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

Reserved on: 29th August, 2019
Decided on: 12th September, 2019

\+ **LPA 137 of 2014**

COMPETITION COMMISSION OF INDIA ..... Appellant
Through: Mr Samar Bansal, Ms Devahuti Pathak, Mr Manan Shishodia, and Mr Sachin Mishra, Advocates.

versus

M/s. GRASIM INDUSTRIES LTD. ..... Respondent
Through: Mr Dhruv Mehta, Senior Advocate with Mr. Ajit Warrier, Mr.Ashish Gupta and Mr Sharad Kharra, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

J U D G M E N T

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Dr. S. Muralidhar, J.:

Introduction

1.1 The Competition Commission of India ('CCI') has filed this appeal against the impugned judgment dated 17th December, 2013 passed by the learned Single Judge disposing of W.P. (C) No.4159/2013 filed by the Respondent Grasim Industries Limited ('GIL').

1.2 In the said writ petition, GIL had questioned an order dated 30th May, 2013 passed by the CCI, dismissing GIL's application, seeking the quashing

of a report dated 26th February 2013, submitted by the Director General ('DG') of the CCI, stating that GIL had abused its dominant position, in terms of Section 4 of the Competition Act, 2002 ('Act').

1.3 The learned Single Judge has, in the impugned judgment, held that inasmuch as the direction issued by the CCI to the DG was to investigate violations of Section 3(3) (a), (b) and (c) of the Act, pertaining to anti-competitive agreements, by manufacturers of Man Made Fibre ('MMF'), including GIL, the DG could not have investigated into any violation by GIL of Section 4 of the Act which pertained to abuse of dominant position. The learned Single Judge clarified that CCI would be entitled to treat the aforesaid part of the report of the DG as 'information' under Section 19 of the Act and proceed accordingly if the CCI was of the opinion that there existed a *prima facie* case of contravention by GIL of Section 4 of the Act.

1.4 In the judgment that follows, this Court reverses the judgment of the learned Single Judge and holds that the DG was within his powers in terms of Section 26 (1) of the Act read with Regulations 18, 20 and 41 of the CCI (General) Regulations 2009 (CCI Regulations), to submit a report regarding the violation of Section 4 of the Act by GIL, although the direction issued by the CCI under Section 26 (1) of the Act was with reference to information pertaining to violation of Section 3(3) (a) , (b) and (c) of the Act.

Background facts

2. On 30th May 2011, 'information' came to be filed with the CCI under Section 19 (1) of the Act that all manufacturers of MMF, including GIL, had

imposed anti-competitive restrictions on the Indian textile industry. GIL is a manufacturer of Viscose Staple Fibre ('VSF'), a variety of MMF.

3. On 22nd June 2011, CCI passed an order under Section 26 (1) of the Act, concluding that the aforementioned information *prima facie* disclosed violation under Section 3(3)(a), (b) and (c) of the Act by the manufacturers of MMF. The CCI, therefore, directed the DG to investigate the matter and submit a report within 60 days.

4. Between 30th November, 2011 and 17th December, 2012, GIL led evidence and provided information called for by the DG. On 26th February 2013, the DG submitted a report to the CCI, holding that none of the parties named in the information had committed any violation under Section 3 of the Act. It was, however, observed by the DG in his report that GIL had abused its dominant position in the market in terms of Section 4 of the Act.

Sections 3 and 4 of the Act

5. At this stage, it may be noted that Section 3(3) of the Act deals with 'anti-competitive agreements' entered into between enterprises or association of enterprises or persons or associations of persons, including cartels engaged in identical or similar trade of goods, which:

(a) directly or indirectly determine purchase of sale prices;

(b) limit or control production, supply, markets, technical development, investment or provisions of services;

(c) share the market or source of production or provisions of services by way of allocation of geographical area of the market, or or type of goods or

services, or number of customers in the market any other similar way; and (d) directly or indirectly results in a bid-rigging or collusive bidding. In the event of any of the above situations existing, there shall "be presumed to have an appreciable adverse effect on competition".

6. Section 4 of the Act is titled 'abuse of dominant position'. Section 4 (1) of the Act states that no enterprise or group shall abuse its dominant position. Explanation (a) thereto defines 'dominant position' to mean "a position of strength enjoyed by an enterprise in the relevant market in India which enables it to:

(i) Operate independently of competitive forces prevailing in the relevant market; or

(ii) Affect its competitors or consumers or the relevant market in its favour.

7. It is thus seen that the focus of Section 4 is on a particular enterprise or group. 'Enterprise' is defined under Section 2 (h) of the Act to mean a person or a department of the government engaged in any activity relating to production, storage, supply, distribution, acquisition or control of articles or goods or the provision of services of any kind. Under Section 2 (l) of the Act, a person includes a company. It is thus seen that the scope of enquiry under Section 4 of the Act would be different from the scope under Section 3 of the Act. However, it is entirely possible that, as has happened in the present case, while investigating activities attracting Section 3 of the Act, the DG may come across 'information' that *prima facie* reveals activities attracting Section 4 of the Act.

CCI's directions under Section 26 (1) of the Act

8. The report dated 26th February, 2013 of the DG was pursuant to the following directions issued by the CCI on 22nd June, 2011:

> "11. On thorough Perusal of the entire material submitted by the informant, the Commission, *prima facie,* finds substance in the submissions made in the Information supported by the material filed by the Informant.
>
> 12. After giving thoughtful consideration on the matter, the Commission is of the opinion that. there exists a. prima facie, case to direct the Director General to cause an investigation into the matter.
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> 13. Accordingly, the Commission directs the Director General to conduct an investigation into the matter and to submit his report within a period of 60 days from the communication of this order.
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> 14. The Secretary is directed to send a copy of the information to the Office of the Director General in terms of the relevant provisions of the Act and the Regulations made thereunder."

