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

+ **W.P.(C) 11195/2015**

BGR ENERGY SYSTEMS LTD.

..... Petitioner

Through Mr.Rajeeve Mehra, Sr.Advocate with
Mr.Amitabh Kumar, Mr.Gautam
Shahi, Ms.Lagna Panda, Ms.Prashant,
Ms.Meenakshi and Ms.Shruti
Aggarwal, Advocates.

versus

COMPETITION COMMISSION OF INDIA

..... Respondent

Through Mr.Vivek Kohli with Ms.Mansha
Anand, Advocates for R-1.
Mr.Ajit Warriar with Ms.Shreya
Munoth, Advocates for Hitachi Ltd.
Mr.Ashish Bhan, Advocate for
impleading respondent0Mitsubishi
Heavy Industries Ltd.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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17.03.2016

C.M.No.1634/2016

Present application has been filed for impleadment by M/s Mitsubishi Heavy Industries Ltd. Keeping in view the averments in the application, the application is allowed.

W.P.(C) No.11195/2015

On the oral prayer of Mr.Ajit Warriar, Advocate, M/s Hitachi Ltd. is impleaded as a respondent.

Let an amended memo of parties be filed by tomorrow.

Present writ petition has been filed with the following prayers:-

- (a) Direct the Respondent/CCI to provide copy/certified copy of the following documents forming part of the public records of the combination bearing registration no.C-2013/07/126 to the petitioner/BGR which were inspected by the petitioner/BGR on 18.09.2015;*
 - i) Notice dated 10.07.2013*
 - ii) Additional respondent dated 07.08.2013*
 - iii) Additional response dated 12.08.2013*
 - iv) Additional response dated 11.09.2013*
 - v) Additional response dated 07.10.2013*
 - vi) Additional response dated 05.11.2013*
- (b) Direct the Respondent/CCI to provide copy/certified copy of information and documents submitted to the Respondent/CCI on which either confidentiality claim was waived by Hitachi and Mitsubishi or confidentiality was not granted by the Respondent/CCI;*
- (c) Direct the Respondent/CCI to provide copy/certified copy of orders passed by the Respondent/CCI in combination bearing registration no.C-2013/07/126 relating to confidentiality and permitting the Petitioner/BGR to conduct inspection;*
- (d) Pass such other order(s)/direction(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case.*

The facts relevant for the present case are that the petitioner in accordance with the liberty granted by the Competition Appellate Tribunal filed an application before the Competition Commission for recall of the order dated 6th November, 2013, by virtue of which the approval of Combination of M/s Mitsubishi Heavy Industries Ltd and M/s Hitachi Ltd was granted.

Learned senior counsel for the petitioner states that the

petitioner is not being granted copies of Public Version of the Record of the said Combination matter. He states that Competition Commission has turned down the petitioner's request for certified copies of the documents on record including its own orders. He further states that even inspection of the orders passed by the Competition Commission has not been allowed.

On the other hand, learned counsel for the respondents state that, by virtue of Section 57 of the Competition Act, 2002 as well as Regulations 35 (13) & (14) of the Competition Commission of India (General Regulations, 2009) (hereinafter referred to as the 'Regulations, 2009'), the petitioner is not entitled to inspection of confidential documents.

After some hearing, learned senior counsel for the petitioner as well as counsel for newly impleaded respondents pray that the matter be disposed of with a direction to the Competition Commission to furnish the copies of Public Version of the Record of the said Combination to the petitioner after excluding the documents mentioned in Regulations 35 (13) & (14) of the Regulations, 2009. The counsel for newly impleaded respondents pray that the copies of the documents be released to the petitioner only after they have had an opportunity to peruse the said documents as well as to raise objections, if any.

Consequently, with consent of the contesting parties, it is directed that the Competition Commission shall supply photocopies of the Public Version of the Record in the said Combination matter after excluding the confidential documents mentioned in Regulations

35 (13) & (14) of the Regulations, 2009. Photocopies of the aforesaid documents shall be first shown to the counsel for M/s Mitsubishi Heavy Industries Ltd. and M/s Hitachi Ltd., and thereafter, the documents shall be released to the petitioner within a period of six weeks. Objections, if any, by the M/s Mitsubishi Heavy Industries Ltd. and M/s Hitachi Ltd. shall be decided by the Competition Commission in accordance with the law.

With the aforesaid directions, the present writ petition stands disposed of.

MANMOHAN, J

MARCH 17, 2016

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