



SAIKRISHNA & ASSOCIATES

ADVOCATES

# CompBuzz

Competition Law Updates

+

Delhi High Court dismisses the writ of India Netizens and Internet Entrepreneurs Welfare Association for being impleaded as a party in information filed against Zomato

---

Madras High Court dismisses Cement Manufacturers petition against impleadment of Builder's Association of India

---

National Company Law Appellate Tribunal dismisses appeal filed by the Consumer Unity & Trust Society

*& more...*

September, 2023 Issue

---





## CompBuzz

### Competition Team



**Subodh Prasad Deo**  
Partner & Head of  
Competition Law Practice  
subodh@saikrishnaassociates.com



**Rinki Singh**  
Senior Associate  
rinki@saikrishnaassociates.com

**Noida Office**  
8th Floor, VJ Business Tower,  
#A6, Sector 125, Noida - 201301,  
T: +91-120-4633900

**Contact**  
E: info@saikrishnaassociates.com  
E: complaw@saikrishnaassociates.com

## Index

Delhi High Court dismisses the writ of India Netizens and Internet Entrepreneurs Welfare Association for being impleaded as a party in information filed against Zomato	04
Madras High Court dismisses Cement Manufacturers petition against impleadment of Builder's Association of India	04
National Company Law Appellate Tribunal imposes a cost of Rs. 50,000/- on Appellant for filing unnecessary and vexatious litigation	05
National Company Law Appellate Tribunal dismisses appeal(s) on grounds of non-prosecution	05
National Company Law Appellate Tribunal dismisses appeal(s) for want of limitation	05
National Company Law Appellate Tribunal dismisses appeal filed by the Consumer Unity & Trust Society	06
Competition Commission of India passes a cease and desist order against Chandigarh Housing Board	07
Competition Commission of India closes information(s) against Tata Motors Ltd. & Others	07
Competition Commission of India passes cease and desist order against Chemist Association(s) in Rajasthan	08
Competition Commission of India closes information(s) against National Accreditation Board for Testing and Calibration Laboratories & Government Departments	08
Competition Commission of India closes information against Sepson AB and its group entities	09



Competition Commission of India closes Information against Boehringer Ingelheim Pharma GmbH & Co. on the grounds of lack of subject-matter competence	10
Competition Commission of India closes information against Association of Certified Fraud Examiners	10
Competition Commission of India closes information against HeroFinCorp Limited	11
Competition Commission of India closes information against Curefit Services Pvt. Ltd.	11
Competition Commission of India closes information against 36 Universities	12
Competition Commission of India imposes a penalty of Rupees One Crores on Bharti Airtel Limited	12
Competition Commission of India imposes a penalty of Rupees Forty Lakhs on NTPC Limited for gun-jumping	12
Competition Commission of India imposes a total penalty of Rupees Fifty Five Lakhs on Acquirers under Section 43A and Section 44 of the Act	13
Competition Commission of India imposes a penalty of Rupees Ten Lakhs on Cummins Inc.	13
Competition Commission of India imposes a penalty of Rupees Forty Lakhs on Axis Bank	13
Competition Commission of India imposes a Rupees Five Lakh on Massachusetts Mutual Life Insurance Company	14
Combinations cases before Competition Commission of India	14
Deemed Approvals under Green Channel	14

# HIGH COURT ORDERS/JUDGMENTS

Delhi High Court dismisses the writ of India Netizens and Internet Entrepreneurs Welfare Association for being impleaded as a party in information filed against Zomato

**India Netizens and Internet Entrepreneurs Welfare V. The Secretary Competition Commission of India & Anr.**<sup>1</sup>

The Delhi High Court *vide* its order dated 21.08.2023 dismissed Writ Petition filed by India Netizens and Internet Entrepreneurs Welfare Association ("INIEWA") against Competition Commission of India ("CCI") order whereby it rejected INIEWA's plea of being impleaded as a party in the anti-trust proceedings against Zomato.

