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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 575/2016 & CM Appls. 2376, 2377/2016

M/S NARESH KUMAR & CO PVT LTD Petitioner

Through: Mr. J.K. Mittal, Adv.

versus

SURENDRA PRASAD

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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25.01.2016

The present writ petition has been filed challenging the order dated 13th January, 2016 passed by COMPAT whereby the review application filed by the petitioner along with other applicants was dismissed both on merits as well as delay.

Learned counsel for the petitioner states that in the present case, the respondent had obtained orders by playing fraud upon COMPAT. He states that the Tribunal erred in observing that the allegations of fraud are an afterthought, without even examining the nature of various frauds pointed out by the petitioner, whereas it was clearly pointed out in the application for review filed on 7th January, 2016 that most of the affidavits filed by the respondent and supplied to the petitioner were different from the affidavits on record.

Learned counsel for the petitioner states that there was no question of giving up its objections when the hearing took place on

15th September, 2015 as the fraud came to the notice of the petitioner only in January 2016 when the petitioner's new advocate discovered the same.

Learned counsel for the petitioner submits that a judgment obtained by playing fraud upon the Court is a nullity and non-est in the eyes of law and it can be challenged in any court, even in collateral proceedings.

In support of his submissions, he relies upon a judgment of the Supreme Court in *A.V. Papayya Sastry and Others v. Govt. of A.P. and Others*, (2007) 4 SCC 221

Having heard learned counsel for the petitioner, this Court is of the view that the impugned order of COMPAT is an appealable order under Section 53T of The Competition Act, 2002. The said Section is reproduced hereinbelow:-

“53T Appeal to Supreme Court. —The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them:

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.”

Consequently, this Court is of the view that the petitioner has an alternative effective remedy. The judgment in *A.V. Papayya Sastry and Others* (supra) does not deal with a case where alternative remedy of appeal was available. Accordingly, the present writ petition and applications are dismissed.

MANMOHAN, J

JANUARY 25, 2016
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