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In the August Edition of the Luthra and Luthra Law Offices India – ‘Competition Law Newsletter’, we cover some of the most pertinent developments in the competition law space over the last month.

Delhi High Court clarifies CCI cannot exercise jurisdiction over matters pertaining to exercise of rights by patentees

In a landmark decision, the Division bench of the Hon’ble Delhi High Court (**DHC**) clubbed and heard together four Letters Patent Appeals (**LPA**) and a writ petition, after noting that all of them raised a common question - “when a patent is issued in India, and the patentee asserts such rights, can the CCI inquire into the actions of such patentee in exercise of its powers under the Competition Act”.

It was argued by the Appellants that since licensing of patents is neither a sale nor a purchase of goods/ services, the Competition Commission of India (**CCI**) does not have the jurisdiction to investigate into the business of licensing of a patent as Section 2(f)(ii) of the Competition Act, 2002 (**Act**) does not look into the aspect of ‘licensing’. On the other hand, the Patents Act, 1970 (**Patents Act**) is a complete code and deals with the sale, lease and license of patents, including anti- competitive and abusive acts by patent holders.

It was also argued that the CCI is

attempting to enter a field that is already covered by jurisdiction of Civil Courts and the Controller of Patents (**Controller**) by way of issuing licenses, including compulsory licenses on FRAND terms. Thus, it was argued that there was no legislative intent to render the Patents Act subservient to the Act.

It was further argued that the informants have sufficient remedies available to them under the Patents Act, both before the Court, as well as, before the Controller. Thus, there was no reason to approach the CCI, other than to initiate vexatious litigation.

The CCI responded to the arguments raised by Appellants by arguing that the mechanism under the Patents Act is insufficient to enable the Controller to effectively inquire into allegations of anti-competitive or abusive behavior of patentees. Thus, the CCI, being a market regulator has the jurisdiction to inquire into such allegations.

It was further argued that the mere overlap between the Patents Act and the Act does not detract the powers vested with the CCI under the Act.

It was also argued that a private settlement between the informants and the patentees cannot oust the jurisdiction of the CCI to inquire into anti-competitive and abusive behavior by patentees.

However, the DHC rejected CCI’s arguments and held that, the inquiry that



the CCI proposes to conduct in respect of an assertion of patent rights is nearly identical to the one that the Controller will conduct under the Patents Act. It was held:

- (i) That the legislative intent of inserting Section 84(6)(iv) under the Patents Act [Compulsory licenses] by way of an amendment after the Competition Act was passed, makes it clear that the Patents Act will prevail over the Act.
- (ii) That the Patents Act is a complete code on all issues pertaining to unreasonable conditions in agreements of licensing of patents, abuse of status as a patentee, inquiry in respect thereof and relief that is to be granted.
- (iii) That once a settlement has been reached between the informant and person against whom the information is filed, the very substratum of the proceedings by CCI is lost.

Consequently, the proceedings initiated by the CCI, that were impugned in the said appeals/ petitions were quashed.

CCI dismisses allegations against M3M India Private Limited

The CCI passed an order dated [19.07.2023](#) under Section 26(2) of the Act dismissing the allegations against M3M India Private Limited (**M3M**) for violation of Section 3(4) and 4 of the Act.

It was alleged that M3M abused its

dominant position as it started construction of the additional 11th tower without taking prior consent of its residents contrary to the original layout plan, the deed of declaration, the occupation certification issued by the Directorate of Town and Country Planning and the brochure. The initial plan of including a low-rise Economically Weaker Section building on one corner was also scrapped. The allegations were in relation to a project in Gurgaon, Haryana, styled as 'M3M Merlin'.

The CCI delineated the relevant market as the "market for provision of services of development and sale of residential flats in Gurgaon". It held that due to presence of several other developers in Gurgaon such as DLF, Emaar India, Godrej Properties, etc., M3M does not enjoy dominant position in the relevant market. Further, it was held that the informant has not substantiated the alleged contravention of Section 3(4) of the Act.

