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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*' (March 2025).

This edition offers a comprehensive update on the developments in the field of Competition Law in India over the last month, i.e., February 2025. 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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...and more

REGULATORY UPDATES

1. DRAFT COMPETITION COMMISSION OF INDIA (DETERMINATION OF COST OF PRODUCTION) REGULATIONS, 2025

On 17.02.2025, the Competition Commission of India (CCI) published the draft Competition Commission of India (Determination of Cost of Production) Regulations, 2025 (**Draft Regulations**) to replace the erstwhile Competition Commission of India (Determination of Cost of Production) Regulations, 2009 (**2009 Regulations**). These regulations aim to enhance the clarity and applicability of cost determination provisions, particularly in cases of predatory pricing. The CCI has invited comments from interested stakeholders on the Draft Regulations. Upon enactment, the Draft Regulations will repeal and supersede the 2009 Regulations.

Some key provisions include defining cost primarily as average variable cost, while allowing flexibility for alternate cost measures like average total cost or long-run average incremental cost, depending on industry specifics. Now, the CCI as well as the Director General may engage experts for cost assessments, with enterprises having the option to dispute cost determinations by requesting expert reviews at their own expense. The regulations also provide for confidentiality requests under the Competition Commission of India (General) Regulations, 2025, ensuring procedural transparency.

2. NOTIFICATION OF THE CCI (MANNER OF RECOVERY OF MONETARY PENALTY) REGULATIONS, 2025

On 27.02.2025, the CCI (Manner of Recovery of Monetary Penalty) Regulations, 2025 came into effect, replacing the earlier CCI (Manner of Recovery of Monetary Penalty) Regulations, 2011. These regulations govern the procedural framework for recovering monetary penalties imposed by the CCI for contraventions of competition law. The key changes introduced in the new regulations are set out below:

- *Concurrent issuance of demand notice:* The demand notice is now issued simultaneously with the CCI order imposing penalty. Previously, the demand notice was issued after the period provided in the order expired, and thus interest on the penalty amount was not leviable till the issuance of the demand notice.
- *Time to deposit penalty:* A person in default is required to deposit the penalty within 60 days from the receipt of the orders (which was previously 30 days). This is aligned with the appeal period to the NCLAT and would prevent interest from accruing before an appeal is filed.
- *Liability of legal heirs:* If the person in default is deceased, the recovery of dues can be done from their legal heirs.
- *Reduction in interest rate:* The revised regulations reduce the interest rate for late payments (from 1.5% to 1% per month), now

aligning it with the Income tax Act.

ENFORCEMENT ORDERS

1. THE NCLAT DISMISSED AN APPEAL FILED BY SRI BALAJI TRADERS AGAINST ASIAN PAINTS LTD.

The NCLAT dismissed an appeal filed by Sri Balaji Traders (**Appellant**) challenging the order of the CCI dated 08.09.2022 (**Impugned Order**) which had previously dismissed an information alleging violation of Sections 3(4) and 4 of the Competition Act by Asian Paints Ltd. (**Asian Paints**).

The Appellant is a dealer and supplier of Asian Paints. In 2010, Asian Paints sold a tinting machine to the Appellant, who was subsequently designated as a Critical Retailer (**CR**) of Asian Paints. In February 2021, the Appellant became a dealer for JSW Paints Pvt. Ltd. (**JSW**) and installed its tinting machine. Following the Appellant's commencement of dealings with JSW, Asian Paints downgraded the Appellant's CR status to Colour World (**CW**) in April 2021 without prior notice. The tinting software installed by Asian Paints was removed which prevented the Appellant from placing new orders and using the leftover material worth INR 3,50,000, rendering it unsellable.

Consequently, the Appellant filed an information before the CCI alleging Asian Paints conditioned the restoration of CR status on signing a letter affirming no grievances against the company and attempted to coerce the Appellant into certifying that Asian Paints had never acted coercively due

to its dealings with JSW. The Appellant relied on CCI's earlier prima facie findings in *JSW Paints Private Limited v. Asian Paints (Case No. 36 of 2019)*, where Asian Paints was found to have prima facie contravened Sections 3(4) and 4 of the Competition Act, leading to an investigation by the Director General (**DG**). Therefore, the Appellant sought to club this information with the *JSW Paints Private Limited v. Asian Paints* and requested reinstatement of its CR status which was allegedly downgraded in retaliation to it becoming a dealer of JSW.

The CCI rejected the Appellant's claim that its CR status was revoked as retaliation for dealing with JSW Paints and upheld the DG's findings of no violation of Sections 4 or Section 3(4) read with Section 3(1) of the Competition Act, leading the Appellant to file the present appeal.

The NCLAT noted that prior to filing the information with the CCI, the Appellant's CR status was already restored in June 2021 and its retailing status had changed multiple times from the year 2014 to 2023, which the Appellant failed to disclose in this appeal. It also relied on the CCI's finding that the reduction in the Appellant's offtake from October 2020 to March 2021 was a likely reason for the downgrade rather than retaliation for engaging with JSW Paints. Further, it noted that other dealers associated with JSW Paints did not face similar downgrades. Accordingly, the NCLAT upheld the Impugned Order, finding that there was concealment of fact on the part of the Appellant and concluded that litigants must approach the court

with clean hands, as cases based on falsehood can be summarily dismissed.

