



CRITICAL COMPETITION  
COMPETITION LAW NEWSLETTER  
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## **ENFORCEMENT ORDERS**

### **1. THE MADRAS HIGH COURT DISMISSED A WRIT PETITION FILED BY AGNI STEELS PRIVATE LIMITED CHALLENGING THE INVESTIGATION DIRECTED BY THE COMPETITION COMMISSION OF INDIA**

In March 2021, Coimbatore Corporation Contractors Welfare Association (CCCWA) filed a complaint with the Central Bureau of Investigation (CBI) alleging that nine companies, including Agni Steels Private Limited (Agni Steels), engaged in the business of sale of steel products formed a cartel to hike the prices of products. The complaint was forwarded by the CBI to the Competition Commission of India (CCI) since the CBI did not have jurisdiction to take up the matter. The CCCWA filed a petition before the Madras High Court, basis which the Madras High Court took note of the complaint being forwarded to the CCI, which directed the DG to take necessary action.

Thereafter, in August 2021, the CCI convened a special meeting wherein, basis the Madras High Court order, the office of the Director General (DG) (the investigative wing of the CCI) was directed to investigate the matter.

Agni Steels thereafter filed a writ petition before the Madras High Court challenging the investigation directed on the grounds that: (i) the DG investigation was initiated without the formation of a prima facie opinion and passing of an order under Section 26(1) of the Competition Act, 2002 (Competition Act), and (ii) Agni Steels was arbitrarily cherry picked by the CCI and the DG, while several other companies were not made part of the investigation.

The Madras High Court dismissed the writ petition and noted that during the meeting in August 2021, the CCI

deliberated and decided to register a 'suo moto' case which in itself is indicative of formation of a 'prima facie' opinion and accordingly, directed an investigation by the office of the DG. Furthermore, the Court noted that since the DG investigation is still ongoing, it would be premature to hold that Agni Steels has been arbitrarily cherry picked by the DG, merely because other companies allegedly involved have not been named or questioned yet.

### **2. THE GUAHATI HIGH COURT REJECTED DALMIA CEMENTS PLEA AGAINST THE CCI'S PROBE INTO ALLEGED CARTELIZATION AND BID-RIGGING IN ONGC TENDERS**

The Division Bench of the Gauhati High Court dismissed a writ petition filed by Dalmia Cement (Bharat) Limited (Appellant) challenging the Single Judge's order. The Single Judge had previously upheld the order of the CCI directing the office of the DG to conduct an investigation under Section 26 (1) of the Competition Act against the Appellant and certain other cement companies (Impugned Order). The investigation pertained to alleged cartelization by the Appellant and other cement companies during the bidding process of four tenders floated by Oil and Natural Gas Corporation Limited (ONGC) for the purchase of oil well cement (OWC).

The Appellant contended that it was unaware of the investigation initiated against it till the receipt of notice for inspection of records and moreover, the notice did not satisfy the standards of legality. The Appellant also contended that certain crucial documents relied upon by the CCI before passing the Impugned Order were not provided to the Appellant despite repeated requests, which is against the principles of natural justice. Further, the DG also allegedly



transgressed the investigation order by conducting a roving and fishing enquiry.

The Division Bench held that the investigation cannot be stayed as the Appellant is merely apprehending that he will be placed in a disadvantageous position and his reputation will be tarnished, which is a premature consideration at this stage. In line with the observation made by the Single Judge and the CCI, the Division Bench also observed that the '*prima facie*' threshold for calling a DG investigation under Section 26(1) of the Competition Act exists. Moreover, interference into the merits of the case without specific denial by the Appellant is not warranted at the initial stage and if the Appellant is exonerated from the allegation of rigging and cartelization, it can regain its reputation. It was also held that after perusing the format of the notice, it is observed that to cause an investigation, certain information is required from the Appellant, therefore, it cannot be held that the DG has gone beyond the scope of the Impugned Order of the CCI order and has conducted a roving and fishing enquiry.

### 3. THE NCLAT SETS ASIDE THE ORDER PASSED BY THE CCI AGAINST VARIOUS SUGAR MILLS & CHEMICAL COMPANIES

The National Company Law Appellate Tribunal (NCLAT) set aside the order of the CCI penalizing sugar mills and chemical companies (Appellants/OPs) for alleged bid rigging and cartelization (Impugned Order). The NCLAT observed that the Impugned Order does not satisfy the basic tenets of the principle of natural justice which are enshrined under Section 36 of the Competition Act. It was observed that the 'quorum' of the CCI that heard the final arguments did not pass necessary orders within reasonable period of time and when the orders were pronounced, one member was not present in at least four hearings

and two members who had heard the matter had already demitted the office. Therefore, the delay in pronouncement resulted in serious infirmity and the principle of '*one who hears must decide*' was not followed by the CCI in letter and spirit.

