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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 25th July, 2024**Date of decision: 14th August, 2024*

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W.P.(C) 2244/2014 & CM APPL. 31397/2021**JCB INDIA LIMITED AND ANR**

.....Petitioners

Through: Mr Sandeep Sethi, Sr. Adv. with Mr. Karan Singh Chandhiok, Ms. Deeksha Manchanda, Mr. Uday Bali (M: 8800164941), Mr. Jai Hindocha, Ms. Kanika Nayar, Ms. Nidhi Singh & Ms. Riya Kumar, Advs.

versus

THE COMPETITION COMMISSION OF INDIA AND ANR

.....Respondents

Through: Mr. Samar Bansal, Mr. Vedant Kapur (M: 9999986628), Mr. Amit Tayal, Additional DG/CCI; Mr. Devender Prasad, Dy. Dir. (Law) for CCI .
Mr. Anurag Ahluwalia, Mr. Abir Roy, Mr. Vivek Pandey, Mr. Aman Shankar, Mr. Sasthibrata Panda (M: 9346402368) & Ms. Biyanka Bhatia, Advs. for R-2.

And

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W.P.(CRL) 1823/2016 & CRL.M.A. 3305/2019**JCB INDIA LIMITED & ANR**

.....Petitioners

Through: Mr Sandeep Sethi, Sr. Adv. with Mr. Karan Singh Chandhiok, Ms. Deeksha Manchanda, Mr. Uday Bali (M: 8800164941), Mr. Jai Hindocha, Ms. Kanika Nayar, Ms. Nidhi Singh & Ms. Riya Kumar, Advs.

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CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

Background:

2. These are two writ petitions *i.e.*, ***W.P.(C) 2244/2014*** and ***W.P. (Crl.) 1823/2016*** which arise out of disputes between Petitioner No.1-JCB India Limited and Petitioner No.2- JC Bamford Excavators Limited (hereinafter, '*JCB*') on one hand and Respondent No.2- M/S Bull Machines Private Ltd. (BMPL) on the other. Both the companies are manufacturers of '*backhoe loaders*' - the Petitioners' loader being '*3DX BHL*' and BMPL's loader being '*Bull Smart*'. The Respondent No.1 herein, is the Competition Commission of India (hereinafter, '*the CCI*').



i. W.P.(C) 2244/2014- JCB India Limited & Anr. v. The Competition Commission of India & Anr.

3. The genesis of the dispute between the parties in these petitions, is a suit filed by JCB against BMPL seeking an injunction restraining infringement of copyright, piracy of registered design, passing off etc. The said suit being **CS(OS) 2934/2011** was filed on 24th November, 2011 before the Original Side of this Court and an *ex-parte* ad interim injunction was granted in favour of JCB on 25th November, 2011. Vide the said order dated 25th November, 2011, local commissioners were also appointed to visit various premises of BMPL in Bangalore, Coimbatore and Noida for seizure of products.

4. Considering that the suit was based on the registered designs of JCB, the Defendant therein *i.e.*, BMPL chose to challenge the validity of the said designs. BMPL then filed cancellation petitions before the Controller of Designs. However, parallelly, an interim arrangement was arrived at between the parties, which was recorded vide order dated 12th December, 2011. Some settlement negotiations ensued between the parties and BMPL agreed to change the design of some of its parts during negotiations. Various meetings were also held between the two parties.

5. While the said settlement talks were underway, BMPL filed an Information under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, '*the Act*') before CCI in December, 2013 which was registered as Case No. 105/2013. JCB sought intervention by way of an application dated 24th February, 2014 and sought a hearing before the CCI, which was, however,



rejected by the CCI vide order dated 4th March, 2014. The said order reads as under:

“The Commission considered the application dated 24.02.2014 filed by the Opposite Party No.1 for grant of an opportunity of being heard prior to passing of any order under Section 26 of the Act.

The Commission observed that vide order dated 18.02.2014, the Commission has already decided to pass an appropriate order in due course in this case. Therefore, the application filed by the Opposite Party No. 1 for grant of an opportunity of being heard prior to passing of any order under Section 26 of the Act is not maintainable. Hence, the application is dismissed.

The Secretary is directed to inform the Opposite Party No. 1 accordingly.”

6. Thereafter, CCI passed the impugned order dated 11th March, 2014 directing an inquiry under Section 26(1) of the Act. The relevant part is extracted below:

“14. The entire case of abuse as laid and made by the Informant is predicated upon the alleged bad faith litigation initiated by JCB against it alleging infringement of its design rights was totally false and that the said legal proceedings before the Hon'ble High Court of Delhi were only initiated to harass it and prevent launch of 'Bull Smart', which in effect would have competed with backhoe loaders of JCB in the relevant market. Furthermore, it is the case of the Informant that the injunction was obtained on the basis that the Informant had allegedly infringed the registered designs and copyrights of JCB while manufacturing 'Bull Smart', which designs/ copyrights themselves were obtained fraudulently.

15. The Commission observes that the predation through abuse of judicial processes presents an



increasingly threat to competition, particularly due to its relatively low antitrust visibility.

16. In view of the allegations projected in the information and as detailed hereinabove, the Commission is of prima facie opinion that JCB by abusing their dominant position in the relevant market sought to stifle competition in the relevant market by denying market access and foreclosing entry of 'Bull Smart' in contravention of the provisions of Section 4 of the Act.

17. Accordingly, the Commission directs the Director General (DG) to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order."

