

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**PRINCIPAL BENCH****NEW DELHI****COMPETITION APPEAL (AT) NO.82 OF 2018**

(Arising out of judgement and order dated 31st August, 2018 passed by the Competition Commission of India, New Delhi in Case No.73/2014).

In the matter of:

Amit Mittal
BD-57, Vishakha Enclave,
Pitam Pura,
New Delhi-110088
Vs

Appellant

1. DLF Ltd,
Shopping Mall,
3rd Floor,
Arjun Marg, Phase I,
DLF City,
Gurgaon 122002

2. DLF New Gurgaon Home Developers Pvt Ltd,
(Amalgamated with DLF Home Developers Ltd)
1-E Jhandewalan Extension,
New Delhi-110055

3. Competition Commission of India,
9th floor, Office Block-I,
Kidwai Nagar (East),
Opp Ring Road,
New Delhi-110023.

Respondent

For Appellant: Mr Jitendra Malkan, Mr R.P. Sharma, Advocates.

For Respondent: Mr Pravin Bahadur, Ms Kanika Sharma, Mr Rohan Arora, Ms Chandni Anand, Mr Aakash Kumbhat, Advocates for R1 and R2.

Ms Shama Nargis, Dy Director (Law), CCI.

Mr. Avishkar Singhvi, Mr Nipun Katyal, Mr Vivek Kumar, Advocates for R3.

JUDGEMENT

(21ST December, 2022)

JUSTICE RAKESH KUMAR, MEMBER (JUDICIAL)

The present appeal has been preferred by the Informant under Section 53(B) of the Competition Act, 2002 (hereinafter referred to as the 'Act') against an order dated 31st August, 2018 passed under Section 26(6) of the Competition Act by the Competition Commission of India (hereinafter referred to as 'CCI') in Case No.73/2014. By the impugned order the CCI held that contravention of the provisions of Section 4 of the Act was not established in the case hence the case was ordered to be closed under Section 26(6) of the Act.

2. The appellant earlier had filed an information application under Section 19 of the Act to the CCI alleging therein that several clauses of the agreement which was entered into between the appellant and Respondent No.2 in the present appeal were violative of provisions of

Section 4(2)(a)(i) of the ACT. It was alleged by the informant that Respondent No.1 being public limited company was involved in the business of residential, commercial and retail properties. The project under reference was launched by DLF Home Developers Ltd, a wholly owned subsidiary of Respondent No.1.

3. As per information application the Respondent group launched a residential township in the name of 'Regal Garden' in Sector 90, DLF Garden City, Gurgaon consisting of 3 and 4 BHK apartment units. The informant applied for allotment of an apartment –flat in the said Project and paid 10% of the sale price of the apartment and parking space amounting to Rs.859850/- as booking amount. Subsequently the agreement was executed between informant and Respondent No.2 and a flat i.e. apartment No.4, Floor No.15, Block D in the said project was allotted to the informant. Since in the agreement number of clauses were reflecting abuse of dominance position by the Respondent, which according to the informant was highly unfair and discriminatory the informant referring number of such clauses filed information application before the CCI. On such information petition a case was registered being Case No.73/2014

and after forming prima facie opinion, Director General was directed by the CCI to conduct investigation. After conducting investigation the DG submitted investigation report showing violation of provision under Section 4 of the Act by Respondent No.1 and 2. The CCI after receipt of the investigation report showing violation of provisions of the Act by Respondent No.1 and 2, exercising jurisdiction under Regulation 20(6) of Competition Commission of India (General) Regulations, 2009 (hereinafter referred to as Regulation 2009) directed the DG to further investigate and submit report. After submission of supplementary/further investigation report the impugned order was passed by the CCI which has been assailed in the present appeal.

4. At the outset it would be appropriate to reproduce the conclusion arrived by the CCI in its order dated 31.08.2018 in Case No.73/2014 as follows:

“Conclusion

In view of the above, the Commission concludes that the contravention of the provisions of Section 4 of the Act is not

established in the instant matter. Hence, the case is ordered to be closed under Section 26(6) of the Act.”