DG's Report

9. The DG submitted a report dated 26th February, 2013 in which, apart from the three issues framed for investigation in respect of violations under Sections 3(3) (a), (b) and (c) of the Act, a fourth issue was framed on "whether GIL had abused its dominant position, by directly or indirectly imposing any unfair or discriminatory conditions in purchase or sale of VSF or imposing unfair or discriminatory price in purchase or sale, or by limiting production, or by indulging in practices resulting in denial of market access in any manner?" After analysing the replies given by GIL on 31st August,

2011, the DG came to the following conclusion:

> "In the light of the above submissions, analysis and discussions, it is concluded that there is no violation of the provisions of section 3(3)(a), 3(3)(b) or 3(3)(c) of the Act 'by the Grasim looking to the fact that Grasim is the sole producer, of VSF and hence there can be no agreement in existence or any tacit collusion or understanding within the market so that any such provisions can be invoked."

10. From paragraph 9.49 of the report, the DG began discussing the allegations relating to abuse of dominant position by GIL. The conclusions reached in paragraph 9.56 of the report in this regard read as under:

> "After the examination of the submissions by the Ops, various spinners as well as the informant and also obtaining details/data wherever found necessary and looking to the allegations and its analysis, it was found that GIL is a dominant enterprise and has abused its dominant position with respect to the following:
>
> > (1) The GIL has kept dual basic price and differential discounts. for the sale of VSF, by imposing unfair conditions relating to subsequent production and sale of yarn (either domestic or export) by virtue of its dominance and violated the provisions of section 4(2) (a) of the Act.
> >
> > (2) The GIL provides segmental discounts for export or domestic consumption on the condition that a minimum of 35% content of VSF is necessary in yarn. In case the content of VSF is less than that, no discounts are offered. GIL obtains proof of production/export before providing discounts. Customers have no choice but to manufacture the yarn in the given manner to obtain such discount. Otherwise they have to pay higher prices for the same VSF. GIL being dominant in the relevant market have imposed such unfair conditions and violated the

provisions of section 4(2)(a) of the Act.

(3) A continuity discount/rebate is given by GIL with a condition that the yarn manufacturer shall not purchase VSF from anybody (including imports) other than GIL. The policy of GIL in this regard is not transparent and through such conditions, the GIL prevents its customer from importing VSF. Putting such unfair conditions and limiting or restricting the market for yarn manufacturers for imports of VSF is violative of the provisions of section 4(2)(a) and 4(2)(b) of the Act.

(4) The GIL sells VSF to the yarn manufacturers directly. It is not sold to the traders. The production, composition of yarn and its quantity is monitored by the GIL to see that VSF is not traded in the relevant market. The GIL stifles the competition by preventing trading of VSF in the relevant market and restricts the choice of customers to buy VSF from alternate source in India. Accordingly putting such unfair conditions in sales and restricting the market, GIL Is violating the provisions of section 4(2)(a) and 4(2)(b) of the Act.

(5) GIL provides discounts on lifting or consumption of VSF, whichever is lower. Through this unfair condition on discount, GIL not only monitors the sale but also the production of yarn and prevents trading of VSF which is violative of the provisions of section 4(2)(a) of the Act.

(6) The GIL has also found to be maximizing its profits through imposing unfair conditions and abusing Its dominant position. By taking the advantage of import landed price and Imposing unfair conditions in pricing and sales, the high profit margins are earned, which is not. passed on to the customers and thereby violating the provisions of section 4(2)(a) of the Act."

Impugned order of the CCI

11. The investigation report was considered by the CCI on 13th March, 2013, and it decided to send a copy thereof to the informant and opposite parties, including GIL, for the replies and objections. It was clarified at the meeting on 30th April, 2013 that since the DG had found a violation of the Act only by GIL, the opposite party would be only GIL.

12. Thereafter on 30th May, 2013, the CCI passed the impugned order, whereby the plea of GIL that the investigation of the DG was limited to examining violations of Sections 3 of the Act and that the DG could not have *suo motu* enlarged the scope of investigation into violation of Section 4 of the Act, was negatived.

13. Referring to the decision of the Supreme Court in ***Competition Commission of India v. Steel Authority of India Limited (2010) 10 SCC 744***, the CCI held that at the initial stage, the DG has to only give a *prima facie* view whether the case was worth investigation or not. Referring to Regulations 18 (1) and 20 (4) of the Competition Commission of India (General) Regulations, 2009 ('CCI Regulations'), the CCI held that the DG had to submit a report on each of the allegations made in the 'information' or the 'reference', as the case may. It was further held as under:

> "10. The scope of investigation to be made by the DG cannot be limited by the prima facie opinion expressed by the Commission. Neither, the DG is bound by the views given by the Commission. While the Commission may have found a matter prima facie showing violation of the provisions of the Act, DG may come to a contrary conclusion. Similarly, the Commission may form a view (prima facie) on the basis of

> facts available to it regarding violation of one or the other provisions of the Competition Act. DG on investigation may find the violations in respect of different provisions of the Competition Act."

14. The CCI further held that the directions given to the DG under Section 26(1) of the Act are only meant to initiate the process of investigation and the purpose of Section 26(1) was neither to scuttle nor to limit the investigation. As regards the submission of GIL that it was never put to notice by the DG about the potential violation of Section 4 of the Act being investigated, and that it had denied an opportunity to present its arguments in relation to such violation, the CCI observed that the questionnaire sent by the DG to GIL "was self-explanatory and reflected the direction of investigation". It was noted that GIL had been given a copy of the report of the DG and that it had the opportunity to file the relevant documents before the CCI. The order concluded by observing that the CCI would consider all those documents and evidence filed by GIL with its objections to the report of the DG.

Single Judge's impugned judgment

15. W.P.(C) No.4159/2013 challenging the aforementioned order of the CCI was then filed by GIL in this Court. When it was first listed on 5th July, 2013, while directing notice to be issued in the writ petition, the learned Single Judge directed, noting the statement of learned counsel appearing for the CCI, that the CCI would not take up the matter for hearing till the following date.

16. Ultimately, orders were reserved on 6th December, 2013 and the impugned judgment was passed by the learned Single Judge on 17th December, 2013. The learned Single Judge held as under:

(i) If the investigation by the DG is based upon information which the CCI did not consider while forming its opinion with respect to the existence of a *prima facie* case, the DG's action would be contrary to the scheme of the Act.

(ii) Regulation 18 (4) of the CCI Regulations requires the DG to give a report containing its findings on each of the allegations in the information or the reference, as the case may be. This was yet another indicator that the report of the DG was to be confined to the allegations in the information or the reference received by the CCI and he is "not competent to travel outside the said information or reference".