7. Aggrieved by the above order, the Petitioners' filed the present civil writ being **W.P.(C) 2244/2014** seeking quashing of the order dated 11th March, 2014. Reply affidavits were filed by the Respondents *i.e.*, CCI and BMPL in the present writ emphasising the *malafides* of JCB and stated that JCB sought to amend the original suit **C.S.(OS) 2934/2011** through an amendment application dated 12th May, 2014 due to lack of due diligence. BMPL alleged in the counter-affidavit that the said suit majorly affected the sales and business of BMPL and if not for the said suit, their business would have flourished. CCI in their counter-affidavit asserted that the investigation by CCI focused on the Petitioner's alleged abuse of judicial process to harass its competitors, which was considered as an abuse of dominant position under competition laws. As per CCI, predatory litigation, intended to harass rather than win has been recognized internationally as a violation of competition laws.



8. In the rejoinder submissions, Petitioner No.2 /JCB pleaded that CCI cannot proceed with its investigation till the time High Court has adjudicated the merits of the original suit.

9. In the present writ, vide order dated 4th April, 2014, JCB was granted interim protection in the inquiry of CCI to the extent that if the Director General (DG) of CCI required the presence of any officer for investigation purpose, the same shall be intimated to CCI and leave to call the said person would be taken from the Court and that no final order/report shall be passed either by the CCI or by its Director General.

10. In the meantime, the CCI through Additional Director General (ADG) filed an application before the CMM, Patiala House Court for issuance of search warrants in terms of Section 240A of the Companies Act, 1956 for conducting search at the premises of JCB at Ballabhgarh, Faridabad, Mathura Road, New Delhi. The CMM vide order dated 17th September, 2014 directed issuance of search warrants pursuant to which search was conducted at both factories of JCB.

11. An application was then moved by JCB in the present writ petition seeking interim relief and for stay on the investigation being conducted by the DG CCI, in which the following order was passed. The relevant portion of the order dated 26th September, 2014 reads as under:

“CM No.15787/2014

Issue notice.

The learned counsel for the respondents accept notice.

The Director General of respondent no.1 shall file a personal affidavit indicating the material available and the reasons that prompted him to take the drastic action.



The material placed before the Magistrate also be separately placed before this Court on the next date of hearing. This Court on 04.04.2014 had observed that "a substantial question of jurisdiction of respondent No.1 to entertain respondent No.2's petition arises in the proceedings" and directed that order passed in Telefonaktiebolaget LM Ericsson (Publ) Vs. Competition Commission of India and Anr.: W.P.(C) 464/2014 on 21.01.2014 as modified by Division Bench in LPA 182/2014 would continue to operate till further hearing. In terms of the order, this Court had directed that "while the petitioner may give information as called upon by the Director General of Competition Commission of India, no final order/report shall be passed either by the Competition Commission of India or by its Director General." In light of the aforesaid order and given the manner in which the action has been taken by the respondent, I am prima facie, of the view that further proceedings in the matter before the respondent be stayed. It is, accordingly, so directed. Ali hardware seized by the respondent shall be placed in a sealed cover and kept in safe custody by respondent No.1."

12. Vide order dated 26th September, 2014 further proceedings before the CCI were stayed by the High Court and all the hardware, which was seized, was to be retained in the safe custody of CCI. The said order was challenged by CCI before the Division Bench in **LPA 715/2014** titled **Competition Commission of India v. JCB India Ltd. & Ors.** which was rejected on 2nd December, 2014. The operative portion of the said order reads as under:

"26. Coming to the merits of the case, it is relevant to note that the learned Single Judge initially by order dated 04.04.2014 allowed the Director General to proceed with the investigation, however, granted stay



only to the extent of passing a final order/report. The said order has been accepted and acted upon by both the parties. It appears that the whole grievance of the writ petitioner is only with regard to the manner in which the Director General has been proceeding with the investigation.

The Director General who was directed to file his personal affidavit is not a party to the proceedings before the learned Single Judge and admittedly the matter is being contested by the CCI alone. Be that as it may, since the matter is still pending before the learned Single Judge and the counters are yet to be filed by the CCI and other respondents therein, it is always open to the CCI/appellant herein to file the necessary counter and seek for vacating the order dated 26.09.2014 including the direction that the Director General shall file his personal affidavit. Therefore, according to us, the interference by us at this stage is unwarranted.

27. Accordingly, the appeal is disposed of leaving it open to both the parties to urge their respective contentions before the learned Single Judge. The appellant is at liberty to seek advancement of hearing before the learned Single Judge, if so advised'

13. On 26th May, 2016, the application, which was filed *qua* the proceedings before the CMM, Patiala House was withdrawn with liberty to file fresh petition, which is the second petition being ***W.P.(CRL) 1823/2016***.

ii. W.P.(Crl.) 1823/2016- JCB India Ltd. & Anr. v. The Competition Commission of India & Anr.

14. The present writ petition was filed by the Petitioners challenging the order dated 17th September, 2014 passed by the Chief Metropolitan Magistrate, Patiala House, New Delhi, in Case No. 105/2013 and challenging the investigation searches conducted by the Director General (DG) CCI on



19th September, 2014 at 23/7 Mathura Road, Ballabhgarh, Faridabad premises and office premise at B-1/1-1, 2nd Floor, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi of the JCB.

15. In this criminal writ, the Petitioners averred that the impugned search and seizure conducted by the DG CCI is invalid due to multiple legal violations. Firstly, it was averred that the search and seizure were claimed to be in direct contravention of an order dated 4th April, 2014 passed by this High Court in ***W.P. (C) 2244/2014***, which allowed the DG only to summon local officers of the Petitioners for information and not to conduct any searches. Secondly, the Petitioners assert that no summons or requisition for information was issued before the search, and employees were interrogated without legal representation, violating the High Court's directives. Thirdly, it was averred that the search was carried out by unauthorized personnel, and documents irrelevant to the investigation were seized, demonstrating a disregard for legal procedures and judicial orders.