5. Aggrieved with the order dated 31.08.2018 in Case No.73/2014, the informant/appellant has preferred the present appeal which was admitted on 29.01.2019 for hearing. After completion of appearance and pleadings the appeal was listed for hearing.

6. The present appeal was finally heard on 10.11.2022 and judgement was reserved on the same day.

7. During the hearing of the appeal Mr. Jitendra Malkan, learned counsel for the appellant assailing the impugned order has argued that since in the information petition there were substance showing violation of provisions under Section 4 of the Act by the Respondent the CCI was initially satisfied with the prima facie case and by order dated 4.2.2015 directed the Director General (DG) to conduct investigation and submit report. The said order was passed under Section 26(1) of the Act. In compliance with the order of the CCI, the DG conducted investigation and during investigation DG found violation of Section 4 of the Act by the Respondents and thereafter DG report was submitted on 16.8.2016. Though in the DG report

specific case of violation of the provisions of the Act against the Respondents was established, to the reasons best known to the CCI, by its order dated 9.11.2016 CCI directed for further investigation and subsequently the DG conducted supplementary investigation and submitted its report on 8.9.2017.

8. In the supplementary investigation report though the DG noticed involvement of the respondents but taking U-Turn concluded that “Ops as a group was found to be having financial strength, however, the same does not appear to bestow a position of strength to the OP group”. After submission of the supplementary investigation report Learned CCI had passed the impugned order.

9. It was submitted by the learned counsel for the appellant that the order impugned is liable to be set aside since the order is based on its supplementary investigation report for which direction for further investigation was given by the CCI without being authorised under the provisions of the Act. On the sole ground it was argued that the order impugned is liable to be set aside. Learned counsel for the appellant besides making oral submission has also referred to Notes of Written submissions which is reproduced hereinbelow:-

“1. The present notes on submission are being filed in addition to oral arguments which will be adduced before this Hon’ble Appellate Tribunal and that the same may be kindly be taken on record and into consideration before final disposal of the instant appeal.

2. It is submitted that the Ld. CCI has seriously erred in not accepting report of the Director General (DG) in toto wherein the DG had investigated the case in accordance with the directions given vide order dt 04.02.2015 and stated in paras 14.9, 14.11 to 14.14 (page 358-359 of rejoinder) under chapter 14 of main investigation report dt 18.3.2016 that the same was perfectly conducted by DG in accordance with the order dt 4.2.2015 of the Ld. CCI AND reiterated in para nos. 7.8 to 7.14 (page 123-125 of main appeal) under chapter 7 of supplementary investigation report dated 09.08.2017. As a group it has been said to have violated the provisions of section 4(2)(a)(i) read with section 19(4) of the Competition Act 2002.

3. It is that the Ld. CCI had gravely erred in not holding that the respondent DLF enjoys a dominant position in the relevant geographic market as ordered on 4.2.2015. The Ld. CCI ought to have decided all other issues such as abuse of dominant position. The decision rendered by CCI is even otherwise wrong and erroneous.

4. It is submitted that contentions of Respondent Nos 1 and 2 suffers from vice of suppression vari and suggestion falsi. It was the duty of the respondent Nos 1 and 2, to bring to the notice of this Hon'ble Appellate Tribunal that by letter dated 03.10.2018 sent to Respondents Nos. 1 and 2 by speed post, the appellant has clarified that he shall not be bound by any of the conditions of the settlement in case the respondents No.1 and 2 fail to discharge their obligations. (Annexed at page no.11 of rejoinder.)

