



Competition Law

Newsletter - November 2023

Table of Contents

MADRAS HIGH COURT DISMISSES WRIT PETITIONS FILED BY AGNI STEELS	Page 3
GAUHATI HIGH COURT DISMISSES APPEAL BY DALMIA CEMENT TO HALT CCI'S INVESTIGATION	Page 3
NCLAT SETS ASIDE CCI ORDER PENALISING SUGAR MILLS FOR BID RIGGING ON PROCEDURAL GROUNDS AND REMANDS BACK FOR A FRESH HEARING	Page 4
CCI APPROVES THE ACQUISITION OF CARE HOSPITALS BY TPG AND BLACKSTONE	Page 4
REGULATORY UPDATES	Page 4



October was surprisingly slow with only two combination orders published, but a significant judgment passed by the National Company Law Appellate Tribunal (**NCLAT**), and expected results in two High Courts.

The latest edition of the DSK Legal Competition Law Newsletter also covers the Draft (Lesser Penalty) Regulations, 2023 released by the Competition Commission of India (**CCI**) for stakeholder comments.

MADRAS HIGH COURT DISMISSES WRIT PETITIONS FILED BY AGNI STEELS

The High Court of Madras *vide* orders dated [18.10.2023](#) and [19.10.2023](#) respectively, dismissed the appeals filed by Agni Steel challenging the search and the seizure conducted by the Director General in its premises.

By way of brief background, the proceedings were initiated by the Coimbatore Corporation Contractors Welfare Association before the Central Bureau of Investigation alleging a cartel amongst nine companies to fix the prices of iron ore. The said complaint was forwarded to the Director General, CCI for further investigation to unearth the possible anti-competitive concerns in the market. The CCI considered the matter and directed the Director General to investigate the same.

The primary issues for consideration before the Madras High Court were (a) whether investigation is vitiated for non-compliance of Section 26(1) of the Act, and (b) whether the presence of the Director General during the meeting of the CCI vitiated the entire process.

The High Court noted that the CCI has wide powers to order an investigation under Section 26(1) of the Act including on its own motion or on receiving a complaint. The '*minutes of the meeting*' dated 17.08.2021 revealed that the CCI proceeded to register a *suo-moto* case and even though no formal order was passed under 26(1), "*the formation of the opinion as to prima facie case is very much pregnant in the said decision.*"

The Court also dismissed the second argument noting that proceedings under Section 26(1) of the Act are a preparatory process and there are no limitations on the presence of other officials during the meeting.

GAUHATI HIGH COURT DISMISSES APPEAL BY DALMIA CEMENT TO HALT CCI'S INVESTIGATION

Vide an order dated [19.10.2023](#), the Gauhati High Court dismissed Dalmia Cement's plea to stop the investigation into the allegations of big rigging in tenders by Oil & Natural Gas Corporation (**ONGC**) for the supply of Oil Well Cement (**OWC**).

CCI's investigation was challenged by Dalmia Cement on the ground that the Director General was conducting a roving and fishing enquiry, and Dalmia was not provided with certain important documents.

Dalmia had already failed in its first attempt before the Single Judge ([28.06.2023](#)) and suffered the same fate on appeal. The Division Bench rejected each of the contentions raised holding that there was *prima facie* sufficient material on the basis of which an investigation had been ordered and it did not appear from the notice issue that a fishing and roving inquiry was being conducted. It did however ask the CCI to provide copies of the complete set of documents relied upon by the CCI other than those which require confidentiality.

NCLAT SETS ASIDE CCI ORDER PENALISING SUGAR MILLS FOR BID RIGGING ON PROCEDURAL GROUNDS AND REMANDS BACK FOR A FRESH HEARING

The NCLAT *vide* an order dated [10.10.2023](#), set aside the order of the CCI dated [18.09.2018](#) (**Impugned Order**) wherein it had found sugar mills which participated in the tender process for supplying ethanol to depots in the states of Uttar Pradesh, Gujarat, and Andhra Pradesh to be colluding and rigging bids with collusive prices to the tender.