16. It was further stated that the search and seizure breached the statutory provisions under the Companies Act, 1956, and the Indian Evidence Act, 1872. The Petitioners averred that the DG's application for the search lacked reasonable grounds to believe that documents would be destroyed or altered, a necessary criterion under Section 240A of the Companies Act, 1956. Moreover, it was also asserted that the Companies Act, 1956, was repealed and was replaced by the Companies Act, 2013, making the application and subsequent order invalid. The Petitioners further alleged that the search warrant was obtained through misrepresentation and fraud, and the conduct of the search violated procedural safeguards, including seizing privileged attorney-client communications.



17. In the said writ petition, an application- ***Crl.M.A. 9444/2016*** was moved by the Petitioners seeking interim relief. Vide order dated 2nd June, 2016, the CCI was restrained from utilizing the seized materials for any purpose, which was vacated by the Supreme Court vide order 15th January, 2019 in ***SLP (Crl.) No. 5899-5900 of 2018*** titled ***Competition Commission of India v. JCB India Ltd.***, which directed the High Court to determine the extent of use of seized goods. The relevant portions of the said order is set out below:

“ Having due regard to the provisions of Section 240A and the underlying purpose of Section 41(3), we are of the view that the blanket restraint which has been imposed by the learned Single Judge on the appellants utilising the seized material for any purpose whatsoever was not warranted. The High Court has blocked the investigation on an erroneous construction of the powers of the Director General. The High Court should, in our view, be more circumspect before it restrains an investigation under the Statutory authority of the Director General.

Having said this, we are of the view that since the writ proceedings before the High Court are pending, the ultimate order that we pass would be such as would protect the interests of the appellants in a fair investigation and would not prejudice the case of the respondents on the issue of jurisdiction which has been raised before the Delhi High Court.

Accordingly, we vacate the order of injunction which has been granted by the learned Single Judge on 2 June 2016.

While vacating the injunction, we leave it open to the Delhi High Court, at the hearing of the writ petitions to determine whether and if so to what extent a reference to the seized material should be permitted to be made for the purposes of testing the issue of jurisdiction.”



iii. Intersection of both the writ petitions:

18. In the meantime, while these proceedings were going on, an application under Order XII Rule 6 (*I.A. No. 1733/2015*) was filed by BMPL seeking summary dismissal of the original suit. The said application was rejected and dismissed by this Court on 20th December, 2017. The said order dated 20th December, 2017 rejecting the application was challenged before the Supreme Court in *SLP No(s).7518-7519/2018* titled ***Bull Machines Pvt. Ltd. v. J C Bomford Excavators Limited.***

19. On 9th December, 2019 the Supreme Court referred the matter to mediation during the pendency of the two writs. The disputes between the parties were then resolved before the Mediation Centre of the Delhi High Court and the settlement was taken on record vide order dated 26th August, 2021. The said order of the Supreme Court, reads as under:

“Delay condoned.

These matters were sent for mediation before the Mediation centre at Delhi High court. Fortunately, the matters have been settled between the parties before the Mediation Centre and now an application (I.A. No. 87472 of 2021) has been filed with the following prayers:-

"a. Direct that the Settlement Agreement dated 22.07.2021 arrived between the parties in Mediation to be taken on record and accordingly disposed of:

(i) Dispose of present SLP bearing SLP No. 7518-7519 of 2018 titled as 'Bull Machine Pvt. Ltd. vs. J.C. Bamford Excavators Ltd. & Anr.';

(ii) Dispose of SLP bearing Diary No.13878 of 2018 titled as 'Bull Machine Pvt. Ltd. vs. J.C. Bamford Excavators Ltd. & Anr.';



(iii) Dispose of Civil Suit being J.C. Bamford Excavators Limited & Anr. vs. Bull Machines Pvt. Ltd., {Original CS {OS) No. 2934 of 2011) (C.S {Comm.) No. 610 of 2018) before High Court of Delhi, filed by JCB and all proceedings, actions, and applications relating to these proceedings and any other applications which are the subject matter of the dispute;

(iv) Dispose of Appeal being Bull Machines Pvt. Ltd. vs. The Controller of Patents & Designs & Ors., AID 4 of 2017 before the High Court of Calcutta, challenging the Order of the Controller of Patents dated 30th January 2017 with respect to the JCB India's Design Registrations bearing number 200017 (class 12-16);

(v) Dispose of Appeal being Bull Machines Pvt. Ltd. vs. The Controller of Patents & Designs & ors. AID 5 of 2017 before the High Court of Calcutta, challenging the Order of the Controller of Patents dated 25th January, 2017 with respect to JCB India's Design Registrations bearing number 200018 (class 12-16);

(vi) Dispose of the CCI Proceedings being Bull Machines Pvt. Ltd. vs. JCB India Limited Anr. Case No. 105 of 2013 pending & before the CCI.

Learned counsel for the parties have jointly stated that with regard to the matter pending before the Competition Commission of India (for brevity 'CCI') being Case No.105 of 2013, two writ petitions i.e. W.P. (C) No.2244 of 2014 and W.P. (Crl.) No.1823 of 2016 are pending before the Delhi High Court. Learned



counsel for the parties prayed that in place of prayer No.(vi) in I.A. No.87472 of 2021 in SLP (C) Nos. 7518-7519 of 2018, the parties may be permitted to approach the High Court for early disposal of the aforesaid two writ petitions pending before the Delhi High Court.

In view of the above, the said settlement agreement dated 22.07.2021 is taken on record and these special leave petitions are disposed of and in the manner that in the above quoted prayers, we grant the prayers in Clauses no.(i), (ii), (iii), (iv) and (v). With regard to the Clause No. (vi), we provide that the parties may approach the High Court for early disposal of the W.P. (C) No.2244 of 2014 and W.P. (Crl.) No.1823 of 2016, pending before the Delhi High Court and we hope and trust that the High Court will decide the same as expeditiously as possible."