(iii) Under the scheme of the Act, the enterprise against whom the information is given to the CCI is entitled to defend itself, first before the DG during the course of investigation, and in case the DG is not satisfied and reports a contravention of the provisions of the Act, then before the CCI, during the course of enquiry by the CCI.

(iv) Had the information, alleging contravention of Section 4 of the Act by GIL, been considered by CCI, for forming its opinion under Section 26(1) of the Act, and the DG been directed to cause an investigation to be made into the said information, GIL could have requested the DG, under Regulation 41 (4) of the CCI Regulations, to permit it to lead evidence to satisfy the DG that no contravention of Section 4 of the

Act had been committed by it. Since the part of the information provided to the DG during the course of investigation alleging contravention by GIL of Section 4 of the Act was not available to the CCI, it was not the subject matter of the directions issued by the CCI to the DG. Consequently, GIL had no occasion to make an application to the DG under Regulation 41(4) and (5) of the CCI Regulations.

(v) Although there was no power given to the CCI under the Act to quash or set aside the report of the DG, if the DG carried out an investigation into an information, which was not considered by the CCI, while forming its opinion under Section 26 (1) of the Act, CCI was entitled to reject that part of the report, which pertained to such investigation.

(vi) The report of the DG, to the extent that it reported a contravention of Section 4 of the Act by GIL, could not be forwarded to GIL under Section 26 (4) of the Act, nor could the CCI hold a further enquiry into it under Section 26 (8) of the Act, or proceed to pass an order on its basis under Section 27 of the Act. However, CCI in its discretion could treat the said part of the report as 'information' under Section 19 of the Act (concerning *prima facie* contravention of Section 4 of the Act) and direct the DG to undertake an investigation into such information.

This appeal

17. While admitting this appeal on 7th February, 2014, this Court passed the following order:

"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."

18. On 15th February, 2016, the interim order was made absolute during the pendency of the appeal.

Submissions on behalf of CCI

19. Mr Samar Bansal, learned counsel appearing for the CCI, submitted as under:

(i) The 'information' that the CCI received under Section 19 (1) of the Act was different from a 'complaint'. When information is either received by the CCI or taken note of *suo moto*, in respect of the violation of the provisions of the Act, such initial information is considered, and a *prima facie* view is taken by the CCI.

(ii) In the present case the directions by the CCI to the DG was to cause an investigation 'into the matter'. The expression 'matter' was wide enough to include a violation not limited to Section 3 of the Act, but any other violation of the Act, which emerged in the course of investigation.

(iii) If the view of the learned Single Judge is accepted, it would place a very narrow interpretation on the scope of the 'information' that

triggers the order under Section 26 of the Act and equates it to a 'petition/complaint'. The legislative intent was not to place the burden of proof of all violations on the informant. The information was meant to trigger investigation followed by submission of a report by the DG, on the basis of which the CCI could pass its final order. A complete investigation by the DG involved analysing the fact from all angles and finding out every possible violation of the Act. Reliance was placed on the observations of the Supreme Court in ***Competition Commission of India v Steel Authority of India Limited*** *(supra)*.

(iv) In the present case, it could not be said that the DG exceeded his jurisdiction in examining the conduct of GIL for violation of Section 4 of the Act. The information provided in the case on file with the CCI was a comprehensive one. It sought an enquiry against the MMF Industry and Association of MMF Industry in India by referring *inter alia* to Section 19 (4) and (6) of the Act, which specifically dealt with abuse of dominance provision under Section 4 of the Act. The information highlighted that GIL manufactured VSFs. The source of such information was a *Tecoya Trend* article dated 11th May, 2011, which stated that GIL had reported a "30% hike in VSF price realisation". All of this was forwarded to DG for further investigation.

(v) A correct interpretation of Regulation 18 (1) and Regulation 20 (4) of the CCI Regulations would acknowledge that the DG has to attach with the investigation report all the evidence and documents, statements, and analysis collected during investigation, which might not be limited to the *prima facie* opinion expressed by the CCI, which, in any event, was not binding upon the DG.

(vi) After the DG had already given a comprehensive report of investigation, pointing to violation of Section 4 of the Act by the GIL, it would be pointless for the CCI to again require the DG to undertake an identical exercise by treating it only as 'information' for the purposes of forming a *prima facie* view under Section 26 (1) of the Act.

Submissions on behalf of GIL

20. Mr Dhruv Mehta, learned Senior Counsel appearing for the GIL, submitted as under:

(i) The expression 'into the matter', in the order dated 22nd June, 2011 of the CCI, only referred to violations of Section 3(3) (a), (b) and (c) of the Act, and not Section 4 of the Act.

(ii) The scope of the powers of the DG does not include exercise of any *suo moto* powers of investigation. The Act made a clear departure from its predecessor i.e. the Monopolies and Restrictive Trade Practices Act, 1969 ('MRTP Act'), which it repealed. As a delegatee under the Act, the DG cannot exceed the specific powers vested in him. Reliance was placed on the decisions in ***Roop Chand v. State of Punjab 1962 (1) SCR 539***; ***A.K. Roy v. State of Punjab (1986) 4 SCC 326*** and ***Marathwada University v. Seshrao Balwant Rao Chavan (1989) 3 SCC 223***.

(iii) The *prima facie* opinion of the CCI was a *sine qua non* for initiation of an investigation by the DG, in terms of Section 26 (1) of the Act. Therefore, the jurisdiction of the DG to conduct investigation was

strictly circumscribed by the scope and ambit of Section 26 (1) of the Act. Reliance was placed on the decisions in ***Bhikhubhai Vithlabhai Patel v. State of Gujarat (2008) 4 SCC 144***; ***Rohtas Industries v. S.D. Agarwal 1969 (1) SCC 325***; ***Barium Chemicals Ltd. v. Company Law Board 1966 Supp. SCR 311***; and ***Google Inc. V. Competition Commission of India 2015 SSC-Online (Del) 8992***.

(iv) Under Regulations 24 and 26 of the CCI Regulations, only the CCI has been given the powers to join and substitute parties, or strike out unnecessary parties. Under Regulations 27 and 28, it is only the CCI which can "join multiple information" and allow amendment of the information. Therefore, if the DG, during the investigation, came across additional information, pointing to violation of Section 4 of the Act, he had to place such information before the CCI, and seek its approval, before proceeding further.

