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

+ **W.P.(C) 7842/2017**

GRASIM INDUSTRIES LIMITED

..... Petitioner

Through: Mr Gopal Subramaniam, Senior Advocate with Ms Nisha Kaur Uberoi, Ms Soumya Kariharan, Ms Dinoo Muthappa, Ms Shravani Shekhar, Mr Saksham Dhingra, Mr Ankur Kashyap and Mr Vivek Kaja, Advocates.

versus

COMPETITION COMMISSION OF INDIA
& ANR

..... Respondents

Through: Mr Samar Bansal and Ms Shreya Singh, Advocates for CCI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.09.2017

VIBHU BAKHRU, J

CM APPL. 32346/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 7842/2017 and CM Nos. 32345/2017 & 32347/2017

3. The petitioner has filed the present petition, *inter alia*, impugning three separate orders passed by Competition Commission of India (hereafter as 'CCI'). The first order impugned in the present petition was passed on 10.11.2016, under Section 26 (1) of the Competition Act, 2002 (hereafter as 'the Act'). By the said order dated 10.11.2016 the CCI expressed its *prima*

facie view that the petitioner was imposing unfair and discriminatory pricing on the informant and other textile manufacturers and leveraging its dominant position in the relevant market of Viscose Staple Fibres (VSF) in the downstream market of textile products, in contravention of the provisions of Section 4 of the Act. The CCI further directed respondent no.2, the Director General (hereafter ‘the DG’) to investigate the matter under the provisions of Section 26 (1) of the Act. The said order is hereafter referred to as the impugned order dated 10.11.2016.

4. The second order impugned in this petition was passed by CCI on 27.07.2017 directing the petitioner to appear for an oral hearing on 09.08.2017 in connection with the application filed by the petitioner for review/recall of the impugned dated 10.11.2016. By the said order the CCI further clarified that the pendency of the said application would not be construed as a stay on the investigation by the DG.

5. The third order impugned by the petitioners was passed on 09.08.2017, whereby the CCI rejected the petitioner’s contention that CCI was interdicted-in terms of the orders passed by the Division Bench of this Court on 07.02.2014 and 15.02.2016 in ***Competition Commission of India v. M/s Grasim Industries Ltd: LPA No. 137/2014*** from directing investigation or commencing any inquiry under section 19 of the Act with regard to violation of Section 4 of the Act.

6. Mr Gopal Subramaniam, learned Senior Counsel appearing on behalf of the petitioner, advanced contentions on three fronts. First, he contended that by virtue of the orders passed by the Division Bench of this Court in

LPA 137/2014, the CCI was interdicted from commencing any proceedings under Section 26(1) of the Act. He submitted that the present proceedings were commenced on the basis of the information received from an informant and such information was almost identical to the report submitted by the DG in an earlier case (Case No. 28/2011) which was subject matter of proceedings before the Division Bench of this Court in LPA No. 137/2014. He submitted that on the basis of the report submitted by the DG in case No. 28/2011, the CCI was intending to proceed for a further inquiry with respect to the alleged contravention of provisions of Section 4 of the Act. Aggrieved by the same, the petitioner had approached this Court by way of a writ petition (*Grasim Industries Limited v. Competition Commission of India: W.P. (C) 4159/2013*), which was disposed of by an order dated 17.12.2013. The said decision was carried in appeal before the Division Bench of this Court. On 07.02.2014, the said appeal was admitted and the Solicitor General of India appearing for the CCI has, undertaken that CCI would not proceed against the respondent under Section 26(8) of the Act. The said order was made absolute by a subsequent order dated 15.02.2016. He submitted that with a view to overcome the said undertaking, the CCI had on the basis of information, which is identical to the report submitted by the DG, directed investigation to be conducted. By this procedure CCI is attempting to effectively overreach the orders passed by this Court.

7. Second, Mr Subramaniam submitted that the order dated 27.07.2017 was communicated to the petitioner on 08.08.2017, which was one day prior to the hearing fixed on 09.08.2017. He drew the attention of this Court to the third paragraph of the impugned order dated 09.08.2017 and pointed out that

the CCI had incorrectly recorded that the order dated 27.07.2017 was communicated to the petitioner at the time of passing of the order. He submitted that this was false as no hearing was held on 27.07.2017 and the petitioner was never informed of the said order prior to 08.08.2017. He submitted that the said error was not innocuous but clearly an attempt to create a false record. He further stated that there was no hearing held on 27.07.2017 and the said order was ante dated. The CCI had further submitted that the impugned order dated 09.08.2017 does not reflect the proceedings conducted on that date and, therefore, the said order was liable to set aside on that ground alone.