INIEWA submitted before the Court that, it has interest in the information filed against Zomato before the CCI as there is no industry body to represent the Netizens and Indian Consumers on the issue and hence, it should be impleaded as a party to the proceedings. The Delhi High Court rejected the aforesaid argument of INIEWA and noted that in pursuance of the CCI's order it has already submitted all its relevant information and evidences before the Director General ("DG"). The High Court whilst dismissing the writ of INIEWA noted that it has taken almost a year and two months to file the

said petition and now the DG's investigation in the matter is at a much advanced stage. Thus, the Court held that as and when the investigation of the DG in the matter is completed, INIEWA may approach CCI under Regulation 25 of the Competition Commission of India (General) Regulations, 2009.

Madras High Court dismisses Cement Manufacturers petition against impleadment of Builder's Association of India

**Dalmia Cement (Bharat) Ltd. Vs. Competition Commission of India & Ors.**<sup>2</sup>

The Madras High Court *vide* its common order dated 14.08.2023 dismissed writ petitions filed by Dalmia Cement Ltd. and India Cements Limited against CCI's order allowing the impleadment of Builders Association of India ("BAI") in *Suo Motu* proceedings pending before it. The Madras High Court noted that a similar petition is pending before Delhi High Court as well wherein the same order of the CCI has been challenged by Ultratech Cement Limited and a judgment thereto has also been reserved by the Court. Thus, on the basis of principle of forum conveniens and comity of courts, the Madras High Court dismissed the aforesaid petitions.

# NATIONAL COMPANY LAW APPELLATE TRIBUNAL ORDERS / JUDGMENTS

---

National Company Law Appellate Tribunal imposes a cost of Rupees Fifty Thousand on Appellant for filing unnecessary and vexatious litigation

**Manish Sharma vs. Competition Commission of India & Anr.**<sup>3</sup>

The National Company Law Appellate Tribunal *vide* its judgment dated 07.08.2023, dismissed the appeal filed by Mr. Manish Sharma against CCI's order dated 31.12.2021 and imposed a cost of Rs. 50,000/- for filing unnecessary and vexatious litigation before it. The CCI *vide* its said order closed the information filed by the appellant alleging abuse of dominant position by Government of Chhattisgarh in awarding a contract through tender on the grounds that the nature of the allegations of the appellant do not raise any competition concerns.

National Company Law Appellate Tribunal dismisses appeal(s) on grounds of non-prosecution

**Supertech Limited vs. Competition Commission**

**of India & Anr.**<sup>4</sup>; **National Consumer Co-operative Federation of India Ltd. vs. New Town Electric Supply Company Ltd. & Ors.**<sup>5</sup>

The NCLAT *vide* its order dated 22.08.2023 dismissed the appeal filed on behalf of Supertech Ltd. due to non-prosecution. The NCLAT noted that the counsel on behalf of Supertech Ltd. had failed to appear on two consecutive previous occasions and was not interested in pursuing the appeal. The NCLAT after taking note of the submissions made by the counsel on behalf of the respondent, dismissed the appeal.

On the similar grounds of non-prosecution and multiple instances of adjournments sought by the appellant, the NCLAT *vide* its order 24.08.2023 dismissed another appeal filed by National Consumers Co-operative Federation of India Ltd.

National Company Law Appellate Tribunal dismisses appeal(s) for want of limitation

**People's All India Anti-Corruption and Crime Prevention Society (IP) vs. Usha International Ltd.**<sup>6</sup>; **Jawahar Brothers vs. People's All India Anti-Corruption and Crime Prevention Society (IP) vs. Usha International Ltd.**<sup>7</sup>; **Nayan Agencies vs. CCI &**

**Ors.<sup>8</sup>**

The NCLAT *vide* its separate orders dated 24.08.2023 dismissed the appeals of (i) People's All India Anti-Corruption and Crime Prevention Society (IP); (ii) Jawahar Brothers; and (iii) Nayan Agencies, filed against a common order dated 17.03.2021 passed by the CCI under Section 27 of the Competition Act, 2002 ("Act") in Case No. 90 of 2016. The NCLAT dismissed all three appeals for want of limitation.

National Company  
Law Appellate Tribunal  
dismisses appeal filed by  
the Consumer Unity & Trust  
Society

**Consumer Unity & Trust Society vs. Competition Commission of India<sup>9</sup>**

The NCLAT *vide* its judgment dated 10.08.2023, has dismissed the appeal filed by the Consumer Unity & Trust Society ("CUTS") against CCI's order of dismissal of its information filed against the merger

of PVR Limited ("PVR") and INOX Leisure Limited ("INOX"). It was alleged by CUTS that PVR and INOX have entered into an anti-competitive agreement and that the merger of the two was qualified for de minimus exemption under Section 5 of the Act only because due to Covid -19 pandemic, the turnover of Inox was less than Rs. 1000 Crores in FY 2020 - 21, otherwise, it would have been mandatorily be notified for approval of the CCI.

