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CRITICAL COMPETITION

Competition Law Newsletter

Saraf and Partners is delighted to share with you the latest edition of the Firm's Competition Law Newsletter, titled '*Critical Competition*' (June 2024).

This edition offers a comprehensive update on the recent developments in the field of Competition Law in India. We invite all our valued readers to peruse this newsletter and gain valuable insights into the current state of the law.

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- Swiggy moves Karnataka High Court against CCI's order granting NRAI access to its private data.
- NCLAT rejects abuse of dominance complaint against Kerala State Road Transport Corporation.
- The CCI dismissed allegations of abuse of dominant position against Maruti Suzuki India.

...and more



ENFORCEMENT ORDERS

1. NCLAT REJECTS ABUSE OF DOMINANCE COMPLAINT AGAINST KERALA STATE ROAD TRANSPORT CORPORATION

The National Company Law Appellate Tribunal (NCLAT) dismissed an appeal filed by Mr. Shine P. Sasidhar (**Appellant**) challenging the order of the Competition Commission of India (CCI) passed on 22.01.2024 in Case No. 38 / 2022, wherein the CCI held that there exists no prima facie case of contravention of Section 4 (abuse of dominance) of the Competition Act, 2002 (**Competition Act**) by Kerala State Road Transport Corporation (**KSRTC / Respondent**).

The Appellant was aggrieved by the exclusivity granted to KSRTC by the Kerala State Government which allows it to charge exorbitant fares from passengers on a particular route to reach the Sabarimala Temple. On perusing the said notification of the Kerala State Government, the NCLAT held that the notification is passed considering the hike in the price of diesel and other operational costs. Further, it was observed that fixing of fares is solely done as per the notifications which are drafted in line with the provisions of the Motor Vehicle Act, 1988 for providing adequate, economical and properly coordinated passenger road transport service in the public interest.

The NCLAT held that the CCI has noted that the fares on per kilometre basis are being charged as per the said notification on a uniform basis by both public and private operators. The NCLAT further noted that the CCI rightly held that this is a matter of public policy and that there is no discernible competition concern that arises. Accordingly, the NCLAT dismissed the appeal.

2. THE CCI DISMISSED ALLEGATIONS OF ABUSE OF DOMINANT POSITION AGAINST DEPARTMENT OF ATOMIC ENERGY AND IREL (INDIA) LTD.

The CCI dismissed allegations filed by Metallurgical Products India Private Limited (**Informant**) alleging contravention of the provisions of Section 4 of the Competition Act by Government of India through the Secretary, Department of Atomic Energy (**DAE**) and IREL (India) Ltd. (**IREL**).

The Informant was permitted by the DAE to set up its plant/factory to process columbite and tantalite ores to produce niobium and tantalum products in India during 2002-03.

The DAE entrusted IREL with the duty to periodically collect and dispose the Uranium bearing Leach Residue produced in the Informant's plant and IREL entered into agreements (**off-take agreement**) with the Informant. The Informant was aggrieved by: (i) refusal to renew the off-take agreement after 2017 for processing of Uranium contained

Leach Residue; (ii) rejection of import licenses applications for Columbite and Tantalite; and (iii) refusal/non-approval of an alternate disposal plan.

The CCI observed that all the grievances essentially pertain to DAE since the IREL has no role to play in renewal of the off-take agreement, rejection of import licenses, and non-approval of an alternate disposal plan. It noted that the allegations under Section 4 of the Competition Act can only be raised against an enterprise and basis a conjoint reading of Section 2(h) of the Competition Act and the relevant Allocation of Business Rules, it concluded that DAE is exempted from the purview of 'enterprise' in terms of the provisions of the Competition Act. Accordingly, the information was dismissed under Section 26(2) of the Competition Act.

3. THE CCI DISMISSED ALLEGATIONS OF ABUSE OF DOMINANT POSITION AGAINST MARUTI SUZUKI INDIA

The CCI dismissed an information filed by Harmit Ahuja (**Informant**) against Maruti Suzuki India Limited (**MSIL**) alleging contravention of the provisions of Section 4 of the Competition Act. MSIL, a subsidiary of Suzuki Motor Corporation, Japan, is India's largest passenger car maker. The Informant is a customer who purchased an SUV 'Jimny' from MSIL. The Informant alleged that the introduction of limited edition 'Thunder' Model of Maruti Jimny in India in June 2023, costing INR

10.74 lakhs, with several freebie accessories and extended warranty not only led to the initial customers of Jimny, who had bought the car at higher prices, feeling cheated, but also led to a downfall in the resale prices of the cars purchased by them as this new model was available at a discount of around INR 2.30 lakhs.