5. It is further submitted that the appellant by way of an e-mail dt 6.10.2018 had again informed R1/R2 that failure to discharge their obligation would tantamount to committing serious breach of agreement/settlement or out of court settlement, and the appellant shall have no other alternative but to adopt due course of law as may be advised in law. (Annexed at page no 12 &13 of rejoinder)

6. It is submitted that the appellant was therefore constrained to issue an e-mail dt 9.10.2018 saying that R-1 & R-2 have neglected and failed to discharge their duty, even after promising under the settlement dt 10.07.2018. The said settlement is breached by R-1 & R-2 and it is pertinent to mention here that the settlement deed dt 10.7.2018 is part and parcel of settlement dt 17.03.2017 (para 8 of settlement dated 10.07.2018. This is further evident from the fact that in the deed dated 10.07.2018 it is mentioned that the

“appellant will pay double the amount of deed dated 17.03.2017 in case of any breach on his part. It clearly established that both settlements are considered as One and non-compliance the terms of settlement deed by R-1/2, give liberty to appellant to invoke his due rights (Annexed at Page No.14 and 15 of rejoinder). It is further submitted that only after reply dated 26.11.2018 filed by R1/R2 and rejoinder dated 4.12.2018 filed by appellant and after detailed arguments, this Hon’ble Appellate Tribunal had admitted the present appeal on dated 29.01.2019.

7.It is submitted that Respondent Nos 1 and 2 made a false statement that they reached out to the Appellant on multiple occasions but on the contrary, there are several emails/letter sent by appellant i.e. 3.10.2018, 6.10.2018, 9.10.2018, 25.11.2018, 27.05.2019, 13.06.2019, 26.06.2019, 15.07.2019, 25.07.2019 and 20.01.2020 calling upon to comply, but there was no proper response from R1/R2 to fulfil terms of settlement.

8. The appellant says and submits, that the appellant does not belong to the legal fraternity and is a business person. As stated earlier, lawyers of the R1 and R2 advised the appellant by showing various orders of this Hon’ble Appellate Tribunal that a compromise is permissible before CCI, therefore, the appellant who was eager to resolve the entire issue at an earlier date and in good faith had no

other alternative but to subscribe his signature on the dotted lines as and when the respondents Nos 1 and 2 asked the appellant to subscribe his signature. However, the gist of the entire settlement transaction is that the R1 and R2 have miserably failed to discharge their obligation under the settlement as per law, even otherwise the learned CCI has not taken any note or cognizance of the so called settlement on the ground that settlement is not applicable under 'completion law'. In other words, the Ld. CCI has decided the case (Case No.73/2014) on its own merits independently without taking the so-called settlement into consideration. It may be pointed that, now the R1 and R2 want to rely upon the settlement that has not been fully complied with by them in the first place. **Even otherwise, a private compromise has not been considered/permitted under completion act/CCI (for simple reason that these proceeding are in nature of class action, there are 562 flats in subject matter) nor has been fully honoured by other side and that cannot bar an appeal before this Appellate Tribunal.** It is respectfully submitted that seeking justice for a larger interest by way of the present appeal is fundamental right of the appellant. The Hon'ble Supreme Court in the case of **Olga Tellis and Anr Vs Bombay Municipality and Anr.** Reported as AIR 1986, SC 180 has held that there cannot be any compromise of the fundamental rights. It is clear that R1/2 clearly admitted that they breached the

terms of settlement and by virtue of their this act, appellant has the necessary right to have filed the present appeal.

9. It is to be noted that information filed before the Ld. CCI under competition law is not appellant/ individual centric but it is for the mass benefit of a larger group. Respondent nos. 1 & 2 should offer exit/buy back option along with 11% interest to all DLF Garden City, Gurgaon home buyers who wish to exit due to unfair clauses imposed by R-1 8& 2 (this fact is well established in the DG report where 12 out of 14 clauses are arbitrary, abusive) from the said project as the same way respondent nos. 1& 2 gave an option to the Appellant herein.

10. It is submitted that the decision rendered by Hon 'ble COMPAT in the case titled as Ravinder Kaur Sethi Vs DLF Universal Limited and Others is on facts not applicable to the present case, even otherwise it says that "contractual breaches do not ordinarily give rise to a competition law issue", it has not said that it can't be risen under the Circumstances or facts of different cases. Other case laws i.e., Dalip Singh Vs State of UP, Amar Singh Vs UOI & Kishore Samrite Vs State of UP are on facts not applicable to the present case.