2. THE CCI DISMISSED THE COMPLAINT FILED AGAINST GOKUL AGRO RESOURCES LIMITED AND GOKUL AGRINTERNATIONAL LIMITED

The CCI dismissed an information alleging bid rigging by M/s. Gokul Agro Resources Ltd. (OP1) and M/s Gokul Agri International Ltd (OP2) in the procurement tender issued by the Army Purchase Organization (APO). APO, which is responsible for procuring various ration items for the Armed Forces, raised concerns that the opposite parties, despite having different brands, were potentially sister concerns. It was alleged that both the enterprises, which formed part of the same group, i.e., Gokul Group Limited, were engaged in bid rigging and were operating as a cartel to manipulate the tender process.

It was submitted that the opposite parties were the lowest bidders in several instances and reduced their bids significantly during the reverse auction process. However, the CCI noted that the opposite parties did not consistently emerge as the lowest bidders in the procurement process, and in 7 out of 15 instances, other bidders won the tender, indicating a competitive bidding process. The CCI also noted that while the difference between the bids of the OPs was relatively small (ranging from 0.42% to 10.46%), this alone was not sufficient to suggest bid rigging.

The CCI also found no evidence to support the argument, that the

enterprises due to the common ownership and the shared directors are indicative of collusion. The CCI analyzed the corporate structures of the OPs and found no common directors. It noted that despite the companies being part of the Gokul Group and having some common links in their ownership, the CCI found that mere common ownership or management links were not sufficient to establish cartelization, as there was no direct evidence of coordinated action.

Accordingly, the CCI did not find evidence suggesting bid rigging in the tendering process or a violation of Section 3(3)(d) of the Competition Act. Accordingly, the CCI dismissed the matter under Section 26(2) of the Competition Act.

3. THE CCI DISMISSED BID RIGGING ALLEGATIONS AGAINST HP INDIA SALES PRIVATE LTD. AND ITS RESELLERS IN GOVERNMENT TENDERS FOR PRINTERS

The CCI dismissed an information alleging bid rigging by HP India Sales Private Ltd. (OP1) and its resellers, including Wideprint Systems and Solutions (OP2), Digital Global (OP3), Capricot Technologies Private Limited (OP4), Samman Consultants (OP5), Sigma eSolutions Private Limited (OP6), Transcon Electronics Pvt Ltd. (OP7), and KR Enterprises (OP8) in tenders floated by the Faridabad Metropolitan Development Authority (FMDA).

The informant raised concerns about the conduct of the opposite parties regarding two tenders floated by FMDA and the Gurugram Metropolitan

Development Authority (**GDMA**), for the procurement of inkjet/LED A0-A4 plotter/ printers. These tenders were issued through the Government e-Marketplace (**GeM**) platform. It was alleged that the specifications of the tenders allegedly restricted competition by excluding major brands like Canon India and Epson India, as their product did not meet the tender specifications.

The allegations raised by the informant *inter alia* included bid rigging, collusion among bidders, and restrictive specifications. The informant averred that the specifications in the tenders were restrictive, which limited the participation of other brands such as Canon India and Epson India, and that the prices quoted in the bids were inflated compared to the actual sum of the individual components.

The CCI found that the FMDA and GMDA tenders were similar in specifications, including the type of product, quantity, and features, with only minor differences in conditions such as the buyback of non-functional printers in the GMDA tender. In the GMDA tender, five bidders participated, and all of them quoted HP products. Two companies, OP2 and OP4, offered the same model, while the other bidders offered different HP products. The CCI concluded that the 5-year warranty requirement in the GMDA tender was stipulated by the buyer and not indicative of cartelization.

Similarly, the CCI held that the similarities in the bids submitted by the four bidders which participated in the FMDA tender, were legitimate choices

and not indicative of coordinated action between the parties. The CCI also reviewed the informant's claim that the specifications were restrictive and found that it was within the prerogative of FMDA to define specifications according to its needs. The CCI noted that the specifications were not restrictive and were aligned with the procurer's requirements.

Regarding the informant's claim that the prices quotes were substantially higher than the individual component prices, the CCI found that there was no concrete evidence to substantiate the assertion that the prices quoted were inflated. The informant did not provide the necessary individual component prices to support the claim, and the CCI noted that the procurer's decision to bundle components together in the tender was within its rights.

Accordingly, the CCI observed that the specifications in the tenders were not restrictive, and there was no evidence to suggest collusion or price manipulation and dismissed the case.