(v) A reading of Section 26 (1) of the Act with Regulation 20 (4) of the CCI Regulations, revealed that the DG cannot initiate any *suo moto* investigation, based on the information that was never placed before the CCI, in the first instance. If the DG was held not be bound by the *prima facie* view of the CCI, then the DG would be "virtually on a higher pedestal than the CCI itself", and this would be contrary to the legislative intent.

(vi) To the extent that the report of the DG found GIL to be in violation of Section 4 of the Act, it would be violative of principles of natural justice, as GIL was never put to notice during investigation that the DG was examining such violations. Had it been given such an opportunity, GIL would have made submissions on facts, law and

economics, regarding market definition, dominance and abuse of a dominant position, which formed the subject matter of Section 4 of the Act. Thus, the report of the DG to the extent that contained findings of alleged contravention of Section 4 of the Act by GIL was null and void, and cannot be used or relied for any purpose. Reliance is placed on the decision in ***Institute of Chartered Accountants v. L.K. Ratna, (1986) 4 SCC 537*** and ***Commissioner of Wealth Tax v. Ravi Cheloor (1989) 178 ITR 640 (Ker)***.

21. Mr Mehta distinguished the decision in ***Excel Crop Care Limited v. Competitive Commission of India (2017) 8 SCC 47***, which dealt with inclusion of more than one incident or incidents of contravention of the same matter i.e. violations of Section 3 of the Act within the ambit of the DG's investigation. He pointed out that the complaint in that case was filed in respect of one tender only, and the DG sought to investigate the conduct of the relevant entities with respect to a subsequent tender. However, in the present case, the DG went beyond the complaint under Section 3 of the Act, and investigated GIL for alleged violation of Section 4 of the Act. It was accordingly submitted that the decision in ***Excel Crop Care Limited v. Competitive Commission of India*** *(supra)* would have no application to the facts of the present case.

22. Mr. Mehta also sought to distinguish the decision of this Court in ***Cadila Healthcare Limited v. Competition Commission of India 2018 SSC OnLine Del 11229*** by pointing out that in that case the CCI held that "in the course of investigation, if involvement of any other parties is found, the DG

shall investigate the conduct of such other parties, who may have indulged in such contravention". It was on those specific facts that this Court, according to Mr Mehta, found no error in the investigation against Cadila, which was not named in the original complaint.

23. Mr. Mehta submitted that a judicial decision is an authority of what it actually decides and not for what can be read into it by implication. Reliance was placed on the decisions in ***Amrendra Pratap Singh v. Tej Bahadur Prajapati (2004) 10 SCC 65***; ***M.P. Gopal Krishna Nair v. State of Kerala (2005) 11 SCC 45***; ***Davinder Singh v. State of Punjab (2010) 13 SCC 88*** and ***State of Orissa v. Md. Illiya (2006) 1 SCC 275***.

Analysis and reasons

24. Before proceeding to consider the above submissions, the relevant provisions of the Act are required to be referred to. The object of the Act is to ensure fair competition by prohibiting trade practices which have an adverse effect on competition in the markets within India. The focus of the Act is to prohibit anti-competitive agreements, which are the subject matter of Section 3 of the Act, and abuse of dominant position, which forms the subject matter Section 4 of the Act. The Act also seeks to regulate 'combinations' under Sections 5 and 6 of the Act.

25. Under Section 18 of the Act, the CCI is tasked with the duty of eliminating practices that have an adverse effect on competition 'and to promote and sustain competition, protect the interest of consumers, and ensure freedom of trade carried on by other participants in the markets in

India'. Section 19 of the Act deals with "inquiry by the CCI into certain agreements and dominant position of enterprise." While Section 19 (3) lists out the factors that will be examined by the CCI while determining whether an agreement has an appreciable adverse effect on competition under Section 3 of the Act, Section 19 (4) of the Act lists out those factors which would be kept in view when the CCI enquires into whether an enterprise enjoys a dominant position or not under Section 4 of the Act.

26. Section 26 of the Act sets out the procedure for an enquiry under Section 19 of the Act and it reads as under:

> "26. Procedure for inquiry on complaints under section 19.—
>
> (1) On receipt of a complaint or a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information, 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.
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> (2) 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.
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> (3) Where on receipt of a complaint under clause (a) of sub-section (1) of section 19, the Commission is of the opinion that there exists no prima facie case, it shall dismiss the complaint and may pass such orders as it deems fit, including imposition of costs, if necessary.
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> (4) The Commission shall forward a copy of the report referred to in sub-section (2) to the parties concerned or 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 relates on a complaint and such report recommends that there is no contravention of any of the

provisions of this Act, the complainant shall be given an opportunity to rebut the findings of the Director-General.

(6) If, after hearing the complainant, the Commission agrees with the recommendation of the Director General, it shall dismiss the complaint.

(7) If, after hearing the complainant, the Commission is of the opinion that further inquiry is called for, it shall direct the complainant to proceed with the complaint.

(8) If the report of the Director General relates on a reference made under sub-section (1) and such report recommends that there is no contravention of the provisions of this Act, the Commission shall invite comments of the Central Government or the State Government or the statutory authority, as the case may be, on such report and on receipt of such comments, the Commission shall return the reference if there is no prima facie case or proceed with the reference as a complaint if there is a prima facie case.

(9) If the report of the Director General referred to in sub-section (2) 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."

27.1 The scope of the powers of the CCI under Section 26 of the Act has been examined in sufficient detail by the Supreme Court in ***Competition Commission of India v. Steel Authority of India Limited*** *(supra)*. It was observed in paragraphs 37 to 39 of the said decision as under:

"37. As already noticed, in exercise of its powers, the Commission is expected to form its opinion as to the existence of a prima facie case for contravention of certain provisions of the Act and then pass a direction to the Director General to cause an investigation into the matter. These proceedings are initiated by the intimation or reference received by the

Commission in any of the manners specified under Section 19 of the Act. At the very threshold, the Commission is to exercise its powers in passing the direction for investigation; or where it finds that there exists no prima facie case justifying passing of such a direction to the Director General, it can close the matter and/or pass such orders as it may deem fit and proper. In other words, the order passed by the Commission under Section 26(2) is a final order as it puts an end to the proceedings initiated upon receiving the information in one of the specified modes. This order has been specifically made appealable under Section 53A of the Act.