The NCLAT in its judgment noted that the Information filed by CUTS under Section 19(1)(a) of the Act is not in accordance with the law as the two entities PVX and INOX have become one after the merger and thus do not fall within the definition of Section 3(1) of the Act. With respect to allegations pertaining to abuse of dominance, the NCLAT upheld the observations of the CCI that dominance per se is not anti-competitive and that post facto, if any matter of abusive conduct under the Act comes up, the same may be examined by the CCI at that stage in terms of the provisions of the Act.

# COMPETITION COMMISSION OF INDIA ORDERS

---

Competition Commission  
of India passes a cease  
and desist order against  
Chandigarh Housing Board

**In Re: Ramesh Kumar and Chandigarh Housing Board<sup>10</sup>**

The CCI *vide* its order dated 22.08.2023 held Chandigarh Housing Board ("CHB") in contravention of its Section 4(2)(a)(i) of the Act and in terms of Section 27(a) passed a cease and desist order against it. The CCI found CHB to be abusing its dominant position in the relevant market of "market for the provision of services for development and sale of residential flats in the Union Territory of

Chandigarh" by imposing one sided clauses on the allottees in relation to its Self - Financing Housing Scheme i.e. by not disclosing the date of delivery of possession to consumers and levying penal interest for full month on account of delay of one day in credit of instalment.

While the CCI found CHB's conduct in contravention of Section 4(2)(a)(i) of the Act, it did not impose penalty upon it as it noted that CHB has already taken certain corrective measures such as calculating interest on actual day basis, registering its projects under RERA etc.

## Competition Commission of India passes a cease and desist order against Chandigarh Housing Board

### **In Re: Ramesh Kumar and Chandigarh Housing Board**<sup>10</sup>

The CCI *vide* its order dated 22.08.2023 held Chandigarh Housing Board ("CHB") in contravention of its Section 4(2)(a)(i) of the Act and in terms of Section 27(a) passed a cease and desist order against it. The CCI found CHB to be abusing its dominant position in the relevant market of "market for the provision of services for development and sale of residential flats in the Union Territory of Chandigarh" by imposing one sided clauses on the allottees in relation to its Self - Financing Housing Scheme i.e. by not disclosing the date of delivery of possession to consumers and levying penal interest for full month on account of delay of one day in credit of instalment.

While the CCI found CHB's conduct in contravention of Section 4(2)(a)(i) of the Act, it did not impose penalty upon it as it noted that CHB has already taken

certain corrective measures such as calculating interest on actual day basis, registering its projects under RERA etc.

## Competition Commission of India closes information(s) against Tata Motors Ltd. & Others

### **In Re: Neha Gupta and Tata Motors Ltd. and Others.**<sup>11</sup>; **In Re: Nishant P. Bhutada vs. Tata Motors & Ors.**<sup>12</sup>

The CCI *vide* its common order dated 23.08.2023, closed two similar information(s) filed against Tata Motors Ltd. ("TML"), Tata Capital Financial Services Limited ("Tata Capital") and Tata Motors Finance Limited ("Tata Motors Finance"), alleging contravention of Section 3(4) and Section 4 of the Act. The information(s) were filed by the Informants concerning their dealership agreements with TML whereby they alleged that TML has abused its dominant position by imposing conditions such as restricting the dealers from indulging in other businesses, restricting the choice of dealers to off-take vehicles, restricting dealers to sell vehicles in their allotted territories only etc. It was further alleged that every authorized dealer of TML was obligated to raise finance / loan from banks and / or NBFCs such as Tata Capital and Tata Motors Finance. Based on the information(s) filed by the Informants, the CCI passed a prima facie order directing the DG to cause an investigation into the said dealership agreements and conduct of TML for violation of Section 4 and Section 3(4) of the Act.