11. It is submitted that appellant has approached this Hon'ble Appellate Tribunal with bona fide intentions. It is settled legal position that a judicial quasi-judicial authority can dismiss a

complaint for default (without going into the merits of the case for non-appearance or the informant) in case of non-appearance of the complainant, however in a case where the judicial / quasi-judicial authority chooses to decide case on merits, the authority has to consider all the material and evidence on record. And a party not appearing before the authority can challenge the order by filing an appeal provided under the law. Therefore, the contentions raised by R-1& R-2 has no merits. Interestingly, the Ld. CCI has passed the order dt 31.08.2018 on merit without considering settlement because it is trite law that settlements are not considered in competition law for the simple reason that this law is for the benefit of a larger group rather than of one single individual. Information can be riera under competition law even if one is not a buyer in subject matter.

12. ne crux of the appeal is "Relevant Market", It is submitted at in case of Belaire Owners Association Vs DLF on almost identical facts, the Ld. CCI had found that DLF was enjoying a dominant position and that it has abused the same. The finding given by the Ld. CCI was upheld by the Hon'ble COMPAT. Copy of the order dt 19.05.2014 passed by the Hon'ble COMPAT is annexed hereto marked as (Annexed at page no 16 to 149 of rejoinder). It may be mentioned that both the case of i.e., Belaire case as well as the case of present appellant pertains to same geographical market i.e.,

Gurgaon and in Belaire case also, the residential units were considered as "Relevant Market". Further, it is pertinent to place on record that while passing the first order dt 04.02.2015 under section 26(1), the Ld. CCI had very much considered the Belaire case (commission considered it inappropriate to segregate the market into high-end/middle end, mid-tier etc" para no 9 of 4.2.2015) and relevant product market, which may be reproduced as under:

"Provisioning of services for development and sale of residential units in Gurgaon". (Annexed at page no 150 to 157 of rejoinder).

13. It appears that during the course of investigation, the Director General clarified that the residential units means; apartment/flat/independent floors villas under the licensed category. It is respectfully submitted that explanation rewording of the relevant product market does not change the subject in view of the doctrine of interchangeable or substitutable by the Consumer by reason of characteristics of the product or services. For example, a consumer proposing to buy a flat may opt for RGH or RPL on account of locational advantage; budget etc. however the Ld. CCI by an order dated 09,11.2016, in terms recalled its earlier order determining relevant product market and substituted the relevant product market already determined earlier by an order dated 04.02.2015 and

determining an entirely different product market, that is reproduced herein "Provision of service for development and sale of residential apartments/flat in Gurgaon". Such an action was beyond the scope of the authority of Ld. CCI.

14. In view of the facts above- said, the report dt 18.03.2016 submitted by the Director General after a detailed and full-fledged investigation may be restored in the interest of justice and fair play. Same is Annexed as marked (Annexed at page no 158 to 359 of rejoinder); Quashing and setting aside order dated 09.11.2016 and further proceedings based on the newly determined relevant market. The appellant states that the appellant has never been served upon order dt 09.11.2016 and received it for the first time with reply dt 26.11.2018 filed by R-1/R-2. It is pertinent to mention here that CCI in order dt 09.11.2016 had taken a distorted shelter of section 20(6) of CCI (General) Regulation 2009 and is on facts not appropriate to the present circumstances. Here is the reproduction of section 20(6) of CCI (General) Regulation 2009.

"If the Commission, on consideration of the report, is of the opinion that further investigation is called for, it may direct the Director General to make further investigation and submit a supplementary report on specific issues within such

time as may be specified by the Commission but not later than forty five days".

On plain reading of the above provision, it is clear that it emphasizes on further investigation on specific issues" only. There is not even a whisper to give powers to the Ld. CCI to change the entire nature of order or investigation contrary to original order dt 04.02.2015. It is further submitted that the Ld. CCI did not per se deny the findings of DG report dt 18.3.2016.

The R-1 & R-2 are trying to mislead this Hon ble Appellate Tribunal by quoting Gurgoan and Delhi for relevant market consideration and It is very clear that the present case pertains to Gurgoan property only which is the subject matter of case no 73 /2014.