8. Mr Samar Bansal, learned counsel appearing for the CCI countered the submissions made on behalf of the petitioner. He earnestly contended that the information pursuant to which the CCI had passed an order under Section 26(1) of the Act was not identical to the report submitted by the DG in case No. 28/2011. He submitted that first of all, the informant had provided data till 2015 to support his allegation that the petitioner was acting in violation of Section 4 of the Act and such information could not possibly be available in the DG's report, which was submitted four years earlier (in the year 2011). In addition the informant had made further allegation that the persons/entities, which had assisted the DG in providing information adverse to the petitioner, were singled out for unfair treatment.

9. He further submitted that the CCI was not interdicted in any manner from accepting information and directing a fresh investigation. He urged that the petitioner's contention that it enjoyed a blanket stay from investigation or inquiry by the CCI is unmerited. Insofar as the petitioner's grievance that

the order dated 27.07.2017 was communicated only on 8.8.2017 is concerned, he readily conceded that no hearing was held 27.07.2017 and further the order dated 27.07.2017 was not forwarded till 08.08.2017.

10. I have heard the learned counsel for the parties.

11. The first and foremost question to be addressed is whether the CCI had been interdicted in any manner from receiving a complaint and inquiring into the alleged contravention of the provisions of Section 4(1) of the Act.

12. Before proceeding further, it would be necessary to take note of the circumstances that led the petitioner to move this Court in W.P. (C) 4195/2013. The CCI had received certain information that manufacturers of man-made fibres (MMF) had imposed several restrictions on the Indian Textile Industry, which allegedly fell foul of the Act. The CCI, having regard to such information, passed an order dated 22.06.2011 directing the DG to conduct an investigation into the matter. The allegations against the manufacturers of MMF were that they were violating the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) of the Act.

13. The DG conducted the investigation and submitted its report. Although, the DG did not find that there was any violation of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) of the Act by the petitioner; however, it appears that DG did report that the petitioner had abused its dominant position and had contravened the provisions of Section 4 (2)(a) and 4(2)(b) of the Act. Aggrieved by the same, the petitioner filed an application before the CCI, *inter alia*, seeking the quashing and setting aside of the DG's report to the extent that it had reported that the petitioner had violated the Section 4

of the Act.

14. The principal ground urged by the petitioner in its application, was that such investigation was beyond the jurisdiction of the DG as it was beyond the scope of the investigation directed by the CCI by way of its order dated 22.06.2011. According to the petitioner the scope of investigation by the DG was confined to alleged violation of sections 3(3)(a), 3(3)(b) and 3(3)(c) of the Act. The CCI did not accept the above contention and rejected the petitioner's application by an order dated 30.05.2013.

15. Aggrieved by the aforesaid order dated 30.05.2013, the petitioner challenged the same by filing the petition titled ***Grasim Industries Limited v. Competition Commission of India: W.P. (C) 4159/2013***, in this Court.

16. The said petition was disposed of by a judgment dated 17.12.2013, the operative part of which reads as under:-

"18. For the reasons stated hereinabove, the writ petition is disposed of with the direction that the report of the Director General, to the extent he has reported contravention of the provisions of Section 4 of the Act by the petitioner by misuse of its dominant position as a VSF manufacturer, shall not be subjected to the procedure prescribed in sub-section (8) of Section 26 nor shall the Commission be entitled to pass order on the said report, in terms of the provisions of Section 27 of the Act. The Commission, however, shall be entitled to treat the aforesaid part of the report of the Director General as an information in terms of Section 19 of the Act and proceed accordingly in terms of the provisions of the Act, if the Commission on consideration of the aforesaid part of the report of the Director General, is of the opinion that there

exists a prima facie case of contravention of the provisions of Section 4 of the Act by the petitioner.

There shall be no orders as to costs."

17. This order was challenged by the CCI before a Division Bench of this Court in LPA No. 137/2014. In that proceedings the following order was passed on 07.02.2014 :-

"Admit.

Issue notice to the respondent returnable on 31st March, 2014.

In the meantime, in view of the undertaking given by the learned Solicitor General of India that the appellant, till the disposal of the appeal is not going to proceed against the respondent under sub-Section (8) of Section 26 of the Competition Act, 2002 with regard to the report of the Director General to the effect that the respondent has misused its dominant position as a VSF manufacturer and will also not pass order on the said report in terms of Section 27 of the Act, operation of the impugned judgment dated 17.12.2013 passed in W.P.(C) No.4159/2013 shall remain suspended."

The aforesaid order was made absolute on 15.02.2016.

