



Competition Law

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Table of Contents

DELHI & MADRAS HIGH COURTS DISMISS CEMENT COMPANIES' PETITIONS AGAINST THE IMPLEADMENT OF BUILDERS ASSOCIATION OF INDIA BY CCI	Page 3
CCI APPROVES OF TITAN'S ACQUISITION OF CARATLANE	Page 3
CCI APPROVED ALOKE LOHIA'S ACQUISITION OF 20.51% STAKE IN INDO RAMA SYNTHETICS	Page 4
NCLAT STAYS THE PENALTY IMPOSED BY THE CCI ON NTPC LIMITED FOR GUN JUMING	Page 4
CCI PROPOSES REGULATIONS FOR DETERMINING TURNOVER AND INCOME FOR PENALTIES ON ENTERPRISES AND INDIVIDUALS	Page 4



We wish our readers a very Happy New Year! In this edition of the newsletter, we cover one judgment from the Delhi High Court and Madras High Court, three relevant combination orders, and the draft regulations issued by the CCI for determining turnover and income.

DELHI & MADRAS HIGH COURTS DISMISS CEMENT COMPANIES' PETITIONS AGAINST THE IMPLEADMENT OF BUILDERS ASSOCIATION OF INDIA BY CCI

The High Court of Delhi, vide order dated [18.12.2023](#), dismissed the writ petition filed by Ultratech Cement Limited against the order of CCI allowing the impleadment of Builders Association of India (BAI) to the proceedings.

The petition is yet another offshoot of the ongoing cement cartel proceedings that started back in 2019. During the course of investigation by the DG, BAI filed an application for being impleaded as a party to the proceedings. When this was disallowed by the CCI, the same BAI approached the Delhi High Court, which, vide order dated [26.09.2022](#), allowed the BAI to re-approach the CCI with a fresh application.

The BAI was successful the second time around and was impleaded as a party. The cement companies were unhappy at this turn of events and while Ultratech chose to file a petition in the Delhi High Court, Dalmia and India Cements chose Madras.

Vide its order dated [14.08.2023](#), the single judge of the Madras High Court dismissed the petitions observing that the cause of action arose vide the order of the CCI and on the grounds of *forum conveniens* and comity of courts, the Delhi High Court should have the jurisdiction. An appeal before the Division Bench of the Madras High Court met the same fate ([29.09.2023](#)), albeit with an important observation that the CCI ought to have heard the cement companies prior to passing the order and dismissed the appeals.

The detailed decision of the Delhi High Court came in December where it noted that the CCI has given reasons for arriving at the conclusion

that making BAI a party to the proceedings which was *in consonance with the satisfaction of the two-fold test of bearing substantial interest in the outcome of the proceedings and is necessary in light of public interest*. The Court went on to hold that the “impleadment of a party even at subsequent stages, therefore, is not a conclusive effective determination of any rights and obligations of parties involved but is merely an action effectuating the enablement of the CCI to reach an informed conclusion on the question of violations under the competition law framework in the country”.

CCI APPROVES OF TITAN'S ACQUISITION OF CARATLANE

Vide order dated [21.11.2023](#), CCI approved of the acquisition of an additional 27.18% share capital of CaratLane, by Titan, increasing its shareholding to 98.28%, and giving it the sole control.

The CCI looked into horizontal overlaps which existed at a broader level in the market for manufacture and sale of gems and jewellery in India, and in the organized segment for manufacture and sale of gems and jewellery in India, being the narrow market.

The combined market shares of the entities were in the range of 5-10% in the broader market, and between 15-20% in the narrow market, in terms of value. Additionally, the existence of several other players, made the market competitive.

The Commission also looked at the vertical overlaps which were created due to CaratLane selling its products on TATA CLiQ, however, since the sales were miniscule, the transaction was unconditionally approved.