The DG in its investigation found the aforesaid conduct of TML to be in contravention of Section 4(2)(a)(i), Section 4(2)(d) and Section 3(4)(c) of the Act. However, the CCI disagreed with the findings of the DG and held that the DG has placed limited evidence

on record to establish that TML has restricted passive sales / sales outside their allocated territories and has contravened Section 3(4) of the Act. Further, with respect to contravention of Section 4(2)(a)(i), Section 4(2)(d) of the Act, the CCI noted that mere mentioning of a clause requiring the dealers to seek a NOC from TML prior to starting a new business in the absence of anything on record to show that such NOC has actually been withheld by TML, cannot be said to be violative of Section 4(2)(a)(i) and Section 4(2)(d) of the Act. Thus, the CCI closed information against TML.

## Competition Commission of India passes cease and desist order against Chemist Association(s) in Rajasthan

### **In Re: Solar Life Sciences Medicare Ltd. and Chemist Association, Raisingh Nagar & Others**<sup>13</sup>

The CCI *vide* its order dated 22.08.2023 passed a cease-and-desist order against Chemists Association, Raisingh Nagar, Rajasthan), its members and Sri Ganganagar Chemists Association, Rajasthan ("collectively referred as "OPs") for violation of Section 3(3)(a) and Section 3(3)(b) read with Section 3(1) of the Act. The Information was filed by Solar Life Sciences Medicare Private Ltd. against the OPs for collectively deciding their margins and incentives from the suppliers of medicines and boycotting the suppliers in case of refusal by them in accepting the margins and incentives decided by the OPs.

The CCI in consonance with the finding of the DG found all the OPs in violation of Section 3 of the Act as the diktats of the aforesaid associations negatively affected the price and supply of medicines in the market. Though the CCI found a contravention of the Act, no monetary penalty was imposed by it.

## Competition Commission of India closes information(s) against National Accreditation Board for Testing and Calibration Laboratories & Government Departments

### **In Re: Prem Prakash and National Accreditation Board for Testing and Calibration Laboratories (NABL) & Others**<sup>14</sup>; **In Re: Prem Prakash and Director, CPWD & Others**<sup>15</sup>

<https://www.cci.gov.in/antitrust/orders/details/1081/>

The CCI closed two separate information(s) filed by the Informant, namely, Prem Prakash, a proprietor of a testing and research laboratory, against various Government Departments and the National Accreditation Board for Testing and Calibration Laboratories ("NABL").

That in Case No. 12 of 2023, the Informant filed information against NABL and Secretaries & other officials of Department of Science & Technology, and Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry. In the said information, the informant alleged that the Secretaries & other officials of the said Government Departments have violated Section 3 of the Act by issuing certain circulars whereby they allegedly promoted NABL as desired accreditation body. The informant further stated that NABL has attained a dominant position due to the collective operation of circulars issued by various Government Departments and mandates issued by NABL itself from time to time to the laboratories/Conformity Assessment Bodies (CABs). This situation has resulted in a



scenario where accreditation is perceived to be done only by NABL, despite there being other accreditation agencies existing in India. The CCI, with respect to allegations of Section 3 of the Act, noted that there is no evidence on record to suggest that the said circulars of Government Departments were issued in furtherance of some understanding/arrangement/agreement amongst them. For allegations pertaining to Section 4, the CCI found that the alleged abusive conduct in form of conditions such as mandatory use of the NABL's logo, mandatory calibration of measuring instruments at a facility authorized by NABL, unannounced assessments by NABL etc. were not made out on the basis reasons discussed by the it in its Order. Thus, *vide* its order dated 22.08.2023, the CCI closed the information and passed an order under Section 26(2) of the Act.

In another information filed by the Informant *vide* Case No. 08 of 2023, it was alleged that the officials of various Government Departments in New Delhi and Madhya Pradesh had abused their dominant positions in their respective relevant markets by incorporating a condition in their circulars and tenders / Expression of interest which requires the interested entities to avail services for testing of materials through laboratories which are accredited by NABL only. It was also alleged that NABL and these Government Departments operate at different level of production chain and thus, the aforementioned condition allegedly favours NABL which violates Section 3(4) of the Act. In this case as well, the CCI found that no cogent evidence has been provided by the Informant in support of its allegations pertaining to Section 3(4) of the Act and with respect to allegations of Section 4, the CCI held that it could not be established that all the opposite party Government Departments were dominant in their respective relevant markets. Hence, the CCI

*vide* its order dated 07.08.2023 closed the said information.