Further, the NCLAT noted that non-compliance of the principles of natural justice is solely due to an irrational procedure followed by the CCI meant to prejudice the Appellants as the final order was delivered after almost thirteen months from the date on which the matter was reserved for final order. Further, there was a possibility that the members, who did not sign the judgment 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 been decided differently.

Moreover, the NCLAT also noted that since a supplementary investigation was directed to be done on the request of OPs, the OPs must have been granted an opportunity to present oral arguments to substantiate their objections, which was not done by the CCI.

Lastly, in respect of the issue as to whether Regulation 3A of the Competition Commission of India (Meeting for Transaction of Business) Regulations, 2009 would have retrospective effect, it was held that it is not necessary to look at the issue of retrospective operation of Regulation 3A, since it has already been established that the Impugned Order suffers from illegality of a smaller body of members signing and pronouncing the final order than the body of members that heard the case and the inordinate delay in pronouncing the judgments. Accordingly, the NCLAT held that the CCI had violated the principles of natural



justice basis which the Impugned Order was set aside.

## **COMBINATION ORDERS**

### **4. THE CCI APPROVED THE ACQUISITION OF LANCO AMARKANTAK POWER LIMITED BY PFC PROJECTS LIMITED, REC LIMITED, SJVN LIMITED AND DAMODAR VALLEY CORPORATION**

The CCI approved the acquisition of 100% shareholding of Lanco Amarkantak Power Limited (**Lanco**) by PFC Projects Limited (**PPL**), REC Limited (**REC**), SJVN Limited (**SJVN**) and Damodar Valley Corporation (**DVC**). PPL and DVC are engaged in the business of power generation and distribution. REC is an infrastructure finance company. SJVN is engaged in the business of implementing and operating projects in Himachal Pradesh, Uttarakhand, Bihar, Maharashtra, and Uttar Pradesh. Lanco is engaged in power generation in India.

### **5. THE CCI APPROVED ZONNEBAARS NETHERLANDS B.V.'S ACQUISITION OF INDIRA IVF AND AMALGAMATION OF SPACEWAY WELLNESS PRIVATE LIMITED**

The CCI approved the acquisition of majority shareholding of Indira IVF Hospital Private Limited (**Indira IVF**) by Zonnebaars Netherlands B.V. (**Zonnebaars**) and the subsequent amalgamation of Spaceway Wellness Private Limited (**Spaceway**) with and into Indira IVF. Zonnebaars is a part of the global investment organization BPEA Private Equity Fund VIII. Indira IVF is primarily engaged in the provision of fertility and invitro fertilization treatment through its hospitals/clinics. Spaceway is one of the promoters of Indira IVF and provides embryologists who provide IVF related services at two centers/hospitals in Uttar Pradesh.

### **6. THE CCI APPROVED THE ACQUISITION OF SHARES OF LENSKART SOLUTIONS PRIVATE LIMITED BY KEDAARA CAPITAL FUND III LLP**

The CCI approved the acquisition of 1.74% of the issued and paid-up equity share capital of Lenskart Solutions Private Limited (**Lenskart**) by Kedaara Capital Fund III LLP (**Kedaara**). Kedaara is a Category II Alternative Investment Fund engaged in the activity of investing in companies across various sectors ranging from manufacturing, industrials, auto components, retail and wholesale trading, micro-finance, banking, non-banking financial services, logistics, packaging and health care. Lenskart is engaged in the manufacture, sale, and wholesale trading of eyewear products.

### **7. THE CCI APPROVED THE ACQUISITION OF SHARES OF HITACHI ASTEMO LIMITED BY JICC-01 LIMITED PARTNERSHIP AND HONDA MOTOR CO. LTD. AND ACQUISITION OF SHARES OF HITACHI ASTEMO ELECTRIC MOTOR SYSTEMS BY HITACHI ASTEMO LIMITED**

The CCI approved JICC-01 Limited Partnership's (**JICC**) acquisition of 20% voting rights and Honda Motor Co. Ltd.'s (**HMCL**) acquisition of 6.6% voting rights in Hitachi Astemo Ltd. (**HAL**) respectively. Furthermore, HAL acquired a 49% equity shareholding in Hitachi Astemo Electric Motor Systems (**HAEMS**) bringing its equity shareholding to 100%. JICC, a sovereign wealth fund of the Government of Japan, was created to generate a virtuous cycle of risk capital to support next-generation industries in Japan. HMCL is engaged in activities such as manufacture and sale of automobiles, two-wheelers, power products, auto parts, etc. HAL is largely engaged in the manufacture of auto parts for automobiles and two-wheeler vehicles, and related research and development. HAEMS is engaged in the



development, manufacture, and sale of motors for electric vehicles.