Aggrieved by the refusal of MSIL to grant him a refund for the excess amount in purchasing the Jimny car, the Informant filed the present Information alleging that MSIL abused its dominant position in the market and imposed unfair and unethical pricing strategy with respect to 'Jimny', which also amounts to an unfair trade practice. The CCI observed that MSIL does not hold a market share large enough to enable it to operate independently of competitive forces prevailing in the market or to affect its competitors or consumers or the market in its favour, especially in the SUV segment of passenger vehicles. Furthermore, it noted that this was an inter-se dispute without any substantial competition issues. Accordingly, the information was dismissed under Section 26(2) of the Competition Act.

4. THE CCI DISMISSED ALLEGATIONS OF ANTI-COMPETITIVE CONDUCT BY CATHOLIC SYRIAN BANK

The CCI dismissed a complaint filed by AV Satheeshkumar (**Informant**) against Catholic

Syrian Bank Ltd. (CSB) and two others (collectively, OPs) alleging contravention of the provisions of the Competition Act.

The Informant alleged that he is suffering from financial crisis and is aggrieved from the conduct of Mr. George Mathew, who promised the Informant to get loans from various banks after executing two sale deeds in respect of the property registered in the name of the Informant and his wife. After executing the sale deeds, Mr. George Mathew mortgaged the property to CSB without Informant's knowledge for availing loan/ credit from the bank and defaulted in repayment of the said loan. Due to the default in repayment, recovery proceedings were initiated by CSB against the Informant's property which was allegedly sold by Mr. George Mathew and resulted in the Informant being compelled to part away with his property. The Informant alleged collusion between Mr. George Mathew and the officials of CSB.

The CCI held that the Informant has not invoked any specific provision of the Competition Act and has also not made Mr. George Mathew a party to these proceedings. Further, the above facts and circumstances do not involve any competition issue, and resultantly, does not warrant scrutiny from the perspective of the Competition Act. Accordingly, the information was dismissed under Section 26(2) of the Competition Act.

5. SWIGGY MOVES KARNATAKA HIGH COURT AGAINST CCI'S ORDER GRANTING NRAI ACCESS TO ITS PRIVATE DATA

Food delivery platform Swiggy, on 21.05.2024, filed a petition before the Karnataka High Court (KHC) challenging CCI's order dated 24.04.2024 (Impugned Order), granting access to representatives of National Restaurant Association of India (NRAI) to Swiggy's confidential information. The information had been shared with the Director General (DG) of the CCI as part of an inquiry into allegations of anti-competitive conduct by Swiggy and Zomato, filed by NRAI. Swiggy has alleged that the Impugned Order is arbitrary, unreasoned, and contrary to the provisions of the Competition Act, and it could lead to irreparable harm of Swiggy's business. It has urged the KHC to overturn the Impugned Order and in the event that the information has already been shared with NRAI, it should be ordered to destroy the confidential records.

COMBINATION ORDERS

1. THE CCI APPROVED THE RIGHT TO NOMINATE A DIRECTOR ON THE BOARD OF DIRECTORS OF EMBASSY OFFICE PARKS MANAGEMENT SERVICES PRIVATE LIMITED

The CCI has approved the right of APAC Company XXIII Limited (APAC) and Kotak Performing RE Credit Strategy Fund I (Kotak Fund) to nominate a director on

the board of directors of Embassy Office Parks Management Services Private Limited (**IM**), the manager of Embassy Office Parks REIT, pursuant to the recent amendments to the Securities Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014, (as amended). APAC is owned and controlled by Bain Capital Credit (**BCC**), a global credit specialist which invests, through its family of funds, across the credit spectrum in credit-related strategies. Kotak Fund is a SEBI registered Alternative Investment Fund (**AIF**). IM is the manager of Embassy REIT and is an irrevocable trust with the objective to own, operate and invest in rent and/ or income generating real estate and related assets in India.