CCI APPROVED ALOKE LOHIA'S ACQUISITION OF 20.51% STAKE IN INDO RAMA SYNTHETICS

Vide an order dated [06.11.2023](#), CCI approved a composite transaction regarding a transfer of shares between two promoter groups of Indo Rama Synthetics (India) Limited (**IRSL**) – O.P. Lohia group and Alope Lohia group, as a result of which the shareholding percentages would be approximately equal.

The Commission noted that “*while at present IRSL is subject to positive control of Alope Lohia Group and negative control of O.P. Lohia Group, post the Proposed Transaction, IRSL would be subject to negative control of its both promoter groups. However, the degree of control of O.P. Lohia Group is likely to increase post the Proposed Transaction with increase in shareholding while the rights, etc., remain unchanged.*”

As the combination would lead to no significant change in the competition dynamics in the concerned markets, the Commission approved the combination.

NCLAT STAYS THE PENALTY IMPOSED BY THE CCI ON NTPC LIMITED FOR GUN JUMING

The NCLAT vide order dated [04.12.2023](#), stayed the penalty of INR 40,00,000 imposed on NTPC Limited by the CCI vide order dated [22.08.2023](#), for failing to notify its acquisition of 35.47% equity share in Ratnagiri Gas & Power Private Limited.

As covered in our [June Newsletter](#), certain provisions of the Competition (Amendment) Act, 2023, have been enforced, including the requirement to pre-deposit 25% of the penalty for maintaining an appeal before the NCLAT under Section 53 B of the Act. This appears to be the first time, the revised section has been triggered. However, the stay was granted without any finding on the three usual factors that are required to be established, namely *prima facie* case, balance of convenience, and irreparable loss.

CCI PROPOSES REGULATIONS FOR DETERMINING TURNOVER AND INCOME FOR PENALTIES ON ENTERPRISES AND INDIVIDUALS

On 22.12.2023, the Commission published yet another set of draft regulations – the draft [Determination of Turnover or Income Regulations, 2023](#). In brief, the regulations prescribe that turnover, for the purposes of calculating penalty, would be computed based on *the total value of sales or revenue or receipts and other operating income, as per the audited financial statements, excluding indirect taxes, trade discounts, and intra-group sales.*

In case of individuals, the CCI would consider, (a) gross income as per the Income Tax Return (ITR), (b) in case of unavailability of the ITR, total income as certified by a Chartered Accountant, and lastly (c) in case the individual is not required to file the ITR, total income of the individual as certified by a Chartered Accountant along with supporting affidavit.

Key Contacts



Abdullah Hussain

Partner

abdullah.hussain@dsklegal.com



Kunal Mehra

Partner

kunal.mehra@dsklegal.com



Kanika Chaudhary Nayar

Partner

kanika.nayar@dsklegal.com



Abhishek Singh Baghel

Partner

abhisheksingh.baghel@dsklegal.com



DSK Legal Knowledge Center

Contact Details for any queries: knowledge.management@dsklegal.com

Mumbai

1701, One World Centre,
Floor 17, Tower 2B,
841, Senapati Bapat Marg,
Mumbai - 400013.
Tel +91 22 6658 8000

Mumbai

C-16, Dhanraj Mahal,
3rd Floor,
Apollo Bunder, Colaba,
Mumbai - 400001.
Tel +91 22 6152 6000

Bengaluru

201, 2nd floor, Prestige Loka,
7/1 & 7/7, Brunton Road,
Craig Park Layout, Ashok Nagar,
Bengaluru - 560025.
Tel +91 80 6954 8770

New Delhi

Max House, Level 5,
Okhla Industrial Area, Phase 3,
New Delhi - 110020.
Tel +91 11 4661 6666

Pune

Ground Floor, 1 Modibaug,
Ganesh Khind Road, Shivajinagar,
Pune - 411016.
Tel +91 20 6684 7600

✉ contactus@dsklegal.com

in DSK Legal

🌐 www.dsklegal.com

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