#### 8. THE CCI APPROVED THE MERGER OF IDFC HOLDING WITH IDFC FIRST BANK UNDER THE GREEN CHANNEL ROUTE

The CCI approved the merger of IDFC Holding (IDFCH) into IDFC Limited (IDFCL) and subsequently, the merger of IDFCL with IDFC First Bank (IDFC FB), with the latter being the surviving entity. IDFC FB is engaged in the business of providing banking services, i.e., taking deposits, providing loans, credit cards, distributing mutual fund and insurance products and providing other financial solutions like corporate banking solutions, banking solutions for MSMEs, trade finance, treasury & forex solutions and wealth management solutions. IDFCH, its wholly owned subsidiary, is a non-operative financial holding company that is not permitted directly to undertake any business activities in India. IDFCL is a nonbanking financial company.

#### 9. THE CCI APPROVED THE ACQUISITION OF EQUITY STAKE IN QUEST GLOBAL SERVICES PTE. LTD. BY CA PLUME INVESTMENTS AND BEQUEST INC. UNDER THE GREEN CHANNEL ROUTE

The CCI approved the acquisition of equity stake in Quest Global Services Ltd. (Quest) by CA Plume Investments (Plume) and subsequently by Bequest Inc. (Bequest). The proposed transaction also included buy-back of equity stake by Quest. Plume is an investment vehicle indirectly controlled by the Carlyle Group Inc., which manages funds that invest globally in global private equity, global credit, and investment solutions. Bequest is a holding entity of Quest with the sole purpose of holding its shares. Quest is primarily engaged in providing engineering services for products and services across the product lifecycle to its customers.

#### 10. THE CCI APPROVED THE ACQUISITION OF SHARES OF TBO TEK LTD. BY GENERAL ATLANTIC SINGAPORE TBO PTE. LTD. UNDER THE GREEN CHANNEL ROUTE

The CCI approved the acquisition of 15% equity shareholding of TBO Tek Ltd. (TBO) by General Atlantic Singapore TBO Pte. Ltd. (GAST). GAST is a Singaporean investment holding company incorporated to hold long term investments of its portfolio companies. TBO is engaged in the business of providing services related to tours / travel to travel agents and independent travel advisors.

#### 11. THE CCI APPROVED THE ACQUISITION OF MINORITY SHAREHOLDING OF BUSYBEES LOGISTICS SOLUTIONS PRIVATE LIMITED BY 1000632564 ONTARIO LIMITED UNDER THE GREEN CHANNEL ROUTE

The CCI approved the acquisition of minority shareholding of Busybees Logistics Solutions Private Limited (Busybees) by 1000632564 Ontario Limited (Ontario). Ontario is controlled by the Ontario Teachers' Pension Plan Board that administrates pension benefits and investment of pension plan assets of active and retired teachers in Ontario worldwide. Busybees is an express logistics service provider providing end-to-end supply chain solutions.

#### 12. THE CCI APPROVED THE REBALANCING OF CROSS-SHAREHOLDINGS BETWEEN RENAULT S.A. AND NISSAN MOTOR CO. LTD.

The CCI approved the re-balancing of existing cross-shareholdings between Renault S.A. (Renault) and Nissan Motor Co. Ltd. (Nissan) which would allow Nissan to retain its 15% equity shareholding in Renault, through its wholly owned subsidiary Nissan Finance Co. Ltd. (NFC). Renault will transfer 28.4%



of its Nissan shares into a trust estate governed by French law. Accordingly, post transaction, Renault and Nissan will hold 15% equity shareholding in each other. Further, the shareholding of their joint ventures in India, i.e., Renault Nissan Automotive Private Limited (RNAIPL) and Renault Nissan Technology and Business Centre India Private Limited (RNTBCI) will be such that both retain joint control over the ventures. Nissan and Renault are engaged in the sale of passenger vehicles and automotive parts. RNAIPL is engaged in the manufacturing and assembly of passenger vehicles. RNTBCI is a captive automotive technology and business center engaged in research and development, information technology, product planning etc.

### 13. THE CCI APPROVED THE INVESTMENT BY INDIA BUSINESS EXCELLENCE FUND-IV INTO SK FINANCE LIMITED

The CCI approved the minority investment by India Business Excellence Fund-IV (IBEF) in SK Finance Limited (SK) by way of subscription to equity shares and purchase of outstanding equity shares. IBEF is a Category-II Alternative Investment Fund that invests in equity and equity-linked instruments and/or debt and/ or mezzanine or other instruments. SK is a NBFC engaged in the business of providing financing for vehicles (new and used) and loans to Micro Small and Medium Enterprises.