20. In view of the settlement and the above decision of the Supreme Court, the parties *i.e.*, Petitioners and Respondent No.2 – BMPL, jointly moved an application being **CM APPL.31397/2021** with the following prayers:

“a. bring on record the fact of the successful conclusion of the mediation directed by the Hon'ble Supreme Court and in light thereof, quash, set aside the Impugned Order dated 11 March 2014 passed by Respondent No. 1 under the provisions of Section 26(1) of the Competition Act, 2002 in Case 105 of 2013, and terminate the proceedings/actions emanating from the said Impugned Order;”

Both the writ petitions are now listed before this Court for hearing and disposal.

iv. Submissions:

21. Mr. Sandeep Sethi, Id. Sr. Counsel appearing on behalf of the Petitioners primarily relied upon the decision of the Id. Division Bench of this



Court in *Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India & Anr. [2023:DHC:4783-DB]* to argue that under similar circumstances, Id. Division Bench of this Court has held that once a settlement has been arrived at, the CCI proceedings cannot continue.

22. It is his submission that the original suit litigation was between two private parties *i.e.*, JCB and BMPL. It did not involve any issues such as formation of cartels or anti-competitive combinations or abuse of dominance. He submitted that there was no public impact which was raised in the Information given under Section 19(1) of the Act by BMPL. He further submitted that the jurisdiction of the CCI was triggered under Section 19(1) of the Act on the basis of the design infringement suit which was filed at the Delhi High Court by JCB, terming it as '*sham litigation*'. It is on the basis of this Information that the order dated 11th March, 2014 was passed by the CCI under Section 26(1) of the Act directing further investigation.

23. Id. Sr. Counsel emphasized that once the said complaint itself is withdrawn and the disputes have been settled between the parties after the Supreme Court order dated 26th August, 2021 the substratum of the CCI proceedings is gone. Any fresh action has to commence under Section 19 of the Act or *suo moto* by the CCI but the impugned order dated 11th March, 2014 could no longer stand.

24. In support of Mr. Sethi, Mr. Anurag Ahluwalia, Id. Counsel appearing for BMPL submits that the question whether the litigation is a *sham litigation* ought to be considered only at the final stage. At the interim stage or at the ad-interim stage, the CCI cannot presume that a litigation is sham, as that would amount to prejudging the nature of the litigation pending in a superior Court, which is wholly impermissible.



25. Mr. Karan Singh Chandhiok, Id. Counsel appearing for JCB submitted that an anti-trust defence or an anti-competition defence exists even in a suit. Whether a litigation is vexatious or not, the same has to be decided during Trial. He further submitted that Section 4 of the Act is so broad in its wording that any practice resulting in market access being barred can be termed as abuse of dominance. However, unless and until, the Court conducting trial does not pronounce the same, a presumption cannot be made.

26. Mr. Samar Bansal, Id. Counsel appearing for the CCI submitted that the jurisdiction of the CCI and the impact of CCI proceedings are *in rem*. In an application under Order XXIII Rule 3 CPC, Competition law parameters are not examined and thus the settlement made, whether by coercion or by consent is unknown. In the *Ericsson (supra)* decision, the conflict between the Competition Act, 2002 and the Patents Act, 1970 was considered and the conclusion was that the CCI did not have subject matter jurisdiction. It is his submission that even filing of a vexatious litigation by a dominant player against a small player could also be anti-competitive under certain circumstances and hence a settlement can also be anti-competitive as in the case of reverse payment settlement agreements.

27. He further submitted that in the US, the FTC has enquired into such matters, wherein vexatious litigations were filed for harnessing monetary profits. He referred to foreign decisions to elaborate that the Eleventh Circuit Court in the US supports a legal policy favouring settlements, acknowledging the practical concerns that antitrust scrutiny of reverse payment agreements could necessitate in patent validity litigation. However, it was submitted that the potential for reverse payments to harm competition outweighs these concerns, as such payments often indicate that a patentee seeks to maintain



monopoly profits by preventing competition. Therefore, reverse payments need to be scrutinized under antitrust laws to ensure they do not unjustly hinder competition, despite the general preference for settling disputes. He further stated that litigation and settlements can be means to achieve market dominance.

28. Mr. Bansal further submitted that since, as a matter of principle, a settlement agreement can have an anti-competitive effect, some window has to be left for the CCI to examine such settlements. The question is not in respect of the merits of the suit which has been filed between the parties. The question is whether it would constitute abuse of dominance to file a suit. Reliance is placed by Mr. Bansal, Id. Counsel on the order dated 14th December, 2015 passed by the Id. Single Judge in *W.P.(C) 5604/2015* titled *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India & Anr.*, which led to the Division Bench judgment *Ericsson (supra)* dated 13th July, 2023 wherein CCI's rights to take *suo moto* action was preserved.

29. According to Mr. Bansal, Id. Counsel, an order under Section 26(1) of the Act is merely a starting point of the inquiry. The DG can always look at new facts and the jurisdiction of the CCI is not limited to the facts stated in the information. The order under Section 26(1) of the Act does not limit the powers of the CCI. Mr. Bansal, Id. Counsel relied upon the following decisions of the US Supreme Court to highlight his case:

- i. *Federal Trade Commission v. Actavis Inc. [570 US 756 (2013)]*
- ii. *Professional Real Estate Investors, Inc. v. Columbia Picture Industries, Inc., (PREI) [508 US 49 (1993)]*
- iii. *Grip-pak, Inc. v. Illinois Tool Works, Inc. 694 F. 2d 466 (7th Cir. 1983)*



v. Analysis and Reasoning:

30. The dispute between the parties began when a suit was filed in 2011 by the Petitioner- JCB against BMPL. There are several legal issues which have been raised in these petitions, in respect of the jurisdiction of the CCI. One of the issues which has been raised is as to whether the filing of a design infringement action could constitute an anti-competitive practice or vexatious/sham litigation, so as to lead to a conclusion that the Plaintiff in the infringement action in the original suit (**CS (OS) 2934/2011**) has engaged in abuse of dominance. Initially, an interim order dated 25th November, 2011 was passed in the matter which was later suspended vide order dated 12th December, 2011 and the matter remained pending.