2. THE CCI APPROVED 100% ACQUISITION OF TIANISH LABORATORIES PRIVATE LIMITED BY MATRIX PHARMA PRIVATE LIMITED

The CCI approved the acquisition of 100% of the equity shares of Tianish Laboratories Private Limited (**TLPL**) by Matrix Pharma Private Limited (**MPPL**). Inter-connected with the proposed acquisition are investments: (i) by Kingsman Wealth Fund PCC - Aurisse Special Opportunities Fund (**Kingsman**) in Mudhra Lifesciences Private Limited (**Mudhra Lifesciences**); (ii) by Mudhra Lifesciences and Mudhra Pharmacorp LLP in Mudhra Labs Private Limited (**Mudhra Labs**); and (iii) by Kotak Strategic Situations India Fund II (**KSSIF**)

and Kotak Alternate Asset Managers Limited (**KAAML**) in Mudhra Labs.

Prior to the MPPL's acquisition of TLPL, such acquisition will be funded in part by: (i) an investment proposed to be made by KSSIF and KAAML in optionally convertible debentures of Mudhra Labs, the immediate holding company of MLPL; and (ii) an investment by Kingsman in compulsorily convertible preference shares of Mudhra Lifesciences, the ultimate holding company of MLPL. The proceeds of these investments will ultimately be utilised in the acquisition of TLPL.

MPPL, Mudhra Lifesciences, Mudhra Labs and Mudhra Pharmacorp LLP currently do not carry out any business activity either in or outside India. Kingsman is an open-ended fund classifying as a self-managed expert fund for the purposes of the Securities Act 2005 and the Securities (Collective Investment Schemes and Closed-end Funds) Regulations, 2008. KSSIF is an AIF engaged in the business of investing in companies with a sector agnostic approach. KAAML 2 acts as an investment manager, engaged in the business of managing and advising funds across the following asset classes namely: (a) Special Situations; (b) Real Estate; (c) Infrastructure; (d) Private Equity; and (e) Private Credit. TLPL carries out the business of manufacture and sale of active pharmaceutical ingredients in India.

3. THE CCI APPROVED THE DEMERGER OF ITC LIMITED TO ITS SUBSIDIARY ITC HOTELS LIMITED

The CCI approved the demerger of the Demerged Undertaking comprising all businesses, undertakings, activities, operations and properties of ITC Limited (ITC) to ITC's wholly owned newly incorporated subsidiary, ITC Hotels Limited (ITC Hotels). Post the demerger, shares of ITC Hotels will be listed, and the shareholding pattern of ITC Hotels will be as follows: (i) ~ 40% shareholding will continue to be held by ITC; and (ii) ~ 60% shareholding will be held by ITC's shareholders directly, in proportion to their existing shareholding in ITC. 100% of the ultimate economic beneficial interest will remain with ITC shareholders – 40% indirectly; and 60% directly.

ITC has diversified businesses in India spanning fast-moving consumer goods, hotels, paperboards, paper and packaging, and agri-business. ITC Hotels is a newly incorporated entity and does not have any business activities at present. The Demerged Undertaking pertains to ITC's Hotels Business, meaning the hotels and hospitality business of ITC undertaken by way of *inter alia* owning, licensing, operating, managing, servicing, marketing, and supervising the operations of hotels and includes accommodation, dining, and banqueting services and investment in the Hospitality

Entities carrying on the hotels and hospitality business.

4. THE CCI APPROVED THE ACQUISITION OF 11% EQUITY SHAREHOLDING IN HDFC CREDELIA BY SHINHAN BANK

The CCI has approved the acquisition of approximately 11% equity shareholding by Shinhan Bank Co., Ltd (SBCL) in HDFC Credilia Financial Services Limited (HCFSL). SBCL is a multinational bank headquartered in South Korea and it provides retail and corporate banking products and services. HCFSL is a non-deposit taking non-banking financial company, classified as NBFC-Middle Layer. It is primarily engaged in the business of providing education loans to Indians who wish to pursue higher education both in India and overseas.

5. THE CCI APPROVED ACQUISITION OF CONTROL IN AGRO TECH FOODS LIMITED BY ZEST HOLDING INVESTMENTS LIMITED

The CCI has approved the acquisition of control in Agro Tech Foods Limited (ATFL) by Zest Holding Investments Limited (ZHIL). For the combination, ZHIL would first acquire 100% shares of CAG-Tech (Mauritius) Limited (CTML), thereby resulting in acquisition of approximately 51.8% stake in ATFL through CTML. Next, ZHIL will be required to make an open offer for acquiring additional shares up to 26% of ATFL's total

shareholding, to its public shareholders. ZHIL has been incorporated primarily for the purpose of holding investments and specifically undertaking this combination. CTML is the holding company and promoter of the ATFL and does not undertake any separate business activity of its own. ATFL is engaged in the business of manufacturing, marketing, and selling of a wide range of food products and edible oils.

