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Delhi High Court sets aside the prima facie order of Competition Commission of India directing an investigation against Institute of Chartered Accountants of India

Madras High Court passed an interim order directing Google not to delist any of the mobile applications of the petitioners from its Play Store

& more...

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SUPREME COURT ORDERS

Supreme Court passed its judgment in Coal India Ltd. & Another vs. Competition Commission of India

Coal India Ltd. & Anr. vs. Competition Commission of India¹

The Hon'ble Supreme Court of India ("Hon'ble SC") vide its judgment dated 15.06.2023, dismissed the appeal filed by Coal India Ltd.'s ("CIL") against the judgment dated 09.12.2016 passed by the erstwhile Competition Appellate Tribunal ("COMPAT")

whereby it upheld the Competition Commission of India ("CCI") Order dated 27.10.2014 in Case No. 88 of 2013.

The Hon'ble SC held that State Monopolies, Government Companies and Public Sector Units such as the appellant(s) fall within the purview of the Competition Act, 2002 ("Competition Act"). The SC rejected the contention of the appellant(s) that the provisions of Act will not apply to them because they are governed by Coal Mines (Nationalization) Act, 1973 and held that Coal Mines (Nationalization) Act, 1973 cannot be reconciled with the Act.

HIGH COURT ORDERS/JUDGMENTS

Delhi High Court sets aside the prima facie order of Competition Commission of India directing an investigation against Institute of Chartered Accountants of India

Institute of Chartered Accountants of India vs. The Competition Commission of India and Ors.²

The Hon'ble High Court of Delhi vide its Judgment dated 02.06.2023, set aside the *prima facie* order passed by the CCI under Section 26(1) of the

Act to cause an investigation with respect to the Continuing Professional Education ("CPE") program conducted by the Institute of Chartered Accountants of India ("ICAI"). It was noted by the Hon'ble High Court that ICAI is charged with the functions of maintaining professional standards and it conducts the educational program for structured CPE Credits, in-house or through its organs. The grievance of the Informant before the CCI was that this function of ICAI be outsourced which would create a market and enable other entities to participate as market players.

The Hon'ble High Court in its judgment ruled that the jurisdiction of CCI cannot be extended to compel a statutory body to outsource its functions

that it performs in discharge of its statutory duties even if the same may fall within the sphere of economic activity and that it is not necessary to create an open market for the same. The Court noted that CCI's power is for regulating of markets and cannot be extended to address any grievance regarding arbitrary action by any statutory authority. Thus, in view of the same, the decision of ICAI to frame the CPE program for maintaining professional standards could not be considered as an abuse of dominant position.

Madras High Court passed an interim order directing Google not to delist any of

the mobile applications of the petitioners from its Play Store

M/s Arha Media and Broadcasting Private Limited & Ors. vs. Alphabet Inc. & Ors.³

The Hon'ble High Court of Madras vide its common order dated 08.06.2023, passed an interim injunction restraining Google from removing / delisting the mobile applications owned and operated by the petitioners in Google Play Store for their refusal or failure to accept or subscribe the terms of Google payments and its other policies etc. The Court further directed the petitioners to pay a 4% commission to Google and to share their monthly details of downloads and usage with Google which it is entitled to charge.

COMPETITION COMMISSION OF INDIA ORDERS

Competition Commission of India closed Information against L.G Electronics India Private Limited

In Re: Perfect Infraengineers Limited And L.G. Electronics India Pvt. Ltd.⁴

The CCI vide its order dated 20.06.2023, closed the information against L.G. Electronics India Pvt. Ltd. ("L.G. Electronics") for allegations relating to refusal to allow the informant to install its 'Hybrid thermal Solar' ("HTS") panels for ACs of L.G. Electronics in the premises of Delhi Metro Rail Corporation

(DMRC). Thus, the informant alleged contravention of provisions of Section 3 and 4 of the Act by L.G. Electronics.

With respect to allegation pertaining to abuse of dominance, the CCI found that L.G. Electronics is not dominant in the relevant market and thus, a case of contravention of Section 4 was not made out. For allegations concerning Section 3(1) of the Act, the CCI noted that the informant has failed to provide any material evidence and that looking at the market construct and nature of allegations, the question of contravention of Section 3(1) of the Act is also ruled out.