## Competition Commission of India closes information against Sepson AB and its group entities

### **In Re: Transavahan Technologies Pvt. Ltd. & Anr. and Sepson AB and its group entities & Others<sup>16</sup>**

The CCI *vide* its order dated 22.08.2023, closed information against Sepson AB and its group entities for all alleged contravention of Section 3(4) and Section 4 of the Act. The said information was filed by the Informants upon termination of the Sub-Contracting and Manufacturing Agreement ("SCM") between Sepson India and Informant No. 1 due to the resignation of Informant No. 2 as an employee of Sepson India. It was conditioned in the SCM that the relationship of Sepson India with Informant No. 1 would be co-terminus with the employment of Informant No. 2 as Managing Director of Sepson India. The informants alleged that this condition is an unfair term being imposed by the opposite parties and hence, is in contravention of Section 4 and Section 3(4) of the Act.

The CCI upon perusal of the information, closed the matter and held that the issues raised by the informants are contractual disputes, which do not raise any competition concerns.

## Competition Commission of India closes Information against Boehringer Ingelheim Pharma GmbH &

Co. on the grounds of lack of subject-matter competence

**In Re: Macleods Pharmaceuticals Limited and Boehringer Ingelheim Pharma GmbH & Co. KG D & Others<sup>17</sup>**

The CCI disposed of an information filed by Macleods Pharmaceuticals Limited against Boehringer Ingelheim Pharma GmbH & Co. ("Boehringer") vide its order dated 22.08.2023. The Informant alleged that Boehringer has abused its dominant position by engaging into vexatious and frivolous patent litigation against it and by giving notices to third parties such as medical practitioners asking them not to deal with its competitors such as Informant who uses 'Linagliptin' in their drugs manufactured for the treatment of Type 2 diabetes.

With respect to the allegations of vexatious and frivolous litigation, the CCI noted that on the basis of its past orders, a litigation from a competition perspective may be termed as frivolous and vexatious when it is initiated by a dominant undertaking to cause anti-competitive harm with an aim of either subdue a competitor by increasing operational costs or delay the entry of a competitor in the market. In the instant case, the CCI opined that the litigations initiated by Boehringer cannot be said to be fraught with any lack of bona fide. Further, with respect to the question relating to validity of the patents held by Boehringer, the CCI held that the same may not be looked into by it due to lack of subject matter competence. Thus, the CCI closed the information under Section 26(2) of the Act.

Competition Commission of India closes information

against Association of Certified Fraud Examiners

**In Re: Mrs. Kanwaljeet Kaur Soni and The Association of Certified Fraud Examiners & Others.<sup>18</sup>**

The CCI vide its order dated 07.08.2023 closed the information filed against the Association of Certified Fraud Examiners ("ACFE"), an organization based in USA which conducts a certified course named the Certified Fraud Examiner ("CFE"). The Informant, namely, Mrs. Kanwaljeet Kaur Soni, provides study support to the aspirants in the form of 'CFE Exam Prep Course' and appoints Authorized Training Partners ("ATPs") to help aspirants in preparing for the CFE examination. The said information was filed by the informant against ACEF and its two ATPs, namely, Netrika Consulting India Private Limited ("NCIPL") and Open Thinking Academy ("OTA") for alleged contravention of Section 3 and 4 of the Act. The Informant alleged that ACEF being the only entity providing CFE certification has abused its dominant position by imposing unfair and discriminatory conditions through its Byelaws which restricts the supply of preparatory services offered by third parties who are not ATPs of ACEF. The informant also alleged that ACEF has issued various 'cease and desist' notices to her over copyright and trademarks infringements.

The CCI after perusing the information opined that no case of contravention of the provisions of the Act is made out and hence, the information against ACEF was closed.