Thus, the CCI held that there exists no *prima facie* case of contravention of Section 4 or Section 3(4) of the Act against M3M and closed the case under Section 26(2) of the Act.

CCI dismisses allegations against DLF Gayatri Developers

The CCI passed an order dated [13.07.2023](#) under Section 26(2) of the Act dismissing the allegations against DLF Gayatri Developers for violation of Section 4 of the Act.



It was alleged that the DLF Garden City Project in Telangana was promised to be delivered in 2014 but was delayed. Furthermore, it was alleged that DLF Gayatri Developers abused its dominant position by imposing certain one-sided, unfair, and discriminatory conditions in the club agreement such as absolute discretion of the club management to grant, curtail or terminate club membership and charge exorbitant club fees.

The CCI delineated the relevant market as the “market for provision of services for development and sale of residential plots in Mahabubnagar district in the State of Telangana”. It held that due to the presence of several other developers such as Girdhari Constructions, Ashoka Ventures, etc., DLF Gayatri Developers does not enjoy a dominant position in the relevant market.

Thus, the CCI held that there exists no *prima facie* case of contravention of Section 4 of the Act against DLF Gayatri Developers and closed the case under Section 26(2).

CCI dismisses allegations against IRDAI and IISLA

The CCI passed an order dated [26.07.2023](#) under Section 26(2) of the Act dismissing the allegations against Insurance Regulatory and Development Authority of India (**IRDAI**) and Indian Institute of Insurance Surveyors and Loss Assessors (**IISLA**) for violation of Sections 3 and 4 of the Act.

It was alleged that IRDAI has withheld the informant’s license for the sole reason that the informant is not a member of IISLA. It was alleged that IRDAI has created a statutory monopoly in favour of IISLA by mandating its membership as an eligibility criterion for grant and renewal of licenses and IISLA has abused its dominant position by withholding the grant of membership due to non-payment of past dues of annual subscription fee to IISLA.

The CCI noted that IRDAI has been set up under the Insurance Regulatory and Development Authority Act, 1999 (**IRDA Act**) to protect the interests of holders of insurance policies, and IISLA has been established and promoted by IRDAI under Section 14(2)(f) of the IRDA Act which empowers IRDA to promote and regulate professional organisations connected with the insurance and re-insurance business. Additionally, Insurance Regulatory and Development Authority of India (Insurance Surveyors and Loss Assessors) Regulations, 2015 also provide that membership with IISLA is a mandatory condition for acting as a Surveyor and Loss Assessor. Such functions, being regulatory in nature, are not per se amenable to the jurisdiction of the CCI.

Thus, the CCI held that allegations of anti-competitive conduct against IRDAI and IISLA is outside the purview of the Act and closed the case under Section 26(2) of the Act.



CCI approves acquisition of shareholding of MHEPL and MEMG India

The CCI vide its order dated [06.06.2023](#) approved the proposed combination pertaining to the acquisition of equity share capital of Manipal Health Enterprises Private Limited (**MHEPL/Target**) by certain investors. (**Proposed Combination**).

The CCI noted that with respect to the horizontal, vertical and complementary overlaps, the combined market share of the investors, their portfolio companies and the Target Group in each of the relevant markets is insignificant to raise any competition concerns in India.

Thus, the CCI approved the Proposed Combination under Section 31(1) of the Act.

Madras High Court allows CCI to proceed with review of Minda's acquisition of Pricol

The Madras High Court (**MHC**) vide order dated 11.07.2023 vacated the ex-parte ad-interim order against the CCI and Minda Corporation (**Minda**), allowing the CCI to proceed in its inquiry into the proposed acquisition of Pricol Limited (**Pricol**) by Minda.

Minda had previously acquired 15.7% stake in Pricol by purchasing 1.91 crores shares from the open market (**Tranche I**). Minda sought to increase its stake up to

24.5% in Pricol (**Tranche II**) and accordingly filed a Notice before the CCI for approval of the proposed combination. Both the companies, Pricol and Minda compete in the two-wheeler instrument cluster business.

