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

+ W.P.(C) 1807/2015 & CM APPL. 3226/2015

TIRUPATI LPG INDUSTRIES LTD. Petitioner
Through Mr. Balbir Singh, Sr. Adv. with
Mr. Amol Sinha, Mr. Anshum Jain,
Mr. Abhishek Baghel, Advocates.

versus

COMPETITION COMMISSION OF INDIA Respondent
Through Mr. Pallav Saxena and Ms. Bindu Das,
Advocates.

WITH

+ W.P.(C) 1810/2015 & CM APPL. 3233/2015

INTERNATIONAL CYLINDERS LTD. Petitioner
Through Mr. Balbir Singh, Sr. Adv. with
Mr. Amol Sinha, Mr. Anshum Jain,
Mr. Abhishek Baghel, Advocates

versus

COMPETITION COMMISSION OF INDIA Respondent
Through Mr. Pallav Saxena and Ms. Bindu Das,
Advocates

WITH

+ W.P.(C) 4024/2015 & CM APPL. 7205/2015

HIM CYLINDERS LTD. Petitioner
Through Mr. Balbir Singh, Sr. Adv. with
Mr. Amol Sinha, Mr. Anshum Jain,
Mr. Abhishek Baghel, Advocates

versus

COMPETITION COMMISSION OF INDIA Respondent
Through Mr. Pallav Saxena and Ms.Bindu Das,
Advocates

WITH

+ W.P.(C) 4046/2015 & CM APPL.7247/2015

BTP STRUCTURAL INDIA PVT. LTD. Petitioner
Through Mr. Balbir Singh, Sr. Adv. with
Mr. Amol Sinha, Mr. Anshum Jain,
Mr. Abhishek Baghel, Advocates
versus

COMPETITION COMMISSION OF INDIA Respondent
Through Mr. Pallav Saxena and Ms.Bindu Das,
Advocates

WITH

+ W.P.(C) 4048/2015 & CM APPL. 7250/2015

MAURIA UDYOG LTD. Petitioner
Through Mr. Balbir Singh, Sr. Adv. with
Mr. Amol Sinha, Mr. Anshum Jain,
Mr. Abhishek Baghel, Advocates
versus

COMPETITION COMMISSION OF INDIA Respondent
Through Mr. Pallav Saxena and Ms.Bindu Das,
Advocates

AND

+ W.P.(C) 4051/2015 & CM APPL.7257/2015

S.M. CYLINDERS (UNIT OF S.M. SUGAR
PVT. LTD.) Petitioner
Through Mr. Balbir Singh, Sr. Adv. with
Mr. Amol Sinha, Mr. Anshum Jain,
Mr. Abhishek Baghel, Advocates

versus

COMPETITION COMMISSION OF INDIA Respondent
Through Mr. Pallav Saxena and Ms. Bindu Das,
Advocates

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 19.07.2017

1. The petitioners in these petitions impugn an order dated 25.08.2014 (hereafter 'the impugned order') passed by the Competition Commission of India (hereafter 'CCI') under Section 26(1) of the Competition Act, 2002 (hereafter 'the Act'). In the impugned order, CCI has expressed its *prima facie* opinion that the petitioners have contravened the provisions of Section 3 of the Act. The said cases were taken up by CCI on *suo motu* basis. CCI had earlier received information from anonymous sources regarding cartelisation of manufacturers of 14.2 kg LPG Cylinders fitted with S.C. valves, in submission of e-tenders floated by the Hindustan Petroleum Corporation Ltd. (HPCL) on 20.10.2011 and 24.01.2013.
2. The principal grievance of the petitioners is that the petitioners have already been subjected to investigation against allegations of cartelisation and based on such investigation, punitive measures were also directed by CCI. They claim that in the circumstances, it is not open for CCI to once again direct investigation on the same allegations.
3. Mr Balbir Singh, learned counsel appearing for the petitioners referred to an order dated 09.03.2011 passed by CCI in 'Suo Moto Case No. 03/2011'. By virtue of the said order, CCI had *prima facie* found that

manufacturers of LPG Cylinders had manipulated bids and procured orders for supply of 14.2 kg LPG Cylinders by quoting identical rates in certain tenders floated by the Indian Oil Corporation Ltd. (IOCL). The CCI was of the opinion that a thorough investigation into the matter of bid rigging was called for in respect of the tenders awarded for procuring 14.2 kg LPG Cylinders by public sector gas marketing companies, namely, Indian Oil Corporation Ltd. (IOCL), the Bharat Petroleum Corporation Ltd. (BPCL) and Hindustan Petroleum Corporation Ltd. (HPCL) and, accordingly, directed the Director General (DG) to conduct the investigation.

4. Indisputably, DG had called for information from various manufacturers regarding furnishing of bids to various oil companies including HPCL.

5. Thereafter, the DG submitted his investigation report and CCI after considering the said report had passed an order dated 24.02.2012 under Section 27 of the Act; CCI found that bidders had infringed the provisions of Section 3(3) of the Act and thereby imposed penalty for their conduct.

6. Mr Balbir Singh drew the attention of this Court to paragraph 11.1 of the said order wherein CCI had recorded the contentions advanced by the petitioners to the effect that DG had not investigated the issues with regard to BPCL and HPCL and, therefore, his report was incomplete. CCI rejected the contention (and in the *prima facie* opinion of this Court, rightly so) as it appears that CCI was examining whether the conduct of the bidders was anti-competitive and had sufficient material to proceed and determine the issue. Undisputedly, it was open for CCI to issue further directions to the

DG for completion of the investigations as directed. However, CCI did not choose to do so and proceeded to conclude the proceedings.

7. In the aforesaid facts, the principal contention that needs to be considered is whether it would be open for CCI to once again direct investigations and commence proceedings.

8. The learned counsel appearing for CCI states on instructions that CCI would examine the controversy and take an informed decision within a period of eight weeks.

9. In view of the above, this Court is refraining from expressing any opinion in this matter at this stage as it is apparent that the issue in question has neither been canvassed before CCI nor considered by it.

10. The impugned order is set aside and the matters are remanded to CCI for fresh consideration. The present petitions shall be considered by CCI *albeit* as representations made by the petitioners and CCI shall pass such orders as it considers fit, within a period of eight weeks after affording the petitioners an opportunity of being heard.

11. The petitions and the pending applications are disposed of.

VIBHU BAKHRU, J

JULY 19, 2017
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