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DSK Legal Knowledge Center

Update on

- **COMPETITION LAW**

COMPETITION LAW:

The Supreme Court has, in the matter of **CCI v. SAIL & Anr.**¹ held that: “No appeal can be filed against an order of Competition Commission of India (**CCI**), directing an investigation into a complaint received by it.”

A. Brief facts of the case

Jindal Steel and Power Limited (**JSPL**) had filed a complaint before the CCI² by invoking section 19³ read with section 26(1)⁴

¹ civil appeal no. 7779 of 2010

² Decides whether an entity has violated competition law, investigates the said entity if it has, and issues an order

³ Section 19 lays down the procedure for inquiry into certain agreements and dominant position of enterprise.

of the Competition Commission of India Act, 2002 (**Act**), stating that Steel Authority of India Limited (**SAIL**) was a dominant player in the market for the manufacture of rail tracks and that the agreement between SAIL and Indian Railways for exclusive supply of rails was monopolistic.

Indian Railways is the largest purchaser of rail tracks. They had signed an exclusive agreement with SAIL whereby Indian Railways would buy all their requirements from the SAIL. By necessary implication, JSPL, who also owns steel plant for rails,

⁴ Section 26(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 received 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.

couldn't supply rails to the Indian Railways. JSPL contended that the agreement was anti-competitive⁵ and that SAIL was abusing its dominant position⁶ in market by keeping other players out of the market and depriving others of fair competition.

The CCI, after forming a prima facie opinion on the complaint, directed an investigation of the case under section 26(1) of the Act. At this stage SAIL went up in appeal to the Competition Appellate Tribunal (**COMPAT**)⁷ and sought a stay on the investigations. The CCI submitted that they needed to be heard and should therefore be made a party to the appeal, however this submission did not find any merit with COMPAT. COMPAT then passed a stay order on 15.02.2010 against investigations and maintained that such an order by CCI was challengeable

before the COMPAT under Section 53 A (1)⁸ of the Act. The CCI then appealed to the Supreme Court of India and that appeal was heard.

B. Issues before The Supreme Court

Issue 1: Whether a full-fledged hearing is owed to all parties by CCI before commencing any investigation?

Issue 2: Whether an initial opinion formed by CCI is appealable before with COMPAT?

Issue 3: Whether CCI has to reveal its reasons for forming such an opinion?

Issue 4: Whether CCI can appear before its own appellate body?

⁵ Section 3(4)- Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- (a) tie-in arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance,

Shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

⁶ Section 4(1)- No enterprise or group shall abuse its dominant position

⁷ It is an appellate body which hears appeals from entities that believe CCI has ruled unfairly against them.

⁸ Section 53A.(1)- The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal –

(a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Act;

(b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under subsection(2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.

C. Decision of The Supreme Court

The court held that, it is not mandatory and neither is there any statutory duty cast upon the CCI to issue notice or grant a hearing, nor can any party claim, as a matter of right, a notice and/or hearing at the stage of formation of opinion by the CCI, in terms of Section 26(1) of the Act.

An appeal against an order of investigation by the CCI under section 26 (1) is not maintainable and that COMPAT had erroneously interpreted Section 53 A(1) of the Act to hold that it had jurisdiction to entertain appeals against any direction issued or decision made by the CCI.

The court also held that the CCI could pass interim orders but it should record some reasons while forming a prima facie opinion. Also, whenever the CCI passes an interim order it should pass a final order in that behalf "as expeditiously as possible, and in any case not later than 60 days".

The apex court further held that in cases where suo motu cognizance was taken by the CCI, it had to be a party and in other cases also the CCI "shall be a proper party (as opposed to a necessary party) in proceedings before the COMPAT."

D. Effect of this judgment

This landmark decision of the Supreme Court corrects the balance of power between the CCI and the COMPAT. It clearly defines COMPAT'S powers of appellate review and will allow the CCI to conduct investigations into potentially anti-competitive activities without having to go through appeal proceedings at every stage.

For further information please refer to:

<http://judis.nic.in/supremecourt/helddis3.aspx>

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