31. The issues that have been raised in the present petitions are multifarious and Id. Counsels have, accordingly, addressed submissions.

32. In the opinion of the Court, however, none of the issues which have been raised in the writ petitions need to be adjudicated at this stage in these matters. The design infringement action instituted in **CS(OS) 2934/2011** has admittedly come to an end owing to the settlement which has been arrived at and recorded vide order dated 26th August, 2021 in **SLP Nos. 7518-7519/ 2018** before the Supreme Court.

33. The clauses of the settlement agreement dated 22nd July, 2021 as extracted above in the order passed by the Supreme Court dated 26th August, 2021 have resulted in the disposal of the following proceedings:

- **SLP No.7518-7519 of 2018** and **SLP bearing Diary No.13878 of 2018**.
- Original Civil Suit numbered **CS(OS) 2934/2011**.
- An appeal *i.e.* before the High Court of Calcutta, challenging the Order



of the Controller of Patents dated 30th January 2017 with respect to the JCB India's Design Registrations bearing number 200017, and

- An appeal *i.e.* before the High Court of Calcutta challenging the Order of the Controller of Patents dated 25th January 2017 with respect to the JCB India's Design Registrations bearing number 200018

34. In respect of the suit and design cancellations etc., the Supreme Court observed clearly that the settlement agreement is taken on record and the SLPs are disposed of. The prayers in respect of the SLPs, the Civil Suit, the appeals were all granted. The settlement agreement also sought disposal of the CCI proceedings in Case No. 105 of 2013 pending before CCI. However, insofar as the CCI proceedings were concerned, the Supreme Court directed the parties to approach the High Court for early disposal of the present writ petitions ***W.P. (C) No.2244 of 2014*** and ***W.P. (Crl.) No.1823 of 2016***.

35. The spirit of mediation in any dispute is for bringing finality to a matter. Mediations and settlements play a crucial role in dispute resolution by providing a faster, more cost-effective, and less adversarial alternative to litigation. These mechanisms help preserve business relationships, reduce the burden on the judicial system, and allow parties to reach a mutually agreeable solutions tailored to their specific needs.

36. The CCI argues that despite the settlement, the inquiry before the CCI should continue in order for the CCI to explore if there is a chance of the settlement being anti-competitive. If the CCI's argument is accepted, it could mean that despite the settlement, the CCI can proceed with an inquiry under Section 26 of the Act, thereby prejudicing the settlement. This possibility undermines the core principles of mediation by creating uncertainty and instability for the parties involved.



37. The potential for the CCI to continue an inquiry after a settlement has been reached, could even jeopardize the settlement, dissuading parties from opting for mediation in the first place. It could lead to a lack of trust in the mediation process, as parties may fear that their efforts to settle disputes amicably would be disregarded. Moreover, settlements in general being agreements voluntarily agreed to between parties, unless there is an extraordinary situation, they cannot be permitted to be reopened – so as to ensure ‘FINALITY’ and ‘CLOSURE’. Furthermore, the threat of continued investigations by the CCI could compel parties to engage in prolonged and costly legal battles, defeating the purpose of settlements.

38. The Information under Section 19(1) of the Act in the present matter itself is clearly based on the filing of the infringement suit **CS(OS) 2934/2011** by JCB against BMPL. A perusal of the Information would show that the first and foremost paragraph in the Information relating to the dispute reads as under:

“10. The present case involves a clear and deliberate abuse of judicial process by JCB to deny market access to Bull Machines; an indigenous, cheaper and a more efficient competitor. The present case also involves an abuse of the regulatory process by JCB, by attempting to "evergreen" its fraudulently obtained intellectual property rights.

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12. A cursory view of the designs in question will demonstrate the mischief perpetrated by JCB. First, the images relied upon by JCB to obtain the injunction clearly demonstrate the misrepresentations on various counts that were made by JCB before the Hon'ble Delhi High Court in order to obtain the ex parte ad interim injunction. For instance:

*(i) **Annexure 12** demonstrates how JCB took images of*



its own product, misrepresented to the Hon'ble Delhi High Court one of the said images as a part belonging to Bull Smart, and placed it before the Hon'ble Delhi High Court to obtain the ad interim injunction. It is noteworthy, that (a) the image of the Bull Smart part (which would have shown the difference in design from the JCB part) was never placed before the Hon'ble Delhi High Court, and (b) the bucket design over which an infringement has been claimed by JCB was, in fact shown as a part of the patent owned by Bull Machine and was in use, many years well before the design registration was obtained by JCB.

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13. Second, JCB cannot claim a valid design registration over the disputed components because the disputed components were already in production by JCB prior to the design registrations and the images were well published in the newspapers, and therefore, could not be eligible for design registration. In this respect, proceedings challenging the design registration are ongoing before the concerned authority..”