38. In contradistinction, the direction under Section 26(1) after formation of a prima facie opinion is a direction simpliciter to cause an investigation into the matter. Issuance of such a direction, at the face of it, is an administrative direction to one of its own wings departmentally and is without entering upon any adjudicatory process. It does not effectively determine any right or obligation of the parties to the lis. Closure of the case causes determination of rights and affects a party, i.e. the informant; resultantly, the said party has a right to appeal against such closure of case under Section 26(2) of the Act. On the other hand, mere direction for investigation to one of the wings of the Commission is akin to a departmental proceeding which does not entail civil consequences for any person, particularly, in light of the strict confidentiality that is expected to be maintained by the Commission in terms of Section 57 of the Act and Regulation 35 of the Regulations.

39. Wherever, in the course of the proceedings before the Commission, the Commission passes a direction or interim order which is at the preliminary stage and of preparatory nature without recording findings which will bind the parties and where such order will only pave the way for final decision, it would not make that direction as an order or decision which affects the rights of the parties and therefore, is not appealable."

27.2. The Supreme Court in the above decision also discussed various

provisions of the CCI Regulations in the context of whether at all stages and at all events, the right to notice and hearing is a mandatory requirement of principles of natural justice. It was held as under:

> "77. Issue of notice to a party at the initial stage of the proceedings, which are not determinative in their nature and substance, can hardly be implied; wherever the legislature so desires it must say so specifically. This can be illustrated by referring to the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 under the Customs Tariff Act, 1975. Rule 5(5) provides that while dealing with an application submitted by aggrieved domestic producers accounting for not less than 25% of total production of the like article, the designated authority shall notify the government of exporting country before proceeding to initiate an investigation. Rule 6(1) also specifically requires the designated authority to issue a public notice of the decision to initiate investigation. In other words, notice prior to initiation of investigation is specifically provided for under the Anti-Dumping Rules, whereas, it is not so under the provisions of Section 26(1) of the Act.
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> 78. Cumulative reading of these provisions, in conjunction with the scheme of the Act and the object sought to be achieved, suggests that it will not be in consonance with the settled rules of interpretation that a statutory notice or an absolute right to claim notice and hearing can be read into the provisions of Section 26(1) of the Act. Discretion to invite, has been vested in the Commission, by virtue of the Regulations, which must be construed in their plain language and without giving it undue expansion.
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> 79. It is difficult to state as an absolute proposition of law that in all cases, at all stages and in all events the right to notice and hearing is a mandatory requirement of principles of natural justice. Furthermore, that non- compliance thereof, would always result in violation of fundamental requirements vitiating

> the entire proceedings. Different laws have provided for exclusion of principles of natural justice at different stages, particularly, at the initial stage of the proceedings and such laws have been upheld by this Court. Wherever, such exclusion is founded on larger public interest and is for compelling and valid reasons, the Courts have declined to entertain such a challenge. It will always depend upon the nature of the proceedings, the grounds for invocation of such law and the requirement of compliance to the principles of natural justice in light of the above noticed principles."

27.3 The Supreme Court in ***Competition Commission of India v Steel Authority of India Limited*** *(supra)* has characterized the powers of the CCI under Section 26 (1) of the Act as 'an inquisitorial and regulatory power'. The Supreme Court then explained as under:

> "91. The jurisdiction of the Commission, to act under this provision, does not contemplate any adjudicatory function. The Commission is not expected to give notice to the parties, i.e. the informant or the affected parties and hear them at length, before forming its opinion. The function is of a very preliminary nature and in fact, in common parlance, it is a departmental function. At that stage, it does not condemn any person and therefore, application of audi alteram partem is not called for. Formation of a prima facie opinion departmentally (Director General, being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself) does not amount to an adjudicatory function but is merely of administrative nature. At best, it can direct the investigation to be conducted and report to be submitted to the Commission itself or close the case in terms of Section 26(2) of the Act, which order itself is appealable before the Tribunal and only after this stage, there is a specific right of notice and hearing available to the aggrieved/affected party. Thus, keeping in mind the nature of the functions required to be performed by the Commission in terms of Section 26(1), we are of the considered view that the right of notice of hearing is not contemplated

under the provisions of Section 26(1) of the Act."

27.4 The Supreme Court also drew a distinction between the expression 'enquiry' occurring in Regulation 18 (2) of the CCI Regulations and 'investigation' and held as under:

> "115. The first and the foremost question that falls for consideration is, what is `inquiry'? The word `inquiry' has not been defined in the Act, however, Regulation 18(2) explains what is `inquiry'. `Inquiry' shall be deemed to have commenced when direction to the Director General is issued to conduct investigation in terms of Regulation 18(2). In other words, the law shall presume that an `inquiry' is commenced when the Commission, in exercise of its powers under Section 26(1) of the Act, issues a direction to the Director General. Once the Regulations have explained `inquiry' it will not be permissible to give meaning to this expression contrary to the statutory explanation.
>
> 116. Inquiry and investigation are quite distinguishable, as is clear from various provisions of the Act as well as the scheme framed thereunder. The Director General is expected to conduct an investigation only in terms of the directive of the Commission and thereafter, inquiry shall be deemed to have commenced, which continues with the submission of the report by the Director General, unlike the investigation under the MRTP Act, 1969, where the Director General can initiate investigation suo moto. Then the Commission has to consider such report as well as consider the objections and submissions made by other party. Till the time final order is passed by the Commission in accordance with law, the inquiry under this Act continues. Both these expressions cannot be treated as synonymous. They are distinct, different in expression and operate in different areas."