18. It is relevant to note that the petitioner was satisfied with the judgment dated 17.12.2013 passed by the Single Judge in W.P. (C) 4159/2013 inasmuch as the Court had upheld the petitioner's contention that the DG's report, inasmuch as it had reported that the petitioner had violated Section 4 of the Act, could not provide the foundation for further proceedings under

Section 26 (8) of the Act. However, it is relevant to note that the single judge did not interdict the CCI from treating the DG's report as a fresh information in terms of Section 19 of the Act.

19. At this stage, it would be relevant to refer to Section 19(1) and 26 of the Act. Section 19(1) provides that the Commission may inquire into the alleged contravention of the Sections 3(1) and 4(1) of the Act. Section 19 (1) is set out below:-

“19. (1) The Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on—

(a) [receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

(b) a reference made to it by the Central Government or a State Government or a statutory authority.”

20. It is seen from the above that the CCI can commence inquiry either on its own motion or on receipt of information or by a reference made to it by the Central Government/State Government/Statutory Authority. The procedure for conduct of inquiry under Section 19 of the Act is provided in Section 26 of the Act, which is set out below:-

“26. Procedure for inquiry under section 19.—(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director-General to cause an investigation to be

made into the matter:

Provided that if the subject-matter of an information received is, in the opinion of the Commission substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(4) The Commission may forward a copy of the report referred to in sub section (3) to the parties concerned:

Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub- section (3) to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections and suggestions referred to in sub section (5), if any, the Commission agrees with the recommendation of the

Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub section (5), if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act."

21. It is apparent from the plain reading of Section 26(1) of the Act that if the CCI is of the view that there exists a *prima facie* case, it is to direct the DG to cause an investigation in the matter and, the DG is required to conduct an investigation in the matter. In terms of Section 26 (3) of the Act, he is to submit a report of his investigations to the CCI. The CCI is required to forward a copy of the report to the parties concerned. If the report of the DG indicates that there is no contravention of the provisions of the Act, the CCI is required to invite objections and suggestions from the concerned party and if after consideration of such objections, the CCI agrees with the recommendation of the DG, it is required to close the matter forthwith. However, if the DG has, in his report, recommended that there is a contravention of any of the provisions of the Act and the Commission is of

the view that further inquiry is called for, it is required to inquire into such contraventions. If after such inquiry the CCI finds that any of the provisions of Section 3 and/or Section 4 of the Act has been contravened, the CCI is required to pass such order as indicated in Section 27 of the Act.

22. The petitioner's challenge to the DG's report submitted in case No. 28/2011 must be understood in the context of the aforesaid scheme of the Act. The petitioner had successfully campaigned that the DG's report to the extent it reported contravention of Section 4(2)(a) and 4(2)(b) of the Act, was outside the scope of reference and thus could not be considered. It was not the case of the petitioner that such allegation could never be inquired into by the CCI; its case was that no inquiry under section 26(8) could be proceeded with on the basis of the investigation report submitted by the DG. Thus, the principal question before the Division Bench in LPA No. 137/2014 is whether the decision of the Single Judge restraining the CCI from proceeding further under Section 26(8) and/or Section 27 of the Act on the basis of the report submitted by the DG in case No. 28/2007 is sustainable. The undertaking of the Solicitor General as recorded in the order dated 07.02.2014 passed in LPA No. 137/2014 has to be understood in the context of the issue before the Division bench. The contention that the said order provided a blanket stay and precluded the CCI from entertaining any information and conducting an inquiry under Section 19(1) of the Act and issuing orders under Section 26(1) of the Act is bereft of any merit.

23. Since there were serious allegations that the proceedings recorded in the order dated 09.08.2017 passed by the CCI were not correctly recorded and do not reflect the proceedings conducted on that date, this Court has

independently examined the issue considered by the CCI and concurs with the view expressed therein. Thus, no interference with the impugned order dated 09.08.2017 is called for except to expunge a part of paragraph 3 of the said order which records that the impugned order dated 27.07.2017 was communicated to the petitioner at the time of passing the said order. This court is also constrained to caution the CCI to ensure that its orders bear a true record of its proceedings.

24. Insofar as the petitioner's challenge to the impugned order dated 10.11.2016 is concerned, the same is akin to an administrative order and no interference is called for in these proceedings (*Competition Commission of India v. Steel Authority of India Ltd. and Anr.: (2010) 10 SCC 744*).

25. In view of the above, the present petition and all applications are dismissed, however, it is clarified that nothing stated in this order will preclude the petitioner from canvassing its application for review/recall of the impugned order dated 10.11.2016 to the fullest extent before the CCI.

26. No orders as to costs.

VIBHU BAKHRU, J

SEPTEMBER 06, 2017

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