39. The above averments in the Information relate to an alleged misleading stance taken by JCB before the Delhi High Court. The question whether JCB's stance is misleading or not would have been for the High Court to decide, not the CCI. Thereafter, the Information makes an reference to the ad-interim injunction dated 25th November, 2011 granted by the Delhi High Court. The allegation is that the litigation in itself is an *overall diabolical and insidious strategy* and is a misuse of judicial process. In the entire Information, the repeated allegations are of abuse of judicial process and regulatory process. Details of various hearings in the Delhi High Court are set out in the Information. The consequences of the litigation are set out in the Information and it is argued that JCB abused its dominance in view of the said



litigation, which is termed as a ‘predatory litigation’. It deserves highlighting that no issues of anti-trust were addressed in the Information provided by BMPL such as issues regarding relevant geographical market, cartel formation or with regard to collusive arrangements, controlling of shares in markets, refusal to deal, tie-in-arrangements, bid-rigging etc. No issues regarding anti-competitive practices were also raised in the information, apart from the allegation of abuse of dominant position in the garb of filed injunction suit and being lead players in the market.

40. Reliance was placed by BMPL, in the said Information, upon certain foreign judgments to argue that sham litigation can be the basis of anti-trust laws. The further argument was that the intellectual property *i.e.*, designs were obtained by fraud. BMPL also contended that not only does sham litigation violate antitrust laws, but it also leverages fraudulently obtained IP rights, thereby compounding the anti-competitive impact.

41. On the basis of such Information, the order under Section 26(1) of the Act was passed by the CCI. In the impugned order dated 11th March, 2014, under Section 26(1) of the Act, the CCI itself captures the allegations as under:

“14. The entire case of abuse as laid and made by the Informant is predicated upon the alleged bad faith litigation filed by JCB before the Hon'ble High Court of Delhi. It is the case of the Informant that the bad faith litigation initiated by JCB against it alleging infringement of its design rights was totally false and that the said legal proceedings before the Hon'ble High Court of Delhi were only initiated to harass it and prevent the launch of 'Bull Smart', which in effect would have competed with backhoe loaders of JCB in the relevant market. Furthermore, it is the case of the



Informant that the injunction was obtained on the basis that the Informant had allegedly infringed the registered designs and copyrights of JCB while manufacturing 'Bull Smart', which designs/ copyrights themselves were obtained fraudulently.

15. The Commission observes that the predation through abuse of judicial processes presents an increasingly threat to competition, particularly due to its relatively low anti-trust visibility.”

42. A conjoint reading of the Information and the impugned order dated 11th March, 2014 leaves no manner of doubt that the core of the impugned order of the CCI, is the filing of the Delhi High Court infringement proceedings which were termed as ***bad faith litigation*** and nothing more.

43. This being the position, permitting continuation of the proceedings before CCI after the core dispute having been settled would in the opinion of this Court be contrary to the spirit of mediation itself. Mediation aims to resolve disputes efficiently and amicably, bringing finality to the matter. Allowing CCI to proceed with an inquiry post-settlement would undermine this fundamental purpose by reopening issues that the parties have already agreed upon and resolved. It would also be a *carte blanche* to perpetuate the CCI inquiry and pressurize the opposing party. Moreover, the question whether the suit was maintainable is not for CCI to decide. The CCI also cannot decide whether the designs registrations are valid or not. The former is in the domain of the High Court. The latter is in the domain of the Patent and Design office.

44. The CCI proceedings in the present matters cannot be permitted to hang like a Sword of Damocles on both parties *i.e.*, JCB and BMPL when both parties have themselves sought disposal of the CCI proceedings by a



joint application *C.M. Appl. 31397/2021*. The CCI in these facts cannot adopt an attitude which could cause prejudice to the business and commercial interest of the parties who have brought an end to the commercial dispute.

45. Continuation of the CCI's proceedings would in effect mean participation by both parties in the inquiry, production of documents, adducing of evidence, reports being prepared by the CCI which could also result in various unintended consequences to the parties. Such a consequence is not even contemplated under the Act. In essence, the CCI's over-involvement, post-settlement would disrupt the harmony and finality that mediation seeks to achieve, undermining trust in both the mediation process and the regulatory body itself. Competition authorities ought to respect the boundaries of their jurisdiction, ensuring that their role complements rather than conflicts with the resolution of disputes, thereby maintaining a fair competitive market environment without overstepping their mandate.

46. The dispute between the parties was a design infringement action which has been settled. There is no broader impact that this settlement has over the society at large or public at large.

47. Mediation processes and settlements have to be recognised and acknowledged by all Courts/fora where disputes are pending. Regulatory authorities such as the CCI are no exception to the same. It is imperative that the CCI and similar bodies honour the outcomes of mediation and respect the settlements reached between parties. By doing so, they not only uphold the legitimacy and reliability of the mediation process but also foster a legal environment where parties are encouraged to resolve disputes amicably without fear of subsequent regulatory interference. Furthermore, when



regulatory authorities like the CCI respect mediation settlements, it prevents the undermining of negotiated agreements and protects parties from the threat of ongoing inquiries. This recognition reinforces the concept that mediation is not merely a preliminary step but a conclusive process that provides binding and enforceable outcomes. The Supreme Court in ***Salem Advocate Bar Association, T.N. v. Union of India [(2005) 6 SCC 344]*** laid emphasis on the concept of settlement while dealing with Section 89 of the CPC, as set out below:

“55. As can be seen from Section 89, its first part uses the word “shall” when it stipulates that the “court shall formulate terms of settlement”. The use of the word “may” in later part of Section 89 only relates to the aspect of reformulating the terms of a possible settlement. The intention of the legislature behind enacting Section 89 is that where it appears to the court that there exists an element of a settlement which may be acceptable to the parties, they, at the instance of the court, shall be made to apply their mind so as to opt for one or the other of the four ADR methods mentioned in the section and if the parties do not agree, the court shall refer them to one or the other of the said modes. Section 89 uses both the words “shall” and “may” whereas Order 10 Rule 1-A uses the word “shall” but on harmonious reading of these provisions it becomes clear that the use of the word “may” in Section 89 only governs the aspect of reformulation of the terms of a possible settlement and its reference to one of ADR methods. There is no conflict. It is evident that what is referred to one of the ADR modes is the dispute which is summarised in the terms of settlement formulated or reformulated in terms of Section 89.”