6. THE CCI APPROVED ACQUISITION OF SHARES IN SVATANTRA MICROFIN POWER LIMITED AND CERTAIN RIGHTS IN SVANTANTRA MICRO HOUSING FINANCE CORPORATION LIMITED

The CCI approved the acquisition of shares (through secondary transfer and primary issuance) in Svatantra Microfin Private Limited (SMPL) and acquisition of certain rights in Svatantra Micro Housing Finance Corporation Limited (SMHFCL) by Multiples Private Equity Fund III (MPEF III) (managed by Multiples Alternate Asset Management Private Limited (MAAMPL)); (b) Multiples Private Equity Fund IV (MPEF IV) (managed by MAAMPL); (c) Multiples Private Equity GIFT Fund IV (managed by Multiples Asset Management IFSC LLP) (MPEGF IV). MPEF III, MPEF IV and MPEGF IV belong to the Multiples group which, through its investee companies, is directly or indirectly engaged in sectors including financial services, banking, healthcare, pharmaceuticals,

consumer, industrials etc. in India. SMPL is engaged in the business of providing micro-finance loans and personal loans to the customers in rural/ semi urban areas. SMHFCL is a registered Non-Deposit Taking housing finance company NBFC-HFC (Middle Layer) and is in the business of providing secured housing loans to financially excluded rural and urban low-income families, loans to individuals against property and loans to corporates / institutions for construction / real estate projects.

7. THE CCI APPROVED THE ACQUISITION OF MORE THAN 25% EQUITY SHAREHOLDING IN SMPL BY VIOLICINA LIMITED

The CCI approved the acquisition of more than 25% equity shareholding (on a fully diluted basis) by Violicina Limited (VL) in SMPL by way of a combination of primary subscription and secondary purchase. Further, VL will also acquire certain rights in SMHFCL. VL is a special purpose vehicle incorporated in Cyprus. It does not have any operations in India.

8. THE CCI APPROVED THE ACQUISITION OF COSMA INDIA BY SKH M INDIA PRIVATE LIMITED

The CCI approved the acquisition of the chassis and BIW business division of Magna Automotive India Private Limited (MAIPL), operating under name of 'Cosma India' (CI), by SKH M India Private

Limited (SKH). It will be jointly controlled by SKH Sheet Metal Components Private Limited (SKH SMC), SKH Management Strategy Services India LLP (SKH LLP), and SKH. SKH SMC is engaged in the business of manufacturing fuel tanks, chassis and BIW parts and seat structures for passenger vehicles. SKH LLP provides management services to Krishna Group companies. SKH has been incorporated by SKH SMC and SKH LLP for the purpose of owning and operating CI. MAIPL manufactures a comprehensive range of metal body & structural assemblies, components, sub-assemblies, and modules including chassis and BIW components and assemblies, through plants based in Pune (Maharashtra), Chennai (Tamil Nadu) and Gujarat (Sanand).

In addition to the above, Magna India has several automotive engineering centers based in Pune and Bangalore from which it caters to inter-company customers as well as domestic OEMs with automotive engineering, particularly in seating systems, complete vehicle engineering, automated driver

assist system (ADAS), powertrain systems, electrical/ electronic architecture, etc. CI is engaged in the design, manufacture, and sale of BIW and chassis parts and assemblies for passenger vehicles in India.

9. THE CCI APPROVED THE ACQUISITION OF ADDITIONAL SHARES IN SIKKIM URJA LIMITED BY GREENKO ENERGIES PRIVATE LIMITED

The CCI approved the acquisition of additional shares in Sikkim Urja Limited (formerly Teesta Urja Limited) (SUL) by Greenko Energies Private Limited (GEPL). GEPL is a limited liability company incorporated in India. It is an (indirectly) wholly owned subsidiary of Greenko Mauritius, which is wholly-owned by Greenko Energy Holdings, an investment company having its investments in a portfolio of companies engaged in the power generation sector in India. SUL is a special purpose vehicle incorporated for the purpose of the implementation of the 1200 MW hydro power project in North Sikkim, India.

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