27.5. A distinction was drawn between the kind of satisfaction that the CCI would record, in terms of Section 33 of the Act, and that which has to be recorded under Section 26 (1) of the Act. It was held as under:

> "117. Once the inquiry has begun, then alone the Commission is expected to exercise its powers vested under Section 33 of the Act. That is the stage when jurisdiction of the Commission can be invoked by a party for passing of an ex parte order. Even at that stage, the Commission is required to record a satisfaction that there has been contravention of the provisions mentioned under Section 33 and that such contravention has been committed, continues to be committed or is about to be committed. This satisfaction has to be understood differently from what is required while expressing a prima facie view in terms of Section 26(1) of the Act. The former is a definite expression of the satisfaction recorded by the Commission upon due application of mind while the latter is a tentative view at that stage. Prior to any direction, it could be a general examination or enquiry of the information/reference received by the Commission, but after passing the direction the inquiry is more definite in its scope and may be directed against a party."

27.6 Thus, it will be seen that the Supreme Court in ***Competition Commission of India v. Steel Authority of India Limited*** *(supra)* made it clear that the opinion formed by the CCI at the stage of issuing directions to the DG under Section 26 (1) of the Act is, by no means, intended to restrict the opinion that may be formed by the DG on such investigation.

28. Both Regulations 18 (1) and 20 (4) of the CCI Regulations, require the DG to investigate the matter i.e. the allegations "made in information or reference, as the case may be", together with all evidence, documents, statements or analysis collected during investigation. The investigation has to be a comprehensive one. The DG may not, in fact, be able to anticipate what information may emerge during such investigation. Merely because the information that emerges does not pertain to the specific subject matter which the DG has been asked to investigate, would not constrain the DG

from examining such information as well if it points to violation of some other provisions of the Act. Indeed, the directions given by the CCI to the DG under Section 26 (1) of the Act is only to 'trigger' investigation.

29.1 In ***Excel Crop Care Limited v. Competitive Commission of India*** *(supra)*, the Supreme Court further explained the powers of the DG in broad terms. In that case, an enquiry was initiated by the CCI on the basis of a letter/complaint dated 4th February, 2011 sent by the Chairman and Managing Director of FCI to the CCI to the effect that four manufacturers of Aluminium Phosphide Tablets ('APT') had formed a cartel by entering into anti-competitive agreements amongst themselves and on that basis had been submitting bids for the previous eight years by quoting identical rates in the tenders invited by the FCI for the purchase of APT.

29.2 In the report of the DG, issued pursuant to the directions issued by the CCI under Section 26 (1) of the Act, it was *inter alia* found that right from the year 2002 up to 2009, all the four parties used to quote identical rates, except in the year 2007. In 2008, all parties abstained from quoting, while in 2009, only three of them participated. For the tender floated in 2009, the three Appellants had quoted identical rates. On that basis, the DG formed an opinion that the Appellants had contravened Section 3(3) (a) (b) and (d) read with Section 3 (1) of the Act.

29.3 The Appellant there *inter alia* contended that since Sections 3 and 4 of the Act were brought into force only with effect from 20th May, 2009, the tenders prior to that date, could not be the subject matter of enquiry for

ascertaining if there was a violation of Section 3 of the Act. Even the March, 2009 tender could not form the subject matter of such enquiry. As far as the tender of 2011 was concerned, since FCI in its complaint dated 4th February, 2011 did not mention it, an enquiry into that aspect by the DG was without jurisdiction.

29.4 One of the issues that arose in the appeal was whether CCI was barred from investigating the matter pertaining to the tender floated by FCI in March, 2011, which obviously did not form part of the complaint of FCI made on 4th February, 2011. It was observed in paragraphs 44 and 45 as under:

> "44. The CCI had entrusted the task to DG after it received representation/complaint from the FCI vide its communication dated February 04, 2011. Argument of the Appellants is that since this communication did not mention about the 2011 tender of the FCI, which was in fact even floated after the aforesaid communication, there could not be any investigation in respect of this tender. It is more so when there was no specific direction in the CCI's order dated February 24, 2011 passed Under Section 26(1) of the Act and, therefore, the 2011 tender could not be the subject matter of inquiry when it was not referred to in the communication of the FCI or order of the CCI. The COMPAT has rejected this contention holding that Section 26(1) is wide enough to cover the investigation by the DG, with the following discussion: (*Excel Crop Care Ltd. case*):
>
> > '28. As per the Sub-section (1) of Section 26, there can be no doubt that the DG has the power to investigate only on the basis of the order passed by the Commission Under Section 26(1). Our attention was also invited to Sub-section (3) of Section 26 under which the Director-General, on receipt of direction under Sub-section (1) is

to submit a report of its findings within such period as may be specified by the Commission. The argument of the parties is that if on the relevant date when the Commission passed the order, even the tender notice was not floated, then there was no question of Direction General going into the investigation of that tender. It must be noted at this juncture that Under Section 18, the Commission has the duty to eliminate practices having adverse effect on competition and to promote and sustain competition. It is also required to protect the interests of the consumers. There can be no dispute about the proposition that the Director General on his own cannot act and unlike the Commission, the Director General has no suo-moto power to investigate. That is clear from the language of Section 41 also, 28 which suggests that when directed by the Commission, the Director General is to assist the Commission in investigating into any contravention of the provisions of the Act. Our attention was also invited to the Regulations and more particularly to Regulation 20, which pertains to the investigation by the Director General. Sub-Regulation (4) of Section 20 was pressed into service by all the learned Counsel, which is in the following term:

> 20(4). The report of the Director-General shall contain his findings on each of the allegations made in the information or reference, as the case may be, together with all evidences or documents or statements or analyses collected during the investigation:(proviso not necessary)

From this, the learned Counsel argued that the Director General could have seen into the tender floated on 08.05.2009 only, and no other tender as the information did not contain any allegation about the tender floated in 2011. Therefore, the investigation made into the tender floated in 2011 was outside the jurisdiction of the Director General. This argument was more particularly pressed into service, as the Director General as well as

the Competition Commission of India have found that all the Appellants had entered into an agreement to boycott the tender floated in 2011 and thereby had rigged the bids.