15. It is submitted that in the order dated 31.08.2018, whereby the Ld. CCI gave a finding that the respondent nos. 1 and 2 do not appear to be in a dominant position in the relevant period with the changed Scenario, be set aside in the interest of justice and fair play. It is submitted that the Director General already gave its findings in its main report dt 18.03.2016 as per the Ld. CCI's order dt 4.2.2015 that 12 clauses out of 14 are found abusive, arbitrary etc. Even otherwise, it is not in dispute that the clauses are prima facie abusive and heavily tilted in favour of R-1 & R-2.

It is most humbly and respectfully prayed that the present appeal may be allowed with costs in favour of the Appellant and against the Respondents.”

10. Mr. Avishkar Singhvi, learned counsel appearing on behalf of the CCI opposing the appeal submits that there is no infirmity in the impugned order. According to him the order impugned assigned detailed reasons and after examining each and every aspect the Learned CCI has come to the conclusion that in the present case allegation of the informant against Respondent No.1 and 2 for violation of provisions under the Act was not established. According to him the Learned CCI has rightly passed the order which was within its jurisdiction under Section 26(6) of the Act which requires no interference.

11. Learned counsel for the CCI has also referred to number of paragraphs of the impugned order to satisfy that CCI after applying its mind assigning a detailed reason has passed order which requires no interference.

12. Mr. Pravin Bahadur, learned counsel has appeared on behalf of Respondent No.1 and 2. He adopting the argument advanced by

learned counsel for the CCI has argued that the appeal is fit to be rejected primarily on the ground that the appellant has not approached this Tribunal with clean hands. It was submitted that the appellant has suppressed the fact that after filing of the information application the informant had entered into settlement/agreement with the Respondents and this was the reason that subsequently the informant did not participate in the proceeding before the CCI. According to him since the appellant had entered into a settlement he has forfeited his right to file appeal. In this context he has drawn our attention to para 8 at running page 49 of the Reply filed on behalf of the Respondent No.1 and 2 which is quoted hereinbelow:-

“8. That it is specifically agreed between the parties that the settlement arrived at between the parties vide Settlement Deed dated 17.03.2017 executed by the First Party as Karta of Amit Mittal (HUF) in respect of another property being Apartment No.4, Floor No.15, Block No.D, Regal Gardens at DLF Garden City, Sector-90, Gurugram, Haryana, has to be read and considered as part and parcel of the present settlement also. The parties hereto further agree and confirm that in case of breach of any terms and conditions of present Settlement Deed, the First Party shall be liable to pay to

the Second Party double the settlement amount received by the First Party under the said settlement dated 17.03.2017, within a period of 2(two) weeks of demand thereof by the Second Party.”

13. It has also been argued that the CCI has committed no error in closing the case exercising powers under Section 26(6) of the Act.

14. Besides hearing learned counsel for the parties we have perused materials available on record. Before we proceed it would be appropriate to discuss some important event.

15. It is the case of the appellant that on 03.03.2012 the appellant was allotted apartment in DLF Regal Garden, Gurgaon for which Apartment buyers agreement was executed on 01.09.2012. Subsequently in view of various arbitrary and one sided clauses in agreement in the month of January, 2014, dispute was raised. On 30.09.2014, appellant filed an information application before the CCI which was registered as Case No.73/2014. On receipt of information application the CCI examined the report and noticed prima facie case of abuse of dominance provisions under Section 4(2)(a)(i) of the Act. The CCI while passing order under Section 26(1) of the Act on 04.02.2015 while directing for conducting investigation by the DG

categorically noticed that the Respondents were earlier also found involved in violation of the Act. It noticed in its order dated 04.02.2015 following facts, which are from running Page 154 onwards of Rejoinder i.e. paras 8, 9, 10, 11 and 12:-

8. The Commission perused the information available on record and heard the Informant at length. At the outset it may be noted that the Commission has already received many informations where OP 1 has been prima facie found to be dominant in market for 'provision of services for development of residential apartments in the territory of Gurgaon'. The allegations raised in this case are reasonably similar to those informations. The Informant is aggrieved by the onesided and onerous conditions imposed in the 'Agreement' by OP 2 which as per the Informant has resulted in abuse of dominant position by OPs in the relevant market.