Competition Commission of India closes information against HeroFinCorp Limited

**In Re: Synco Industries Ltd. and Hero FinCorp Ltd.<sup>19</sup>**

The CCI *vide* order dated 10.08.23 closed information against Hero FinCorp Ltd (“Hero FinCorp”). An information was filed by Synco Industries Limited alleging that Hero FinCorp had lent money to the informant at a specific rate of interest, following which the repo rate was increased by the Reserve Bank of India (“RBI”). Consequently, Hero FinCorp also increased the rate of interest for the Informant. However, in due course, the repo rate was later reduced by the RBI but Hero FinCorp continued to charge the same rate of interest to the informant. Aggrieved by the same, the informant alleged that Hero FinCorp has abused its dominant position in the light of the said facts. The CCI in the said case delineated the relevant market as the “market for provision for loan against property in India” and held that there exist multiple financial institutions within the category of public sector banks, private sector banks, regional rural banks, etc. that compete among themselves for extending loan against property to eligible borrowers. Thus, there is significant competition in the market and hence, Hero FinCorp cannot be said to be a dominant player. Thus, the CCI closed the information under Section 26(2) of the Act.

## Competition Commission of India closes information against Curefit Services Pvt. Ltd.

### **In Re: Creed Gym and Curefit Services Pvt. Ltd.**<sup>20</sup>

The CCI *vide* its order date 10.08.23 held that there exists no prima facie case of infringement of Section 3 & 4 of the Act by Curefit Services Pvt. Ltd. (“Curefit”) in an information filed by Creed Gym. Creed Gym in

its information alleged that Curefit has abused its dominant position by imposing unfair restrictions in its collaboration agreement. Creed Gym alleged that Curefit imposed restrictions upon it not to entertain its customers directly and that customers can avail the services of Creed Gym only through Curefit’s platform. The informant further alleged that Curefit received access to its customer data base under the said agreement and thereafter disabled informant’s access to its own database. The informant further alleged that Curefit by collaborating with a third – party gym acted in violation of Clause 9 of the collaboration agreement *vide* which Curefit was obligated not to open any other third – party gym within the 2 km radius of the informant. Upon objection to the same, Curefit later deleted the said clause from the agreement. The informant also alleged that payments were withheld by Curefit, information was shared with competitors and the gym was floated on other apps etc.

The CCI after considering the submissions of both the parties, noted that the contention of deletion of clause 9 from the collaboration agreement was raised in a civil suit whereby the aforesaid disputes were amicably settled between the parties and noted that the Informant had already acknowledged in the said settlement that there was no outstanding claims and contractual dispute with Curefit. Thus, the CCI closed the information and passed an order under Section 26(2) of the Act.

## Competition Commission of India closes information against 36 Universities

### **In Re: XYZ (Confidential) and H.N.B. Garhwal University & Others.**<sup>21</sup>

The CCI vide its order dated 18.08.23 has closed an information against as many as 36 universities for alleged restrictive terms and conditions in the tenders floated by them for procurement of books for their libraries. The CCI observed that the informant had only made passing references to violations of Section 3 of the Act and has not mentioned any specific conduct of the opposite parties which can be examined under the provisions of Section 3 of the Act. Similarly for allegations pertaining to abuse of dominance, the CCI noted that the informant has again not defined relevant market or established the dominance of any of the opposite parties. Thus, on the basis of information available in public domain, the CCI noted that there are numerous institutional buyers regularly procuring books for libraries apart from the opposite parties. Thus in such a structure of the market, the informant can supply books to a number of other institutions / organizations and thus does not seem to be dependent on any of the OPs for survival of its business.

## Competition Commission of India imposes a penalty of Rupees One Crores on Bharti Airtel Limited

### **In re: Proceedings against Bharti Airtel Limited and Lion Meadow Investment Limited under Section 43A of the Competition Act, 2002<sup>22</sup>**

The CCI imposed a penalty of Rupees One Crores on Bharti Airtel Limited ("BAL") for its failure to notify the transaction in relation to – Step 1: acquisition of 20% shareholding in Bharti Telemedia Limited ("BT") by BAL from Lion Meadow Investment Limited ("LMI") and Step 2: acquisition of 0.664% shares in BAL by LMIL. The CCI noted that a benefit of Item 2 provision of Schedule I of the Combination Regulations is not available in instances where the transaction results

in a transfer from joint control to sole control. With respect to Step 1, CCI held that the rights held by LMIL in BTL prior to Transaction conferred upon it the ability to exert material influence over management or affairs or strategic commercial decisions but after the said transaction LMIL lost the same. Thus, Step 1 was not eligible for the benefit of Item 2 provisions of Schedule 1. With regards to Step 2, the CCI observed that Step 2 being part payment for Step 1 rendered the two tranches interconnected within the meaning of Regulation 9(4) of the Combination Regulations.

