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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6258/2014**

PRAN MEHRA

..... Petitioner

Through: Mr. Ramji Srinivasan, Sr. Adv. with
Mr. Ajit Warriar, Mr. Aashish Gupta
and Ms. Shreya Munoth, Advs.

versus

COMPETITION COMMISSION OF INDIA
& ANR.

..... Respondents

Through: Mr. A.S. Chandhiok, Sr. Adv. with
Mr. Karan Chandhiok, Ms. Shriya
Misra, Mr. Bharat Aggarwal, Ms.
Harleen Singh and Mr. Abhimanyu,
Advs. for R1.

+ **W.P.(C) 6259/2014**

MARC EVAN ROTHMAN

..... Petitioner

Through: Mr. Ramji Srinivasan, Sr. Adv. with
Mr. Ajit Warriar, Mr. Aashish Gupta
and Ms. Shreya Munoth, Advs.

versus

COMPETITION COMMISSION OF INDIA
& ANR.

..... Respondents

Through: Mr. A.S. Chandhiok, Sr. Adv. with
Mr. Karan Chandhiok, Ms. Shriya
Misra, Mr. Bharat Aggarwal, Ms.
Harleen Singh and Mr. Abhimanyu,
Advs. for R1.

+ **W.P.(C) 6669/2014**

ALBERT YUN QUAN LIU

..... Petitioner

Through: Mr. Ramji Srinivasan, Sr. Adv. with
Mr. Ajit Warriar, Mr. Aashish Gupta
and Ms. Shreya Munoth, Advs.

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Misra, Mr. Bharat Aggarwal, Ms.
Harleen Singh and Mr. Abhimanyu,
Advs. for R1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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26.02.2015

1. The challenge is laid to orders dated 17.6.2014 and 31.7.2014 passed by the Competition Commission of India (in short CCI) in Case No.13/2013. The petitioners have approached this Court by way of a writ petition under Articles 226 and 227 of the Constitution of India on a singular ground, which is, that the process commenced under Section 48 of the Act Competition Act, 2002 (in short the Act) is premature, in view of the fact that the CCI has not returned any finding as to the contravention of the Act, as yet.
2. The contention of the petitioner is that only after a finding is returned vis-à-vis contravention, if any, alleged to have been committed by the company, by the name of, VeriFone India Sales Private Limited (in short VeriFone) that any process can be commenced against the petitioners, on the purported ground, that they were, key-persons engaged by the aforementioned company.

3. Mr. Ramji Srinivsan, learned senior counsel for the petitioner has placed before me orders dated 9.10.2014 and 13.11.2014 passed by the CCI. Broadly, a perusal of the order would show that the CCI has reserved orders with regard to the matter in issue and has heard arguments both of the informant as well as the opposite party, i.e. Verifone, pursuant to the submission of the report by the Director General Investigations (D.G.I.).

4. Mr. Ramji Srinivasan, learned counsel for the petitioner submits that the process under Section 48 would commence only in the eventuality of CCI returning a finding against the company under Section 27 of the Act. He says that it is only then, that the petitioner would know what the contravention is; which according to him is the stage when the petitioners can be called upon to disclose their defence, as to their role in the contravention.

4.1 In support of this submission, the learned counsel relies upon the proviso 1 to sub-section 1 of Section 48 of the Act.

4.2 I may also note that Mr. Ramji Srinivasan in support of his submissions has placed reliance, with much vehemence, on the judgment of the Supreme Court in the case of *Aneeta Hada v. Godfather Travels & Tours (P) Ltd. (2012) 5 SCC 661*.

5. Mr. Chandhiok, who appears for the CCI, says that the proceedings before the CCI, cannot be split in two parts.

5.1 In other words, it is Mr. Chandhiok's contention that it cannot be, that the CCI will, in the first instance, hear the parties with regard to the alleged contravention by the company and, thereafter, hear the parties, once again, with regard to the role of the key-persons. He, thus, submits that the key-persons should place their case before the CCI vis-à-vis the alleged

contraventions, which are already disclosed to them via the D.G.I.'s report. The CCI, according to the learned counsel, would hear, all concerned parties and decide the matter in one go.

6. I have heard the learned counsels for the parties. I am in agreement with the submissions of Mr. Chandhiok that there cannot be two separate proceedings in respect of the company (i.e. VeriFone) and the key-persons. As the scheme of the Act, to my mind, does not contemplate such a procedure. The procedure suggested by Mr. Ramji Srinivasan is both inefficacious and inexpedient. As in every such matter, including the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (in short N.I. Act), a procedure of the kind suggested is not contemplated. The judgment of the Supreme Court in the case *Aneeta Hada* dealt with proceedings under Section 138 of the N.I. Act. The judgment does not deal with issue at hand, which is whether adjudication in two parts, as contended by Mr. Ramji Srinivasan, is permissible. The judgment, in my opinion is distinguishable.

7. It is no doubt true that the petitioners can only be held liable if, the CCI, were to come to a conclusion that they were the key-persons, who were in-charge and responsible for the conduct of the business of the company. In the course of the proceedings qua a company, it would be open to the key-persons to contend that the contravention, if any, was not committed by them, and that, they had in any event employed due diligence to prevent the contravention. These arguments can easily be advanced by key-persons without prejudice to the main issue, as to whether or not the company had contravened, in the first place, the provisions of the Act, as alleged by the D.G.I., in a given case.

7.1 However, as indicated above, much water has flown, since the proceeding commenced under the Act. The CCI has already reserved the judgment in the matter.

7.2 The order reserving the judgment in Case No.13/2013, is not assailed before me.

8. Therefore, in these circumstances, the best way forward would be for the CCI to deliver the judgment in the matter as expeditiously as possible, and, thereafter, give an opportunity to the petitioners, in case it comes to a finding that the company i.e., Verifone has contravened the provisions of the Act. While, it is not within the remit of this Court to indicate the time frame, within which, the judgment ought to be delivered in the matter, this court would only request CCI to expedite pronouncement of the judgment, having regard to the circumstances set out above.

8.1 Writ petitions are disposed of in the aforesaid terms.

9. This process, though, will not, form a precedent in other cases.

RAJIV SHAKDHER, J

FEBRUARY 26, 2015

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