29. We have absolutely no quarrel with the proposition that the Director General must investigate according to the directions given by the CCI Under Section 26(1). There is also no quarrel with the proposition that the Director General shall record his findings on each of the allegations made 29 in the information. However, it does not mean that if the information is made by the FCI on the basis of tender notice dated 08.05.2009, the investigation shall be limited only to that tender. Everything would depend upon the language of the order passed by the CCI on the basis of information and the directions issued therein. If the language of the order of Section 26(1) is considered, it is broad enough. At this juncture, we must refer to the letter written by Chairman and Managing Director of FCI, providing information to the CCI. The language of the letter is clear enough to show that the complaint was not in respect of a particular event or a particular tender. It was generally complained that Appellants had engaged themselves in carteling. The learned Counsel Shri Virmani as well as Shri Balaji Subramanian are undoubtedly correct in putting forth the argument that this information did not pertain to a particular tender, but it was generally complained that the Appellants had engaged in the anticompetitive behaviour. When we consider the language of the order passed by the CCI Under Section 26(1) dated 23.04.2012 the things become all the more clear to us. The language of that order is clearly broad enough to hold, that the Director General was empowered and duty bound to look into all the facts till the investigation was completed. If in the course of investigation, it came to the light that the parties had boycotted the tender in 2011 with pre-concerted agreement, there was no question of the DG

> not going into it. We must view this on the background that when the information was led, the Commission had material only to form a prima facie view. The said prima-facie view could not restrict the Director General, if he was duty bound to carry out a comprehensive investigation in keeping with the direction by CCI. In fact, the DG has also taken into 30 account the tenders by some other corporations floated in 2010 and 2011 and we have already held that the DG did nothing wrong in that. In our opinion, therefore, the argument fails and must be rejected.'

We entirely agree with the aforesaid view taken by the COMPAT.

45. If the contention of the Appellants is accepted, it would render the entire purpose of investigation nugatory. The entire purpose of such an investigation is to cover all necessary facts and evidence in order to see as to whether there are any anti-competitive practices adopted by the persons complained against. For this purpose, no doubt, the starting point of inquiry would be the allegations contained in the complaint. However, while carrying out this investigation, 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. Even when the CCI forms prima facie opinion on receipt of a complaint which is recorded in the order passed Under Section 26(1) of the Act and directs the DG to conduct the investigation, at the said initial stage, it cannot foresee and predict whether any violation of the Act would be found upon investigation and what would be the nature of the violation revealed through investigation. 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. We, therefore, reject this argument of the

Appellants as well touching upon the jurisdiction of the DG."

29.5 It is thus seen that in ***Excel Crop Care Limited v. Competitive Commission of India*** *(supra)*, the Supreme Court has agreed with the view taken by the Competition Appellate Tribunal ('COMPAT') that much would depend upon the language of the order passed by the CCI on the basis of the information and the directions issued therein. Although the said information did not refer to a particular tender, it generally complained about the anti-competitive behaviour of the Appellant. It was held that the language of the order passed by the CCI was broad enough to enable the DG to look into "all the facts till the investigation was completed". Therefore, the DG was not prevented from examining any anti-competitive practice adopted by the Appellant in the 2011 tender as well.

30. Turning to the facts of the present case, the Court finds that while the information with the CCI did pertain to the alleged violation by GIL and others under Section 3(3) (a) and (b) of the Act, the direction given to the DG was to investigate 'the matter', and this enabled the DG to examine violations not only of under Section 3 of the Act, but any other violation that may have come to his notice while undertaking the investigation.

31. It must be noticed here that when the learned Single Judge passed the impugned judgment, he did not have the benefit of the decision in ***Excel Crop Care Limited v. Competitive Commission of India*** *(supra)*, and this Court is in no doubt that if such judgment was available at that point in time, the learned Single Judge would not have taken the view that he has taken in the impugned judgment.

32.1 The Division Bench of this Court in ***Cadila Healthcare Limited v. Competition Commission of India*** *(supra)* was called upon likewise to examine whether the DG in that case had exceeded its powers in finding a violation of the Act by Cadila which was not even named in the original complaint filed by the CCI.

32.2 There, the CCI took cognizance of information filed by the Reliance Medical Agency ('RMA') complaining of denial of supply of medicines by certain pharmaceutical companies. Cadila's case was that there had to be separate orders under Sections 26 (1) of the Act by the CCI authorizing the DG to investigate Cadila, and that, in the absence of such order, the DG could not have proceeded against Cadila on the strength of a general order passed by the CCI on 17th November, 2015 where it stated as under:

> "in the course of investigation, if involvement of any other party is found, the DG shall investigate the conduct of such other parties who may have indulged in such contravention".

32.3 After the DG's report was submitted to the CCI, a copy thereof was provided to Cadila, which objected to the report. It also relied upon the decision of this Court in ***Google Inc. v. Competition Commission of India*** (*supra*). However, the CCI rejected these objections. After its appeal against the said order was dismissed by the COMPAT, Cadila filed a writ petition before the learned Single Judge. The said writ petition was dismissed by the learned Single Judge by an order dated 9th March, 2018 and against the said dismissal, Cadila approached the Division Bench.

32.4 In dismissing Cadila's appeal, the DB of this Court, after analysing the

decision in ***Competition Commission of India v. Steel Authority of India Limited*** *(supra)* and ***Excel Crop Care Limited v. Competitive Commission of India*** *(supra)*, held as under:

> "43. Cadila's argument, that in *Excel Crop Care* the issue was inclusion of more than one instance or incident within the ambit of investigation (given that the complaint was in respect of one tender only) is distinguishable, is in this court's opinion, insubstantial and needs to be rejected. Its reliance on *Grasim Industries*, is no longer apt. At the stage when the CCI takes cognizance of information, based on a complaint, and requires investigation, it does not necessarily have complete information or facts relating to the pattern of behaviour that infects the marketplace. Its only window is the information given to it. Based on it, the DG is asked 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 might unfold. At this 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. Or else, the *Excel Crop Care* would not have 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 trigger for assumption of jurisdiction of the CCI is receipt of complaint or information, (when the Commission is of the opinion that there exists a prima facie case exists (per Section 26 (1)). The succeeding order is administrative (per *SAIL*); however, that

order should disclose application of mind and should be reasoned (per *SAIL*). Up to this stage, with that enunciation of law, no doubt arguably Cadila could have said that absent a specific order as regards its role, by CCI, the DG could not have inquired into its conduct. However, with *Excel Crop Care* 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 unremunerated ones, involving others (i.e. third parties), the issue is no longer untouched; Cadila, in the opinion of this court, is precluded from stating that a specific order authorizing transactions by it, was a necessary condition for DG's inquiry into its conduct. 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 "the matter". 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 it CCI can call upon parties to react is when it receives a report from DG stating 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, Cadila's argument that a specific order by CCI applying its mind into the role played by it was essential before the DG could have proceeded with the inquiry, is rejected."

