATE

The ED has entered into a data sharing arrangement with the CCI along with 15 other agencies under the Prevention of Money Laundering Act (PMLA). These changes were made by amending Section 66 of the PMLA, which states that the ED may choose to share as well as obtain corporate information from the CCI by "special order." The confidential information shared by corporate India with the antitrust regulators under its merger control and antitrust framework can now be requisitioned by the ED. Furthermore, information obtained by

the investigation arm of CCI during "dawn raids" such as call data records, e-mail dumps, etc., which otherwise cannot be shared even under the confidentiality ring of CCI, would also become easily accessible to the ED.

SEBI ACKNOWLEDGED THE JURISDICTION OF CCI TO INVESTIGATE THE ISSUE OF CARTELIZATION BY DEBENTURE TRUSTEES.

The CCI in December 2021 upon receiving a complaint by Muthoot Finance Ltd. had ordered an investigation against debenture trustee units of SBI, Axis and IDBI bank along with Debenture Trustee Association of India for alleged cartelization in respect of charging exorbitant fees. The debenture trustees in 2022 moved to the Bombay High Court (HC) praying for a stay on the CCI investigation on the ground that SEBI, being the sectoral regulator, had sole jurisdiction over the matter.

The HC, following the apex court precedent of the Bharti Airtel judgement, stayed the CCI order allowing SEBI a reasonable time to form its prima facie opinion on the matter. SEBI, thereafter by way of an affidavit before the HC acknowledged the jurisdiction of CCI. Based on SEBI's stance, CCI filed an application praying for vacation of the stay order. It is expected that HC will vacate the interim order on the next date of hearing.



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