COMBINATION CASES

1. THE CCI APPROVED THE PROPOSED ACQUISITION OF FUJITSU GENERAL LIMITED BY PALOMA RHEEM HOLDINGS CO. LTD.

The CCI approved the proposed acquisition of the entire shareholding of Fujitsu General (**Fujitsu**) by Paloma Rheem Holdings Co. Ltd. (**Paloma Rheem**). Fujitsu is engaged in the business of developing, manufacturing, selling and servicing of products and components provided in air conditioners,

information & communication systems and electronics devices. Paloma Rheem is a holding company of Paloma Co. Ltd. and Rheem Manufacturing Company.

2. THE CCI APPROVED THE PROPOSED ACQUISITION OF IRELIA SPORTS INDIA PRIVATE LIMITED BY TORRENT INVESTMENT LIMITED

The CCI approved the proposed acquisition of 67% shareholding in Irelia Sports India Private Limited (**Irelia**) on a fully diluted basis and control by Torrent Investment Limited (**Torrent**). Torrent belongs to the Torrent Group engaged in multiple businesses including manufacture and sale of pharmaceutical products; generation, transmission and distribution of power; healthcare services through diagnostic centers; city gas distribution; setting up and operating hospitals; manufacturing of power cables; financing activity; and aviation. Irelia is engaged in the business of ticketing, merchandising and advertising and operates the Ahmedabad franchisee of the Indian Premier League (Gujarat Titans).

3. THE CCI APPROVED THE PROPOSED ACQUISITION OF ONE OF THE BUSINESS OF JOHNSON CONTROLS INTERNATIONAL PLC AND ITS JOINT VENTURE BY BOSCH

The CCI approved the acquisition of sole control over residential and light commercial heating, ventilation and air-conditioning business of Johnson Controls International Plc (**JCI**) and Johnson Controls-Hitachi Air Conditioning Holding (UK) Limited (**JCH**) by Robert Bosch GmbH (**Bosch**). Bosch is engaged in the business of providing a

wide variety of technology solutions including mobility solutions, industrial technology, consumer goods and energy and building technology. JCI is a public multi-industrial company engaged in the business of engineering, manufacturing and commissioning building products and systems, including residential and commercial HVAC equipment, industrial refrigeration systems, controls, security systems, fire-detection systems and fire-suppression solutions. JCH is a joint venture between JCI and Hitachi Limited, engaged in the business of manufacturing home appliances and specializes in air conditioning and cooling technology.

4. THE CCI APPROVED THE PROPOSED AMALGAMATION OF SVATANTRA HOLDINGS PRIVATE LIMITED AND CHAITANYA INDIA FIN CREDIT PRIVATE LIMITED

The CCI approved the proposed amalgamation of Svatantra Holdings Private Limited (**SHPL**) and Chaitanya India Fin Credit Private Limited (**CIFCPL**), resulting in Svatantra Microfin Private Limited (**SMPL**). Post the proposed amalgamation Svatantra Micro Housing Finance Corporation Limited (**SMHFCL**) will become a wholly owned subsidiary of SMPL. SHPL is a private limited company and an unregistered core investment company in terms of Core Investment Companies (Reserve Bank) Directions, 2016. It is engaged in the business of making investments in equity shares, preference shares and other securities. CIFCPL and SMPL are private limited companies, engaged in the business of providing micro finance loans and personal loans to low-income individuals and households in rural/ semi-urban

areas. SMHFCL is a registered non-deposit taking housing finance company. It is engaged in the business of providing secured housing loans to the financially excluded rural and urban low-income families, loans to individuals against property and loans to corporations/institutions for construction/real estate projects.

5. THE CCI APPROVED THE ACQUISITION OF INDIA PUNE PROCESSING CENTER PRIVATE LIMITED BY INDIA PROCESSING CENTER PRIVATE LIMITED

The CCI approved the proposed acquisition of entire shareholding of LX International Corporation (**Seller**) in India Pune Processing Center Private Limited (**IPCP / Target**) by India Processing Center Private Limited (**PCP / Acquirer**). IPCP and PCP both are subsidiaries of POSCO Holdings and are engaged in the business of processing and distribution of steel and its multiples products including hot rolled coils, sheets and plates, cold rolled coils, sheets and plates, galvanised steel products, specialty and other steel products (including electrical

steel and other steel products like steel wire rods, scrap, coil etc.).

6. THE CCI APPROVED THE PROPOSED ACQUISITION OF BLACKWATER COAL MINE BY NIPPON STEEL, NS BLACKWATER, JFE STEEL AND JFE STEEL BW

The CCI approved the proposed acquisition of certain interest in Blackwater Coal Mine (**BW Coal Mine**) by Nippon Steel / NS Blackwater (referred to as the '**Nippon Entities**') and JFE Steel / JFE Steel BW (referred to as the '**JFE Entities**'). The proposed acquisition envisages the acquisition of 20% and 10% interest in BW Coal Mine by Nippon Entities and JFE Entities, respectively. NS Blackwater is a newly incorporated special purpose vehicle formed for the proposed combination and is ultimately owned by Nippon Steel Corporation. JFE Steel BW is also a newly incorporated special purpose vehicle formed for the purposes of the proposed combination, which is owned by JFE Holdings.

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