## Competition Commission of India imposes a penalty of Rupees Forty Lakhs on NTPC Limited for gun-jumping

### **Proceedings Against NTPC Under Section 43A of the Competition Act 2002.<sup>23</sup>**

The CCI imposed a penalty of Rupees Forty Lakhs on NTPC under Section 43A of the Act for its failure to give notice to the CCI in terms of Section 6(2) of the Act of its acquisition of 35.47% equity share capital in Ratnagiri Gas & Power Private Limited.

The CCI observed that the concerned transaction was a combination in terms of the provisions of Section 5 of the Act and did not benefit from any exemption given vide Government of India notification. The CCI noted that after the Concerned Transaction, the shareholding of NTPC in RGPPL exceeded 50%. Thus, a benefit under Item 1A of Schedule I of Combination Regulations was also not available to the Concerned Transaction. The CCI held that the Concerned Transaction ought to have been notified by NTPC, even if it did not get any additional control conferring rights or the transaction did not result in change in control from joint to sole control.

Competition Commission of India imposes a total penalty of Rupees Fifty Five Lakhs on Acquirers under Section 43A and Section 44 of the Act

**In Re: Proceedings against Platinum Jasmine A 2018 Trust, under Sections 43A and 44 of the Competition Act, 2002.<sup>24</sup>**

The CCI *vide* its order dated 18.08.2023 approved the acquisition of 5% shareholding in UPL Sustainable Agri Solutions Limited ("UPL SAS") by Platinum Trust A 2018 and TPG Upswing Ltd. (Collectively referred as "Acquirers") and also imposed a total penalty of Rupees Fifty Five Lakhs upon the Acquirers. A penalty of Rupees Five Lakhs was imposed under Section 43A whereas a penalty of Rupees Fifty Lakhs was imposed under Section 44 of the Act. In this case, a green channel approval was sought by the Acquirers and in terms of Section 6(2) of the Act read with Regulation 5A of the Combination Regulations an automatic approval was granted under Section 31 (1) of the Act. It was observed by the CCI that the entities of the parties to the transaction were involved in overlapping business activities which in terms of query 6.5 of Form I was ought to have been disclosed by the Parties. Thus, the CCI noted that the said transaction was not one falling under Schedule III and held that the Acquirers in their Green Channel Notice has provided an incorrect and false declaration.

Competition Commission of India imposes a penalty of Rupees Ten Lakhs on

Cummins Inc.

**In Re: Proceedings against Cummins Inc. under Section 43A of the Competition Act, 2002<sup>25</sup>**

The CCI imposed a penalty of Rupees Ten Lakhs on Cummins Inc. under Section 43A of the Act for its failure to notify its acquisition of sole control of Meritor Inc. A notice regarding the said transaction was received by the CCI on 2nd November 2022 and the same was approved by the CCI under Section 31 (1) of the Act. However, it was observed by the CCI in the said Notice that the aforesaid transaction was already consummated by the parties on 3rd August, 2022. Thus, the CCI imposed a penalty upon Cummins Inc. under Section 43A of the Act.

Competition Commission of India imposes a penalty of Rupees Forty Lakhs on Axis Bank

**In Re: Proceedings against Axis Bank Limited under Section 43A of the Competition Act, 2002**

The CCI imposed a penalty of Rupees Forty Lakhs on Axis Bank for its failure to notify its acquisition of 9.91% stake in CSC e-Governance Services India Limited. Axis Bank consummated the aforesaid transaction on 23rd November 2020 without notifying the CCI under the impression that the transaction enjoyed the de minimis exemption as it did not meet the prescribed thresholds. However, the CCI observed that the said the acquisition of stake in CSC e-Governance by Axis Bank was neither solely an investment nor was in the ordinary course of business. Therefore, the said acquisition was not eligible for the benefit of the Item 1 of Schedule I and ought to have been notified to the CCI.