33. Mr Mehta sought to distinguish both ***Excel Crop Care Limited v. Competitive Commission of India*** *(supra)* and ***Cadila Healthcare Limited***

v. Competition Commission of India *(supra)* on the ground that they did not involve a situation where the initial complaint was for violation of Section 3 of the Act, but what was found by the DG was a violation of another provision. This submission is unconvincing when the binding *ratio decidendi* of both decisions is distilled. The decision in ***Excel Crop Care Limited v. Competitive Commission of India*** *(supra)* makes it abundantly clear that while the initial complaint may be on a limited aspect, the DG can investigate into other violations that emerged during the investigation of such complaint. For instance, in ***Excel Crop Care Limited v. Competitive Commission of India*** *(supra),* the validity of the DG's report which pointed to the existence of a cartel in relation to a tender which was not even mentioned in the first complaint was upheld by the Supreme Court. Likewise, a party which was not even named in the complaint could be investigated into by the DG, as held by this Court in ***Cadila Healthcare Limited v. Competition Commission of India*** *(supra)*.

34. The aforementioned decisions clarify that an order of the CCI under Section 26 (1) of the Act 'triggers' investigation by the DG, and that the powers of the DG are not necessarily circumscribed to examine only such matters that formed the subject matter of the original complaint. No doubt, the language of the order passed by the CCI issuing directions to the DG will also have a bearing on the scope of such investigation by the DG. In the present case, however, the language of the order passed by the CCI on 26th February, 2011, is broad enough to cover an investigation by the DG into what appeared to be *prima facie* violation of Section 4 of the Act by GIL.

35. Consequently, this Court is not impressed with the submissions of Mr Mehta that since Section 26 (1) of the Act limits the powers of the DG, in the instant case, the DG went beyond the scope of its powers in submitting a report for the alleged violations of Section 4 of the Act by the GIL.

36. Extensive reliance was placed by Mr Mehta on the decision in ***Bhikhubhai Vithlabhai Patel v. State of Gujarat*** *(supra)* to restrict the ambit and scope of the order passed under Section 26 (1) of the Act. That decision was in the context of Section 17 (1) (a) (2) of the Gujarat Town Planning and Urban Development Act, 1976 and the procedure that had to be adopted by the State Government in making modification to the draft development plan prepared thereunder. Clearly, that decision turned on the language of the statute involved and the facts of the case.

37. As far as the present case is concerned, the aforementioned decision of the Supreme Court in ***Competition Commission of India v. Steel Authority of India Limited*** *(supra)* and ***Excel Crop Care Limited v. Competitive Commission of India*** *(supra)*, followed by this Court in ***Cadila Healthcare Limited v. Competition Commission of India*** *(supra)*, provides a complete answer to all the contentions of Mr Mehta. In light of the law explained in the above decisions, the conclusion arrived at by the learned Single Judge that the DG had exceeded the scope of its powers in submitting a report on the alleged violation under Section 4 of the Act by GIL cannot be sustained in law.

38. There is also merit in the contention of the CCI that even the

consequential directions issued by the learned Single Judge that the report of the DG can at best constitute information, which again had to be placed before the CCI under Section 19 of the Act for an order for fresh investigation, actually serves no purpose. While the learned Single Judge may be right in concluding that there is a two-step process before the CCI can pass a final order, i.e. the first stage before the DG and then before the CCI, this Court is unable to agree with the conclusion that the scope of the opportunity available to GIL before the DG, at the stage of investigation, is no different from the opportunity available to it before the CCI, at the stage of the enquiry, following the report of the DG.

39. No doubt under Regulation 41 of the CCI Regulations, both the CCI and the DG can determine the manner in which evidence may be adduced in the proceedings before them, and the DG also has the powers to call for information and examine witnesses and documents under Regulation 45 of the CCI Regulations, it is not mandatory that in every such investigation the DG has to necessarily exercise all those powers. The extent of the opportunity to be given to a party, against whom the investigation is in progress, will depend on the facts and circumstances of the case, and on the kind of information and evidence chanced upon by the DG during the course of its investigation. Indeed, it is not mandatory that in every such case, even at the stage of investigation, the party will have to be given opportunity to adduce evidence, cross-examine persons who may have given evidence adverse to them, in the course of investigation. That is not the position that emerges on a collective reading of Section 26 of the Act read with Regulations 20, 41 and 45 of the CCI Regulations.

40. The admitted position is that GIL did make its written submissions before the DG and was considered by the DG before forming a *prima facie* view in the report submitted to CCI. It is not in dispute that before the CCI, the GIL had a full-fledged opportunity of presenting evidence, documents and materials to counter the report of the DG.

41. In ***Cadila Healthcare Limited v. Competition Commission of India*** *(supra)*, the Court characterized the functions of the DG at the stage of investigation as '*quasi inquisitorial.*' Indeed, the essential function of the DG is to investigate i.e. gathering of facts and evidence and analyzing them to form a *prima facie* view about the violations alleged in the complaint or information, which forms the subject matter of investigation.

42. The scope of the powers and functions of the CCI, when it is considering the report of the DG, is a *quasi judicial* function. It undertakes that exercise after furnishing to the party a copy of the report and then permits the party to make its submissions in relation thereto. This is followed by a full-fledged hearing. At that stage the CCI can in its discretion permit the affected party to lead evidence. Therefore, the scope and extent of participation of GIL in the present case would obviously be different at the stage of investigation before the DG and at the subsequent stage of consideration of the DG's report by the CCI.

43. The Court, therefore, is unable to concur with the view expressed by the learned Single Judge that in the present case, GIL was deprived of an opportunity to present its case before the DG and, therefore, the DG's report

was violative of principles of natural justice.

Conclusion

44. For all of the aforementioned reasons, this Court sets aside the impugned judgment of the learned Single Judge and restores the order dated 30th May, 2013 passed by the CCI. The matter before the CCI will now proceed from the stage where it was when the above order was passed, in accordance with law.

45. The appeal is allowed in the above terms. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 12, 2019

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