Competition Commission of India closed an Information concerning a franchise agreement between the parties

In Re: N. Rajesh Kumar And Shubham Consumer Durables Pvt. Ltd. & Ors.⁵

The CCI vide its order dated 27.06.2023, closed a case concerning disputes arising out of a franchise agreement between the parties. The informant, namely, N. Rajesh Kumar was aggrieved by the conduct of the opposite parties of cheating, defrauding and misrepresenting. The informant alleged opposite parties of unilaterally changing the amount of refundable security deposit, deciding the location of the premises unilaterally, ignoring purchase orders of the informant, and not sending profit from sales to the informant's account, etc.

With respect to aforesaid allegations, CCI opined that such allegations were purely commercial disputes arising out of a failed business arrangement raising no competition concerns. The CCI further noted that the opposite party no. 1, namely, Shubham Consumer Durables Pvt. Ltd., does not appear to have sufficient market power in the relevant market and hence a case of contravention of Section 4 is also not made out.

The Competition Commission of India imposed a penalty of Rupees Five Lakhs on Bank of Baroda under Section 43A for gun jumping

Proceedings against Bank of Baroda under Section 43A of the Competition Act, 2002

The CCI imposed a penalty of INR 5,00,000 (Rupees Five Lakhs) upon Bank of Baroda ("BOB") under Section 43A of the Act for its failure to give the notice of the Combination to the CCI before consummating the same.

The BOB acquired 21% of shares of India First Life Insurance Company Limited from Union Bank of India and the transaction was consummated by it on 31.03.2022. Thereafter, BOB filed a Form III Notice under Section 6(5) on 02.05.2022, followed by a Form I Notice which was filed on 18.08.2022. Taking cognizance of the same, the CCI issued a show cause notice to BOB on 29.09.2022. In response to the said Notice, BOB submitted that it was of the opinion that a bank acquiring a company is required to file a Form III Notice under Section 6(5) of the Act and that the said transaction was not intended to benefit in terms of profit. The CCI, rejected the submissions of BOB and imposed a penalty under Section 43A of the Act.

Combinations cases before Competition Commission of India

- CCI approved acquisition of certain additional shareholding of HDFC ERGO General Insurance Company Limited by Housing Development Finance Corporation Limited (HDFC Bank).⁶
- CCI approved acquisition of certain additional shareholding of HDFC Life Insurance Company Limited by HDFC Bank.⁷
- CCI approved acquisition of 51% of expanded share capital of TCNS Clothing Company Limited

and subsequent merger with Aditya Birla Fashion and Retail Limited.⁸

- CCI approved acquisition of certain shareholding of Daiwa International Holdings Inc. by Ambit Private Limited.⁹

- CCI approved acquisition of equity share capital of Manipl Health Enterprises Private Limited by Kangto Investments Pte. Ltd., Kabru Investments Pte. Ltd., Manipl Global Health Services, TPG SG Magazine Pte. Ltd. & Manipl Research & Management Services International; and acquisition of optionally convertible debentures of Manipl Education and Medical Group India Private Limited by MEMG International India Private Limited.¹⁰

- CCI approved acquisition of 4.04% shareholding of Acko Technology & Services Private Limited by General Atlantic Singapore ACK Pte. Ltd.¹¹

Deemed approvals under Green Channel Route

- Carrier Global Corporation received deemed approval of CCI for purchase of 100% of the share capital of Viessmann Climate Solutions SE and its subsidiaries.¹²

- Dove Investments Limited, Defati Investments Holding B.V. and Infinity Partners received deemed approval of CCI to acquire certain equity shareholding of Lenskart Solutions Private Limited.¹³

- International Finance Corporation received deemed approval of CCI to subscribe certain compulsorily convertible preference shares of a new wholly owned subsidiary proposed to be incorporated by Mahindra and Mahindra Limited.¹⁴

¹Civil Appeal No. 2845/2017

²W.P.(C) 2815 / 2014

³C.S.(Comm. Div.) No.124 of 2023; M/s Primetrace Technologies Private Limited vs. Alphabet Inc. [C.S.(Comm. Div.) No.126 of 2023]; Cold Brew Tech Private Limited vs. Alphabet Inc. [C.S.(Comm. Div.) No.127 of 2023] & M/s Mebigolabs Private Limited vs. Alphabet Inc. [C.S.(Comm. Div.) No.128 of 2023]

⁴Case No. 35 of 2023

⁵Case No. 41 of 2022

⁶C-2023/05/1033

⁷C-2023/05/1032

⁸C-2023/05/1030

⁹C-2023/05/1027

¹⁰C-2023/04/1019

¹¹C-2023/04/1017

¹²C-2023/06/1036

¹³C-2023/06/1035

¹⁴C-2023/06/1034

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