48. Further, in the case of ***Vikram Bakshi and Others v. Sonia Khosla (Dead) by Legal Representatives [(2014) 15 SCC 80]***, the Supreme Court



also stated the importance of mediation proceedings and held as under:

“16. According to us it would have been more appropriate for the parties to at least agree to resort to mediation as provided under Section 89 CPC and make an endeavour to find amicable solution of the dispute, agreeable to both the parties. One of the aims of mediation is to find an early resolution of the dispute. The sooner the dispute is resolved the better for all the parties concerned, in particular, and the society, in general. For parties, dispute not only strains the relationship but also destroys it. And, so far as society is concerned it affects its peace. So what is required is resolution of dispute at the earliest possible opportunity and via such a mechanism where the relationship between individual goes on in a healthy manner. Warren Burger, once said:

“The obligation of the legal profession is ... to serve as healers of human conflict ... we should provide mechanisms that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about.”

MEDIATION is one such mechanism which has been statutorily brought into place in our justice system. It is one of the methods of alternative dispute resolution and resolves the dispute in a way that is private, fast and economical. It is a process in which a neutral intervenor assists two or more negotiating parties to identify matters of concern, develop a better understanding of their situation, and based upon that improved understanding, develop mutually acceptable proposals to resolve those concerns. It embraces the philosophy of democratic decision-making [Alfin, et al., *Mediation Theory & Practice* (2nd Edn., 2006) Lexis Nexis].

17. Thus, mediation being a form of Alternative Dispute Resolution is a shift from adversarial litigation. When



the parties desire an on-going relationship, mediation can build and improve their relationships. To preserve, develop and improve communication, build bridges of understanding, find out options for settlement for mutual gains, search unobvious from obvious, dive underneath a problem and dig out underlying interests of the disputing parties, preserve and maintain relationships and collaborative problem solving are some of the fundamental advantages of mediation. Even in those cases where relationships have turned bitter, mediation has been able to produce positive outcomes, restoring the peace and amity between the parties.

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19. This Bench is of firm opinion that mediation is a new dimension of access to justice. As it is one of the best forms, if not the best, of conflict resolution. The concept of Justice in mediation is advanced in the oeuvres of Professors Stulberg, Love, Hyman, and Menkel-Meadow (Self Determination Theorists). Their definition of justice is drawn primarily from the exercise of party self-determination. They are hopeful about the magic that can occur when people open up honestly and empathetically about their needs and fears in uninhibited private discussion. And, as thinkers, these jurists are optimistic that the magnanimity of the human spirit can conquer structural imbalances and resource constraints.”

49. The sanctity of settlements has been upheld in various field of law from cases with respect to family settlements (as held in ***Kale &Ors. v. Deputy Director of Consolidation &Ors.*** [(1976) 3 SCC 119] and the recent decision ***Sita Ram Bhama v. Ramvatar Bhama*** [AIR 2018 SC 3057]) as also in other laws such as commercial disputes, labour disputes etc. In one such dispute under the Industrial Disputes Act, 1947, the Division Bench of Madras High Court in the matter of ***United Labour Federation, (represented by its***



General Secretary, K. Nithyanandan), Chennai v. Union of India (represented by its Secretary to Government, Ministry of Surface Transport Department of Shipping, Port Department), New Delhi, [2002 (2) L.L.N. 1128] held as under:

“There is a sanctity for the statutory settlement entered under the Industrial Disputes Act. Such statutory settlement is binding on the parties thereto. Neither party can wriggle out of the settlement so long as the settlement is in force. In Tata Engineering and Locomotive Company, Ltd. v. Their workmen, [1982 (1) L.L.N. 28], there was a settlement between the labour and the management and that was reduced to writing. Some workmen who were not parties to the settlement had ratified the same by their individual letters. Under the settlement wage-structure was arrived at. Some of the workmen who were parties to the settlement turned back and questioned the settlement on the ground that wage-structure was not reasonable, and it could have been on the higher side, and that in any event such workmen who were not originally parties to the settlement, but later on ratified the same were not bound by the settlement. Both the said contentions found favour by the Labour Court, and accordingly, the settlement was set aside. The matter finally reached the Supreme Court, and it was held that merely because some workers have resented later, the settlement cannot be vitiated and that it was binding on all the workers, both the members of the union on the date of settlement, as also the workmen who had ratified the settlement later. It was held by the Supreme Court that, in Para. 10, at page 31:

The settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication. If the



settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers were not parties to it or refused to accept it or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. It was also held that the settlement has to be accepted or rejected as a whole and it should not be scanned in bits and pieces and hold that some parts are good and acceptable and others bad unless it can be demonstrated that the objectionable portion is such that it completely outweighs all other advantages gained. In Barauni Refinery Pragatisheel Shramik Par is had v. Indian Oil Corporation, Ltd., [1990 (2) L.L.N. 288], it was held that, in Para. 9, at page 295:

“A settlement under S. 18 of the Industrial Disputes Act arrived in the course of conciliation proceedings with a recognised trade union, will be binding all workmen of the establishment, even those who belong to minority union, which had objected to the same and to that extent, it departs from the ordinary law of contract. It was held that the object obviously is to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority-union from scuttling the settlement and that there is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing



the settlement but also on others. It was also held that a settlement arrived at in the course of conciliation proceedings is put on par with the award made by an adjudicatory authority.””