On 24.05.2023, the MHC passed an interim order restraining the CCI from adjudicating upon Minda's notice in relation to acquisition of 24.5% shares in Pricol and issued notices to the CCI and Minda.

The counsel for Pricol submitted before the MHC that Minda has willfully contravened the provisions of the Act by going ahead with Tranche I acquisition without seeking the prior approval of the CCI and Tranches I and II of the acquisition by Minda are interconnected and re-emphasize the intention of Minda to acquire interest and control over Pricol.

Responding to these contentions, the CCI submitted that Section 20 of the Act empowers it to conduct *suo motu* inquiries. Furthermore, Regulation 8 of the Combination Regulations, 2011 empowers the CCI to inquire into a combination even if prior notice was not given and the presumption is always in favour of the validity of the Combination Regulations.

The MHC held that *prima facie* Regulation 8 of the Combination Regulations is in aid of Section 20 of the Act and agreed with the contention that the presumption is in favour of the



Regulation. It also observed that it would not be appropriate to stall the statutory inquiry being conducted by the CCI.

Thus, the MHC vacated the ex-parte ad-interim order against the CCI and Minda, allowing the CCI to proceed in its inquiry into the combination.

Gauhati High Court refuses to grant interim relief to Dalmia in Oil Well Cement investigation

The Gauhati High Court (**GHC**) vide its order dated 28.06.2023 has refused to grant interim stay on the *prima facie* order passed by the CCI dated 18.11.2020 and notice of the Director General (**DG**) dated 08.11.2021 against Dalmia Cement (Bharat) Limited (**Dalmia**). Dalmia had filed a writ petition seeking quashing of the *prima facie* order of the CCI and notice issued by the DG.

The information before the CCI was filed by Oil & Natural Gas Corporation Limited (**ONGC**) alleging contravention of the provisions of Section 3 of the Act against three cement manufacturers including Dalmia. ONGC had floated tenders in the years 2013, 2015, 2017 and 2018 respectively, inviting bids for purchase of Oil Well Cement (**OWC**). It was alleged that cement manufacturers colluded and indulged in bid rigging by submitting identical bids.

The GHC held that, at the stage of issuing direction under Section 26(1) of the Act, the CCI has to merely form a *prima facie*

opinion and the direction to the DG to initiate investigation is administrative in nature. Such a direction is without entering upon any adjudicatory process and does not effectively determine any rights of the parties. The GHC also noted that the information and documents sought by the DG are in the interest of facilitating a proper inquiry.

Thus, the GHC refused to grant interim stay on the order passed by the CCI and the notice issued by the DG against Dalmia. A Letters Patent Appeal against this order has been filed by Dalmia.

NCLAT dismisses all four appeals challenging CCI's approval of AGI Greenpac's acquisition of HNG

The National Company Law Appellate Tribunal (**NCLAT**) vide its order dated 28.07.2023 has dismissed all four appeals challenging the CCI's approval order of AGI Greenpac Limited's (**AGI Greenpac**) acquisition of Hindustan National Glass & Industries Limited (**HNG**). The appeals were filed by U.P. Glass Manufacturers Syndicate, Independent Sugar Corporation Limited, M/s Geeta and Company and HNG Industries Thozilalar Nala Sangam.

HNG was admitted to the Corporate Insolvency Resolution Process and AGI Greenpac submitted a Resolution Plan for its acquisition. Accordingly, AGI Greenpac filed a Notice under Form-I which was invalidated by the CCI. On 28.10.2022, the Committee of Creditors

(CoC) approved the Resolution Plan of AGI Greenpac and thereafter, AGI Greenpac filed a Notice in Form II. The CCI considered the information and in its meeting dated 09.02.2023 formed a prima facie opinion that the proposed combination is likely to cause appreciable adverse effect on competition (AAEC) in India and a show cause notice (SCN) was issued to AGI Greenpac. AGI Greenpac responded to the SCN offering modifications in terms of divestiture of the Rishikesh plant. The CCI after considering the proposed modifications offered by AGI Greenpac, approved the combination vide order dated 15.03.2023.