## Competition Commission of India imposes a Rupees Five Lakh on Massachusetts Mutual Life Insurance Company

### **In Re: Proceedings under Section 43A of the Competition Act, 2002 against Massachusetts Mutual Life Insurance Company**<sup>26</sup>

The CCI imposed a penalty of Rupees Five Lakhs on Massachusetts Mutual Life Insurance Company ("MassMutual") for its failure to notify its acquisition of approximately 16% shareholding in Invesco Limited. Based on the information available on public domain, the CCI observed that MassMutual has consummated the said transaction in May 2019 without giving notice to the CCI in terms of Section 6(2) of the Act. The CCI observed that the said transaction was strategic in nature and was accompanied with the right to nominate a director on the board of Invesco and thus, was ought to have been notified by the parties.

### **Combinations cases before Competition Commission of India**

- CCI approved acquisition of 90% of the shareholding and voting rights of HDFC Credila by Kopvoorn B.V., Moss Investments Limited, Infinity Partners and Defati Investments Holding B.V.<sup>27</sup>
- CCI approved the merger of Tata Capital Financial

Services Limited and Tata Cleantech Capital Limited into Tata Capital Limited.<sup>28</sup>

- CCI approved acquisition of certain shareholdings by Orogen-Brunson L.P in Brillio Holdings, Inc.<sup>29</sup>
- CCI approved acquisition of approximately 29.6% of issued share capital on a fully diluted basis of IBS Software Pte Ltd (Singapore) from Techware Singapore Holdings Pte. Ltd. by Pelipper HoldCo SARL, a special purpose vehicle of Apax Partners LLP.<sup>30</sup>

### **Deemed Approvals under Green Channel**

- Kotak Special Situations Fund received deemed approval of CCI for purchase of certain equity shares of Biocon Biologics Limited.<sup>31</sup>
- TBJH, Inc. received deemed approval of CCI to acquire complete shareholding of Toshiba Corporation.<sup>32</sup>

<sup>1</sup>W.P.(C) 11052/2023

<sup>2</sup>WP/22263/2023; The India Cements Limited vs. Competition Commission of India & Ors., WP/0022045/2023

<sup>3</sup>Competition Appeal (AT) No. 29 of 2022

<sup>4</sup>Competition Appeal (AT) No. 03 of 2021

<sup>5</sup>Competition Appeal (AT) No. 51 of 2019

<sup>6</sup>Competition Appeal (AT) No. 46 of 2022

<sup>7</sup>Competition Appeal (AT) No. 53 of 2022

<sup>8</sup>Competition Appeal (AT) No. 64 of 2022

<sup>9</sup>Competition Appeal (AT) No. 61 of 2022

<sup>10</sup>Case No. 39 of 2021

<sup>11</sup>Case No. 21 of 2019

<sup>12</sup>Case No 16 of 2020

<sup>13</sup>Case No. 20 of 2020

<sup>14</sup>Case No. 12 of 2023

<sup>15</sup>Case No. 08 of 2023

<sup>16</sup>Case No. 30 of 2022.

<sup>17</sup>Case No. 25 of 2022.

<sup>18</sup>Case No. 05 of 2023.

<sup>19</sup>Case No. 09 of 2023.

<sup>20</sup>Case No. 27 of 2022.

<sup>21</sup>Case No. 13 of 2023.

<sup>22</sup>Ref No. M&A/03/2021/03/CD

<sup>23</sup>M&A/01/2021/03/CD

<sup>24</sup>C-2022/12/995

<sup>25</sup>C-2022/11/981

<sup>26</sup>M&A – 2021/01/810

<sup>27</sup>C-2023/06/1039

<sup>28</sup>C-2023/07/1040

<sup>29</sup>C-2023/06/1038

<sup>30</sup>C-2023/06/1037

<sup>31</sup>C-2023/08/1048

<sup>32</sup>C-2023/08/1045

#### **Noida Office**

8th Floor, VJ Business Tower,  
#A6, Sector 125, Noida – 201301,  
T: +91-120-4633900

#### **New Delhi Office**

57, Jorbagh,  
New Delhi - 110003  
T: +91-11-40244360

#### **Mumbai Office**

#85, Free Press House, Nariman Point,  
Mumbai - 400021  
T: +91.22.68605151

#### **Bengaluru Office**

Unit No. 4, HM Geneva House, (Ground Floor),  
#14 Cunningham Road, Bengaluru - 560052  
T: +91.80.42274363

#### **Contact**

E: [info@saikrishnaassociates.com](mailto:info@saikrishnaassociates.com)

E: [comp@saikrishnaassociates.com](mailto:comp@saikrishnaassociates.com)