9. The relevant market proposed by the Informant is market for 'service of mid-tier residential accommodation in upscale self-contained township in Gurgaon'. However, the Informant has not provided any cogent reasoning as to why mid-tier residential accommodation should be taken as relevant product market in this case. Considering the previous orders of the Commission and material placed on record, the Commission is of the view that market for 'provisioning of services for development and sale of residential

units in Gurgaon' would be the correct market in the present case. In any case, since the conclusion on dominance does not seem to change in the present case irrespective of delineation of alternative relevant market definitions, the Commission considers it inappropriate to segregate the market into high-end/middle end, mid-tier etc. at this prima facie stage.

10. The Informant contended that OPs are dominant in the relevant market. It may be noted that OP 1 and OP 2 belong to the same group and as such their dominance as a group is required to be seen. The Commission has already held OP 1 to be dominant in the geographic market of Gurgaon. Although such cases were before the Commission for the 'Agreement' which were entered into from 2007 to 2010, in the absence of any material pointing to the contrary, the Commission is of the view that vis-a-vis OP 1, the market dynamics have not changed much and OP 1 still holds a dominant position in the relevant market. Further, OP 2, by virtue of being amalgamated with M/s DLF Home Developers Limited (wholly owned subsidiary of OP 1), is a group entity of OP 1. Thus, OPs as a group, appears to be in a dominant position in the relevant market defined above. Some of the terms of the 'Agreement' seems onerous and one-sided and clearly depicts how OP 2 has misused its dominant position to mould the impugned clauses of the 'Agreement' in its favour. The said act

of OP 2, prima facie, appears to be abusive in terms of section 4 (2)(a)(i) of the Act.

11. On the basis of foregoing, the Commission is prima facie of the opinion that the conduct of OPs appears to be in contravention of the provisions of section 4 of the Act. Accordingly, the Commission directs the Director General (DG) to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order.

12. In case the DG finds that OPs have acted in contravention of the provisions of the Act, it shall also investigate the role (if any) of the persons who were in charge of and were responsible for the conduct of the businesses of such OPs.

16. After the aforesaid order, the DG conducted a detailed investigation and in investigation it was concluded that OPs were a group said to violated the provisions of Section 4(2)(a)(i) read with Section 19(4) of the Competition Act, 2002. Even though DG in its investigation report dated 18.03.2016 noticed the violation committed by Respondents under Section 4 of the Act, by its order dated 09.11.2016 the CCI directed the DG to conduct further investigation. The operative portion of order dated 9.11.2016 is reproduced below:

“On a careful perusal of the DG report, the Commission is of opinion that before proceeding any further in the present matter, it would be appropriate to direct the DG in terms of the provisions contained in Regulation 20(6) of the Competition Commission of India (General) Regulations, 2009 to conduct further investigation in light of the observations made hereinabove. Accordingly, the DG is directed to make further investigation and submit a supplementary report within a period of 45 days from the receipt of this order.”

17. Thereafter the DG conducted further investigation and concluded as follows:

“7.14 Hence, the investigation came out with conclusion that the Ops as a group was found to be having higher financial strength, however, the same does not appear to bestow a position of strength to the OP group.”

18. After receipt of the second/supplementary DG report the impugned order has been passed under Section 26(6) of the Act wherein the CCI concluded that “the contravention of the provisions under Section 4 of the Act is not established in the instant matter.” Since the order impugned has been passed under Section 26(6) of the Act, we propose to reproduce entire Section 26 of the Act as follows:-

“26. Procedure for inquiry on complaints under section 19.—

(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information, under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter.

