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

\+ **<u>W.P.(C) 2086/2016</u>**

MARUTI SUZUKI INDIA LTD. ..... Petitioner

Through Mr P. Chidambaram, Senior Advocate with Mr Rajeshekhar Rao, Ms Shreya Sircar, Mr Anandh Venkatramani, Mr Saifur R. Faridi, Ms Chandni Anand, Advocates.

versus

COMPETITION COMMISSION OF INDIA ..... Respondent

Through Mr Vaibhav Gaggar, Ms Neha Mishra, Ms Sumedha Dang, Ms Niti Richhariya, Advocates for CCI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 16.05.2019

1. The present petition, *inter alia*, impugns an order dated 26.04.2011 passed by the Competition Commission of India (CCI), whereby the Commission had directed that in all cases where the CCI orders investigation, the same need not be confined to the parties mentioned in the information. The petitioner also impugns an order dated 25.08.2014 passed by the CCI under Section 27 of the Competition Act, 2002 (hereafter 'the Act'), *inter alia*, imposing a penalty on the petitioner.

2. It is the petitioner's case that the Director General (DG) could not expand the scope of the inquiry as directed by the CCI and further that CCI,

by its notice, could not direct the DG to expand the scope of inquiry to cover parties not specifically mentioned in the order passed under Section 26(1) of the Act.

3. Concededly, the said issue is covered by the decision of the Division Bench of this Court in ***Mahindra Electric Mobility Limited and Anr. v. Competition Commission of India and Anr.*** : ***W.P. (C) 11467/2018 and other connected matters, decided on 10.04.2019***. The relevant extract of the said decision is set out below:-

> "185. This Court is of the opinion that the argument with respect to illegality of the CCI's procedure, in expanding the scope of inquiry under Section 26 (1) is insubstantial. At the stage the CCI decides to act on a complaint, and directs investigation, it does not always have all information or material in respect of the *general pattern or method adopted by parties* that vitiates the marketplace. It is only the information given to it. Premised on that information, the DG is tasked to look into the matter. During the course of that inquiry, *based on that solitary complaint or information*, facts leading to pervasive practises that amount to abuse of dominant position on the part of one or more individuals or entities may be possibly unearthed. At that stage, the investigation is *quasi inquisitorial, to the extent that the report given is inconclusive of the rights of the parties; however, to the extent that evidence is gathered, the material can be final*. Neither is the DG's power limited by a remand or restricted to the matters that fall within the complaint and nothing else. The Excel Crop Care (supra) case has explained the DG's powers in broad terms: ("if other facts also get revealed and are brought to light, revealing that the 'persons' or 'enterprises' had entered into an agreement that is prohibited by Section 3 which had appreciable adverse effect on the competition, the DG would be well within his powers to include those as well in his report….If the investigation process is to be restricted in the manner projected by the

Appellants, it would defeat the very purpose of the Act which is to prevent practices having appreciable adverse effect on the competition”). The assumption of jurisdiction of the CCI, then is upon receipt of complaint or information, when the “*Commission is of the opinion that there exists a prima facie case*” [as per Section 26 (1)]. The following order is administrative [as per *SAIL (supra)*]; however, that order should disclose application of mind and should be reasoned [as per SAIL (supra)]. Till that time, with the enunciation of law confined to *SAIL (supra)*, it could arguably have been said that in the absence of a specific order as regards its role, by CCI, the DG could not have inquired into a particular party’s conduct. However, with *Excel Crop Care (supra)* specifically dealing with the question of alleged “subject matter” expansion (in the absence of any specific order under Section 26 (1)) and the Supreme Court clarifying that the subject matter included not only the one alleged, but other allied and unenumerated ones, involving others (i.e. third parties), the issue is no longer untouched; the petitioners are precluded from stating that a specific order authorizing transactions by it, was a necessary condition for the DG’s inquiry into its conduct.

186. This Court is further reinforced in its conclusion in this regard by the express terms of the statute: Section 26 (1) talks of action by CCI directing the DG to inquire into “<u>the matter</u>”. At this stage, there is no individual; the scope of inquiry is the *tendency of market behaviour, of the kind frowned upon in Sections 3 and 4*. The stage at which CCI can call upon parties to react is when it receives a report from DG stating that there is no material calling for action, it has to issue notice to the concerned parties (i.e. the complainant) before it proceeds to close the case [Sections 26 (5) and (6)]. On the other hand, if the DG’s report recommends otherwise, it is obliged to proceed and investigate further [Sections 26 (7) and (8)]. Again Section 27 talks of different “parties” [“*enterprise or association of enterprises or person or association of persons*”- per Section 27 (a)]. Likewise, the steps outlined in Section 26 are amplified in the procedure

> mandated by Regulation 20 and 21, which requires participation by “the parties”, in the event a report after DG’s inquiry, which is likely to result in an adverse order, under Sections 27-34 of the Act. Consequently, the argument that a specific order by CCI applying its mind into the role played by each of them was essential before the DG could have proceeded with the inquiry, is unmerited and, therefore, rejected.”

4. In view of the above, the petitioner’s challenge to the order dated 26.04.2011 is unmerited.

5. Insofar as the petitioner’s challenge to the order dated 25.08.2014 passed under Section 27 of the Act is concerned, the petitioner has an equally efficacious remedy by way of an appeal before the Competition Commission Appellate Tribunal under Section 53 B of the Act.

6. In view of the above, the present petition is disposed of leaving it open for the petitioner to avail of the alternate remedies. It is clarified that all contentions of the parties are reserved. It is further directed that if the appeal is preferred within a period of six weeks from today, the same would be considered uninfluenced by the question of delay.

5. The petition is disposed of.

VIBHU BAKHRU, J

MAY 16, 2019

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