The Appellants argued before the NCLAT that the CCI without application of mind has hurriedly proceeded to approve the proposed combination and has not followed the due process.

Refuting these submissions, the CCI submitted that none of the Appellants have any locus to challenge the approval order as an appeal under Section 53B of the Act can only be filed by an aggrieved person. The CCI argued that it had scrutinized the notice in accordance with the Act by asking AGI Greenpac to remove defects, provide clarifications and documents. It was submitted that divestiture of the Rishikesh plant as suggested by the modification adequately addressed the AAEC concern. The approval of the Resolution Plan by the CoC on 28.10.2022, does not affect the jurisdiction of the CCI to examine the

notice.

It was further submitted by AGI Greenpac that the Resolution Professional having examined the Resolution Plan submitted by AGI Greenpac and having found it compliant with the Insolvency and Bankruptcy Code, 2016 has placed it before the CoC, which clearly indicates that HNG had no objection to the acquisition by AGI Greenpac. Further, the CCI being satisfied by the response submitted by AGI Greenpac along with voluntary modifications offered, has rightly decided to not to proceed any further and has approved the combination.

The NCLAT rejected the objections on locus of the Appellants and decided to proceed on merits. On merits, the NCLAT held that Section 29(1) of the Act contemplates that SCN has to be issued to both parties to the combination i.e. acquirer and target entity. However, based on mere non-issuance of notice to HNG, the proceedings before the CCI need not be annulled. The CCI proceeded to approve the combination by following the statutory procedure prescribed under Section 29 of the Act as well as Combination Regulations. The NCLAT observed that in the facts of the present case, the publication of details of the combination was not required to be directed, since at the second stage, the CCI did not form any *prima facie* opinion of AAEC. The CCI's decision on the adequacy of modifications offered does not warrant any interference being the



decision of the Expert Body, given after following the procedure prescribed in the Act and the Regulations.

Thus, the NCLAT upheld the approval order passed by the CCI and dismissed all appeals challenging the same.

CCI begins adjudication of Anti - Profiteering cases

The CCI notified the [“Competition Commission of India \(Methodology and Procedure\), 2023](#) under Rule 126 of the Central Goods and Services Tax Rules, 2017” in June 2023 to enable it to adjudicate pending cases under the anti-profiteering provisions of the Central Goods and Services Tax Act. Since then, the CCI has adjudicated and closed proceedings in 11 pending matters. Additionally, 4 interim orders have been passed by the CCI to direct the Director General of Anti Profiteering (**DGAP**) to conduct further investigation. Most of the cases adjudicated by the CCI concerned entities operating in the real estate sector.

CCI’s Chairperson keen to expedite implementation of new regulations to operationalize the amendments

News Reports suggests that the new Chairperson of the CCI will prioritize completing pending cases relating to anti-trust and anti-profiteering and expedite new regulations to operationalize the amendments undertaken vide the Competition

(Amendment) Act, 2023. Furthermore, it appears that the Chairperson is also taking effective measures to collaborate with international jurisdictions to promote global antitrust principles and strengthen cooperation in cross-border cases by organizing the 8th BRICS international conference on competition law in October 2023.

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 contact G.R. Bhatia/ Arjun Nihal Singh, at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2023. All rights reserved.

The Team:-



G.R. BHATIA

Partner and Head – Competition Law Practice

Email: - GBhatia@luthra.com

Ph.: +91 11 4121 5192



Arjun Nihal Singh

Partner Designate

Email: - ansingh@luthra.com

Ph.: +91 11 4121 5192



MANAV GUPTA



SANYAM JUNEJA



TOSHIKA SONI