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

+ W.P.(C) 10956/2016 & CM Nos. 42864/2016 & 42865/2016

MITSUI & CO LTD

..... Petitioner

Through: Mr Amit Sibal, Sr. Advocate with Mr
Aashish Gupta, Mr Aditya
Mukherjee, Mr Ritwik Bhattacharya,
Ms Suprita and Mr Rakshit Jha,
Advocates.

versus

THE COMPETITION COMMISSION OF INDIA Respondent

Through: Mr Samar Bansal, Mr Manan
Shishodia and Ms Devahuti Dathak,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.07.2019

1. The petitioner has filed the present petition, *inter alia*, impugning a show cause notice dated 25.10.2016 issued by the Competition Commission of India (CCI) calling upon the petitioner to show cause why an action under Section 43A of the Competition Act, 2002 (hereafter 'the Act') should not be initiated against the petitioner.
2. Prior to the said show cause notice, a similar show cause notice dated 31.05.2016 was issued by CCI calling upon the petitioner to show cause why penalty under Section 43A of Act should not be imposed. The petitioner had responded to the said show cause notice dated 31.05.2016 by a letter dated 14.06.2016 raising certain preliminary objections. It is the

petitioner's case that the transactions in question are covered under the notification dated 04.03.2011 issued by the Central Government in exercise of powers under Section 54 of the Act. By the said notification, the Central Government has exempted certain enterprises from the provisions of Section 5 of the Act. It is the petitioner's case that the value of the turnover was lower than the threshold as specified in the said notification and, therefore, the petitioner was not required to issue any notification regarding the acquisition (combination).

3. The CCI did not examine the said contention and issued an impugned notice dated 25.10.2016 providing the petitioner an opportunity to submit a comprehensive response and not just limited to the preliminary objections raised by the petitioner.

4. The petitioner contends that it was necessary for the CCI to first adjudicate the preliminary objections before proceeding further. It is also submitted that the CCI has already taken a view that the petitioner would be covered under Section 5 of the Act and, therefore, no purpose would be served of placing that matter before the CCI.

5. Mr Bansal, learned counsel appearing for the CCI countered the aforesaid submissions. First of all, he submitted that there is no requirement for the CCI to decide the matter in a piecemeal fashion. He submitted that the jurisdiction to decide the question whether the transaction in question falls within the exemption notification as claimed by the petitioner, rests with the CCI. He also disputes the contention that CCI has taken any final view in the matter.

6. The contentions advanced on behalf of the CCI are merited.

7. This Court is not persuaded to accept that CCI is required to adjudicate the issues involved in the show cause notice in a piecemeal fashion. In this view, this Court finds no infirmity with the impugned show cause notice calling upon the petitioner to file a comprehensive response.

8. In view of the above, this Court finds no reason to interfere with the impugned notice except to the extent of granting the petitioner further three weeks' time to file a comprehensive response with the CCI. It is also clarified that the CCI shall consider all objections/contentions raised by the petitioner uninfluenced by any prior order or communication including the observations made in the communication dated 07.01.2016 and the order dated 11.05.2016.

9. The petition is disposed of with the aforesaid observations. The pending applications are also disposed of.

10. It is further clarified that this Court has not expressed any opinion as to the merits of the controversy whether the CCI has the jurisdiction to impose the penalty as proposed. And nothing stated in this order should be construed as such.

VIBHU BAKHRU, J

JULY 25, 2019
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