50. A settlement has a finality attached to it and without such finality parties may be dissuaded from settling disputes. The examination of settlements is a power which may exist with the CCI, but under the existing scheme of the Act, unless a settlement is alleged as being abuse of dominance, the same would not be liable to be examined under Section 4 of the Act. No allegation has been made by any party that the settlement is an abuse of dominance. A theoretical power with CCI to examine settlements cannot lead to uncertainty for the parties, and their commercial behaviour. In fact both parties jointly seek disposal of the petitions and closure of the proceedings before CCI, in view of the settlement.

51. Moreover, in the present context, if there is an allegation that a particular settlement or an agreement is anti-competitive, then the same may fall in a completely different category as may be contemplated under Section 3 of the Act. Under Section 3 there is a clear exception to disputes relating to the intellectual property. Section 3 of the Act is set out below for reference:

“Anti-competitive agreements.

(1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of



persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

- (a) directly or indirectly determines purchase or sale prices;*
- (b) limits or controls production, supply, markets, technical development, investment or provision of services;*
- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;*
- (d) directly or indirectly results in bid rigging or collusive bidding,*

shall be presumed to have an appreciable adverse effect on competition.

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Provided further that an enterprise or association of enterprises or a person or association of persons though not engaged in identical or similar trade shall also be presumed to be part of the agreement under this sub-section if it participates or intends to participate in the furtherance of such agreement.]

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(4) Any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons] at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- (a) tie-in arrangement;*
- (b) exclusive 3[dealing] agreement;*
- (c) exclusive distribution agreement;*



(d) refusal to deal;
(e) resale price maintenance,
shall be an agreement in contravention of sub-section (1)
if such agreement causes or is likely to cause an
appreciable adverse effect on competition in India.
[Provided that nothing contained in this sub-section shall
apply to an agreement entered into between an enterprise
and an end consumer.]

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(5) **Nothing contained in this section shall restrict--**
(i) the right of any person to restrain any infringement
of, or to impose reasonable conditions, as may be
necessary for protecting any of his rights which have
been or may be conferred upon him under--

- (a) the Copyright Act, 1957 (14 of 1957);
- (b) the Patents Act, 1970 (39 of 1970);
- (c) the Trade and Merchandise Marks Act, 1958
(43 of 1958) or the Trade Marks Act, 1999 (47 of
1999);
- (d) the Geographical Indications of Goods
(Registration and Protection) Act, 1999 (48 of
1999);
- (e) the Designs Act, 2000 (16 of 2000);
- (f) the Semi-conductor Integrated Circuits
Layout-Design Act, 2000 (37 of 2000);
- (g) any other law for the time being in force relating
to the protection of other intellectual property
rights.

(ii) the right of any person to export goods from India to
the extent to which the agreement relates exclusively to
the production, supply, distribution or control of goods or
provision of services for such export."

52. While intellectual property rights recognise, grant and enforce monopoly rights, under certain circumstances, competition law does not encourage monopolies. The recognition of monopolies under IP laws is for the purpose of encouraging innovation and creativity. The same also has a



statutory basis. Every IP dispute cannot be converted into a competition dispute as it would severely impinge upon statutory rights recognised under various statutes protecting intellectual property. Moreover, any attempt to hijack an IP dispute from the jurisdiction of a High Court or a commercial court to the Competition authority has to be viewed with caution and in a manner so as not to tread upon the forum seized of the IP dispute.

53. Allegations of ‘*sham litigation*’ or predatory litigation as being an attempt to abuse dominance, especially when Courts are still seized of the IP dispute, ought to be discouraged. If a Court renders a finding that a litigation was a ‘*sham litigation*’ or an abuse of process, in such a situation, approaching the CCI may be justified. The foreign decisions cited by the CCI are under circumstances where there were allegations that a particular settlement was anti-competitive in nature or was contrary to public interest – such as preventing affordable medicines from coming into the market¹. Such a situation does not arise in the present case.

54. In the present dispute also the substratum of the dispute being the design infringement action filed by JCB for protection of its registered designs, the said suit having itself being settled, in the opinion of this Court, the CCI proceeding cannot continue and deserves to be disposed of. This is in line with the decision of the Division Bench in *Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India & Anr. [2023:DHC:4783-DB]* where the Court categorically holds that once the settlement is reached, the substratum of the proceedings itself no longer exists. The relevant portion of the said judgment is set out below:

¹*Federal Trade Commission v. Actavis Inc. [570 US 756 (2013)]*- which is a case concerning Reverse Payment Settlements to enable withdrawal of challenge to a patent.



*“58. For the above reasons, the 2015 Judgement is sustained. The CCI’s proceedings deserve to be quashed for want of power. **The Court is of the view that once a settlement has been reached between the informant and person against whom the information is filed, the very substratum of the proceedings by CCI is lost and the 2015 Judgement has rightly quashed the same.** The question of liberties granted by the 2015 Judgement being sustainable do not arise, given as this Court has already held that CCI has no power to conduct the investigation that was impugned.”*

55. Needless to add, the powers of the CCI to proceed under its *suo moto* powers or on the basis of any other information which may be filed before it in accordance with law is fully preserved.

56. With these observations, the application is allowed. The settlement dated 22nd July, 2021 is taken on record. The impugned order dated 11th March, 2014 under Section 26(1) of the Act is set aside. The proceedings before the CCI in Case No. 105/2013 are accordingly terminated. The order dated 17th September 2014 passed by the Id. Metropolitan Magistrate is also set aside. Any material seized by CCI shall not be used in any other proceedings and be returned to JCB.

57. Both the writ petitions are allowed in the above terms. Applications, if any, are also disposed of accordingly.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

AUGUST14, 2024/dk/dj/bh