The NCLAT held that:

- a. the quorum of five members which had heard the final oral arguments on all dates ought to have signed the final order, whereas only three did, two having retired in the period between the conclusion of arguments and the publication of the order;
- b. there existed an inordinate delay in the pronouncement of the Impugned Order, since it was passed almost after 13 months of being reserved; and
- c. that the CCI should have given the parties an oral hearing subsequent to the Supplementary Report of Investigation which was shared on 07.06.2018.

On the delay specifically, the NCLAT concluded that *“this period [of 13 months] is definitely a very long period, and it may be entirely possible that the members, who did not sign the judgement may have held a different point of view, or that, when they participated in collective deliberation and discussion while preparing the final order, the final order may have gone in a different direction. Added to this is also a distinct possibility that even the members, who signed and authenticated the final order, may have suffered from some loss of memory regarding the facts of the case, which could have a bearing on the final order.”*

Consequently, the Tribunal remanded the matter back to the CCI for a fresh hearing.

CCI APPROVES THE ACQUISITION OF CARE HOSPITALS BY TPG AND BLACKSTONE

The CCI, *vide* order dated [20.09.2023](#), approved the acquisition of 72.49% equity shareholding of Quality Care India Limited (**QCIL**), a multi-speciality healthcare provider which operates hospitals under the brand name ‘CARE Hospitals’ in India, by Blackstone.

By way of a separate order of the same date ([20.09.2023](#)), the CCI also approved the acquisition of a transaction by way of which TPG’s shareholding in QCIL was reduced to 24.16% along with the exit of two co-investors.

The CCI noted that there were minimal horizontal and vertical overlaps between the portfolio companies of both TPG and Blackstone and hence the transaction was not likely to raise any competition concerns.

REGULATORY UPDATES

I. Draft Regulations for Lesser Penalty, 2023

Following the draft regulations for [settlements](#), [commitments](#), and [combination](#) regulations, the CCI released the [draft Regulations for Lesser Penalty, 2023](#) on 16.10.2023, which intend to repeal and replace the existing CCI (Lesser Penalty) Regulations, 2009.

The significant changes, as expected, are the introduction of provisions relating to modalities and requirements of leniency plus:

- a. **Leniency Plus** – The amended Competition Act provides for an existing leniency applicant in respect of one cartel to make full, true, and vital disclosure about the potential existence of another cartel. If the applicant’s disclosure aids the CCI in its formation of a *prima facie* view regarding the existence of the other cartel, it may make that applicant eligible for an additional

reduction of 30% in the former cartel. The application must be filed any time before the DG submits its Investigation Report with respect to the first cartel.

b. Withdrawal of Leniency Plus

Applications – a Lesser Penalty or the Lesser Penalty Plus applicant may now withdraw their applications any time before the CCI receives the Investigation Report of the DG with respect to the first cartel. Interestingly, the CCI or the DG have the discretion to use the information submitted during the course of the pending investigation.

c. Forfeiture of Benefits from Lesser Penalty / Lesser Penalty Plus

– The CCI has the discretion to forfeit any benefits bestowed upon the applicants, if it is satisfied that the applicant has during the course of inquiry / proceedings has: (i) failed to comply with the conditions on which the benefit of leniency was granted by the CCI; or (ii) provided false evidence or omitted to submit any material information knowing it to be material; or (iii) not made a vital disclosure. Such an applicant becomes subject to further inquiry for contravention of

the lesser penalty provisions and shall be liable for the imposition of a penalty.

- d. Confidentiality** – The Draft Regulations confirm that the CCI shall consider identity and information / evidence provided by the applicants as confidential unless (a) it is required by, or (b) the applicant has agreed to allow such disclosure in writing, or (c) there has been a public disclosure by the applicant itself. If required, the DG may also disclose any such relevant information to any other party to the investigation, after written approval is sought from the CCI.

II. Draft Regulations for Lesser Penalty, 2023

Vide a notification dated [26.10.2023](#), the Central Government released the Competition (Form of Publication of Guidelines) Rules, 2023, enabling the issuance of guidelines by the CCI under Section 64B of the Act. This signals the impending introduction of the much awaited ‘Penalty Guidelines’, which will help more accurately determine penalties leviable by the CCI once a contravention is determined and also influence how settlement amounts are arrived at.

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

Disclaimer

This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to reach out to any of the unique individuals above.

© DSK Legal. All rights reserved.