## **OTHER DEVELOPMENTS**

### THE CCI PUBLISHES DRAFT COMPETITION COMMISSION OF INDIA (LESSER PENALTY) REGULATIONS, 2023 AND INVITES STAKEHOLDER COMMENTS

On 16 October 2023, the CCI published the draft Competition Commission of India (Lesser Penalty) Regulations, 2023

(Draft LPR 2023) for public consultation and invited comments from stakeholders. The proposed regulations seek to implement changes to bring in the 'leniency plus' framework introduced by way of the Competition (Amendment) Act, 2023 (Amendment Act). The Draft LPR 2023 will replace the existing Competition Commission of India (Lesser Penalty) Regulations, 2009.

Some of the key features of the Draft LPR 2023 are as follows:

#### Who can be an applicant?

A 'lesser penalty' / 'lesser penalty plus' application may be submitted by an 'enterprise' under Section 2(h) of the Competition Act, or an individual, who is or was a member of a cartel. The Draft LPR 2023 expands the scope of an applicant by permitting an enterprise, association of enterprises, a person or association of persons, not engaged in identical or similar trade if it participates in furtherance of such a cartel, to also be an applicant and seek benefit of the lesser penalty provisions.

#### Leniency Plus Mechanism

Section 46(4) of the Competition Act as introduced by the Amendment Act read with the Draft LPR 2023 provides for a 'lesser penalty plus' mechanism, which aims to incentivize a leniency applicant who has made a full, true and vital disclosure in respect of alleged violation of Section 3 of the Competition Act (Cartel 1) to also make a full, true and vital disclosure in respect of the existence of another cartel (Cartel 2). The said applicant will not only be entitled to priority status (marker 1) in relation to the newly disclosed cartel but also will receive an additional reduction in monetary penalty of up to 30% in respect to Cartel 1.



### Application for Leniency Plus

The application for leniency plus shall include: (i) details of the applicant / authorized representative, (ii) details of the ongoing matter, i.e., Cartel 1 in which the applicant has obtained any priority status, (iii) disclosures regarding Cartel 2 (with all information that is required to be given regarding a leniency application), (iv) whether there are any similarities between Cartel 1 and Cartel 2 in terms of conduct, product and service, (v) justification as to how Cartel 2 is a new / separate cartel arrangement and any other material information.

### Conditions for grant of Leniency Plus

- a) The applicant seeking benefit of lesser penalty plus shall cease to further participate in the cartel from the time of its disclosure and provide vital disclosure in respect of the alleged contravention of Section 3 of the Competition Act along with cooperating throughout the investigation and providing all relevant information to the CCI.
- b) The disclosure pertaining to the second cartel must be such that it enables the CCI to form a *prima facie* opinion under Section 26(1) of the Competition Act regarding the existence of the newly disclosed cartel by the leniency applicant.
- c) The reduction in monetary penalty under leniency plus mechanism is contingent upon the likelihood of the newly disclosed cartel being detected by the CCI or the Director General (DG) without the leniency plus application being filed. The determination of the 'likelihood of the newly disclosed cartel' being detected, remains unclear.
- d) The application for lesser penalty plus in lieu of the information on newly disclosed cartel must be made before the Director General's

investigation report (DG Report) for the first cartel is received by the CCI.

- e) The application must be provided in accordance with the newly introduced Schedule II of the 2023 Draft Regulations, *inter alia* requiring the applicant to provide grounds for differentiating the newly disclosed cartel from the first cartel. Notably, unlike the lesser penalty, lesser penalty plus is only available to the first applicant.
- f) The application must be given in writing to the CCI as oral applications are no longer entertained by the CCI.

### Forfeiture

It shall be considered that an applicant has forfeited the benefit of lesser penalty / lesser penalty plus application if the CCI is satisfied that the applicant: (i) has failed to comply with the conditions on which the benefit of lesser penalty was granted by the CCI; (ii) had given false evidence or omitted to submit any material information knowing it to be material; or (iii) has not made a 'vital disclosure' to the CCI.

### Confidentiality

The DG has the power to disclose confidential information furnished by the lesser penalty/ lesser penalty plus applicant to any party, for the purpose of investigation, after taking prior permission of the CCI and recording its reasons in writing. Furthermore, after the receipt of the DG Report by the CCI, the CCI may disclose such confidential information submitted by the applicant to other parties in terms of the confidentiality regime prescribed under Regulation 35 of the Competition Commission of India (General) Regulations, 2009 (General Regulations).



### Withdrawal

An applicant may withdraw its application of lesser penalty at any time prior to the receipt of the DG Report by

the CCI. However, the information furnished by the applicant (except its admission), may be used by the CCI or the DG in terms of the provisions of the Competition Act.

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