Provided that if the subject-matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under Section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(4) The Commission may forward a copy of the report referred to in sub-section (3) to the parties concerned:

Provided that in case the investigation is caused to be made based on a reference received from the Central Government or the State Government or the statutory, the Commission shall forward a copy of the report referred to in sub-section (3) to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further

investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

19. On examination of the provisions contained in Section 26 of the Act it is evident that the CCI is having a very limited jurisdiction to direct for further investigation that too in a case as per Section 26(5) of the Act if the DG recommends that there is no contravention of provisions of Act then Commission shall invite objections or suggestions and thereafter under sub-section (7) of Section 26 of the Act after consideration of objections and suggestions referred to in sub-section (5) further investigation is necessary only then direct for further investigation. Meaning thereby that purport of Section 26 of the Act is that if after investigation DG submits report disclosing therein violation of the provisions contained in the Act, the CCI is required to pass appropriate order. In a case DG submits a closure report and thereafter under sub-section (5) of Section 26 of the Act, after inviting objections, CCI is satisfied, only then under sub-section (7) of Section 26 of the Act, CCI can issue direction for further

investigation. Further investigation as per Act is required in a case of closure not in a case where DG has submitted report showing contravention of provisions of the Act by a party/parties.

20. It is not in dispute that in the present case even after receipt of DG report dated 18.03.2016 disclosing violation of Section 4 of the Act by the Respondents, on 9.11.2016 the CCI taking shelter of provisions contained in Regulation 20(6) of the Competition Commission of India (General) Regulations, 2009 had directed the DG to submit supplementary report. At this juncture it would be apt to reproduce Regulation 20 of CCI(General)Regulations, 2009, which is as follows:-

“20. Investigation by Director General-(1) *The Secretary shall, while conveying the directions of the Commission under regulation 18, send a copy of the information or reference, as the case may be, with all other documents or materials or affidavits or statements which have been filed either along with the said information or reference or at the time of preliminary conference, to the Director-General.*

*(2) The Commission shall direct the Director-General to submit a report within such time as may be specified by the Commission which ordinarily shall not exceed sixty days from the date of receipt of the directions of the Commission [***].*

(3) The Commission may, on an application made by the Director-General giving sufficient reasons, extend the time for submission of the report by such period as it may consider reasonable.

(4) The report of the Director-General shall contain his findings together with all evidences or documents or statements or analyses collected during the investigation.

Provided that when considered necessary, the Director General may, for maintain confidentiality, submit his report in two parts. One of the parts shall contain the documents to which access to the parties may be accorded and another part shall contain confidential and commercially sensitive information and documents to which access may be partially or totally restricted.

(5) Ten copies of the report of the Director-General, along with a soft copy in document format, shall be forwarded to the Secretary within the time specified by the Commission: Provided that the Secretary may ask for more copies of the report as and when required.

(6) If the Commission, on consideration of the report, is of the opinion that further investigation is called for, it may direct the Director-General to make further investigation and submit a supplementary report on specific issues within such time as may be specified by the Commission but ordinarily not later than forty-five days.”

21. The aforesaid Regulation 20 describes procedure about the investigation by the DG, whereas Regulation 20(6) empowers the CCI to direct DG for further investigation. However, in view of Section 26 of the Act it can be concluded that Regulation 20 (6) of CCI(General) Regulations, 2009 can be used in furtherance of exercise of jurisdiction under Section 26(7) of the Act which is required to be invoked in a case where DG under Section 26(5) submits report regarding non contravention of the provisions of the Act. In any event taking shelter of Regulation 20(6) of Regulation 2009 CCI was not authorised to pass an order for further investigation and the same cannot be justified.

22. We are of the opinion that without going into further detail or delving into merit of the case the order impugned is liable to be set aside since the order is primarily passed on the supplementary investigation report submitted by the DG which was conducted on a void order of the CCI. Accordingly all subsequent proceeding after the submission of the 1st report by the DG dated 18.03.2016, are declared void.

23. Accordingly the matter is remitted back to the CCI to pass order afresh on the basis of the 1st DG Report i.e. Report dated 18.03.2016 submitted by the DG. The CCI is required to examine the entire issue and pass appropriate order in accordance with law after giving opportunity of hearing to all concerned within a period of three months from the date of receipt/production of copy of this order.

24. With the above observation/directions the appeal stands allowed.

(Justice Rakesh Kumar)
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member (Technical)

Bm