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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2568/2016 & C.M.Nos.10907-10908/2016

VIKRAM MALHOTRA

..... Petitioner

Through

Mr. Rajshekhar Rao with Ms. Ferida
Satarwala, Advocates.

versus

COMPETITION COMMISSION OF INDIA & ANR

..... Respondents

Through

Mr.Vaibhav Gaggar with Ms.Neha
Mishra, Ms.Samali Verma and
Mr.Saksham Dhingra, Advocates for R-
1/CCI.
Mr.Ravi Prakash, CGSC with
Mr.Vidhu Mohan, Advocate for R-
2/UOI.

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Date of Decision: 22nd March, 2016.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the notice dated 26th February, 2016 and respondent no. 1's order dated 18th February, 2016 whereby the respondent-CCI has directed the opposite parties in Reference Case No. 8/2013 to file their suggestions/objections to the report of Director General (for short "DG") and furnish their audited balance sheet, profit and loss account, turnover for the last three financial years. The CCI has further directed individuals who have been identified in the DG's investigation report as key

persons of the parties to appear before the CCI for oral hearing on the investigation report of DG.

2. It is pertinent to mention that the DG had found five leading tyre manufacturing companies under aegis of their association being Automotive Tyre Manufacturers Association (ATMA) who have indulged indirectly in cartelization by determining sale price of tyres in the domestic market.

3. Mr. Rajshekhar Rao, learned counsel for the petitioner submits that the respondent no. 1 is acting contrary to Section 48 of the Competition Act, 2002 (for short "Act, 2002") inasmuch as the respondent no. 1 has not yet arrived at a final and conclusive determination of contravention of the provisions of the Act, 2002 by the company of which the petitioner is an officer. He submits that such final determination of contravention under Section 27 of the Act, 2002 against a company is a necessary and essential pre-requisite for commencement of any proceedings against the petitioner under Section 48 of the Act, 2002.

4. Mr. Rao further submits that since petitioner does not fall under Section 48(1) of Act, 2002, the impugned order is contrary to the CCI's own initial order dated 24th June, 2014 whereby DG had been mandated to investigate the role of the persons who at the time of such contravention were in charge of and responsible for conduct of the business of the opposite parties.

5. Mr. Rao lastly states that Section 48 of the Act, 2002 is not attracted *per se* to the present proceedings.

6. In the opinion of this Court, pleas raised by the petitioner in the present petition can be raised before the CCI itself. This Court in ***Shree Cement Limited & Anr. vs. Competition Commission of India & Anr., W.P.(C) 3008/2014*** has held as under:-

"15. In the opinion of this Court, the issue of maintainability of the writ petition is no longer res integra. In Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai, (1998) 8

SCC 1, the Supreme Court has held, "But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged....." Consequently, a writ petition challenging an order of COMPAT is maintainable on limited grounds.

16. However, this Court is of the opinion that the petitioner's argument of lack of jurisdiction is misplaced as neither CCI nor COMPAT lack inherent jurisdiction to decide the petitioner's first submission as to whether Act, 2002 applies to the proceedings or not. This Court is of the view that issues of applicability of Act, 2002 or Monopolies and Restrictive Trade Practices Act, 1969 and levy of penalty are not equivalent to lack of inherent jurisdiction to decide the case. Consequently, in the opinion of this Court, it is only the CCI and COMPAT which have the jurisdiction to decide the issue of applicability of Act, 2002 as well as the issue of levy of penalty thereunder.

(emphasis supplied)

7. Consequently, present writ petition and applications are dismissed with liberty to the petitioner to file within two weeks an application seeking recall of the impugned order and notice. In the event, such an application is filed, it would be decided first by the CCI before proceeding any further against the petitioner in the present case.

Order dasti under signatures of the Court Master.

MANMOHAN, J

MARCH 22, 2016
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