

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12932 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

J.K. PAPER LTD. THROUGH SANTOSH WAKHLOO, AUTHORIZED
SIGNATORY HEREIN

Versus

COMPETITION COMMISSIONER OF INDIA

Appearance:

MR MIHIR THAKORE, SENIOR ADVOCATE WITH MR DEVANG NANAVATI, SENIOR ADVOCATE WITH MR NIRAG N PATHAK, MS MANISHA NARSINGHANI, MR AADITYA NARAYAN AND MR ARNAV NARAYAN, ADVOCATES for the Petitioner

**MR DEVANG VYAS, ASG WITH MR KM ANTANI AND MS GARIMA MALHOTRA, ADVOCATES for the Respondent(s) No. 1,2
NOTICE UNSERVED for the Respondent(s) No. 3,4**

CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 03/04/2023

CAV JUDGMENT

- 1. Rule.** Ms. Garima Malhotra, learned advocate waives service of notice of Rule for and on behalf of the respondent Nos.1 and 2.

2. The present petition, in all, challenges four orders passed by the Competition Commission of India (for short, hereinafter referred to as `CCI'). The impugned orders are as under:

(1) Order dated 2.5.2019 by which the petitioner has been directed to furnish certain documents and details and to make submissions on the quantum of penalty that may be levied in the event, the petitioner is held to have acted in contravention of the Competition Act, 2002 (for short, hereinafter referred to as `the Act').

(2) Investigation Report dated 7.2.2019 prepared by the Office of the Director General, CCI in case

No.30 of 2014 and case No.85 of 2015.

(3) Order dated 4.7.2019 rejecting the request of the petitioner to cross examine the informant of case No.30 of 2014 and informant in case No.85 of 2015.

(4) Orders dated 1.8.2014 and 17.11.2015 by the CCI under Section 26(1) of the Act by which the CCI has directed the Director General to file a joint investigation report in respect to the violations of the provisions of the Act in context of information case Nos.30 of 2014 and 85 of 2015.

3. The facts in brief are as under:

* The petitioner is a Public Limited Company engaged in the manufacture of paper and paper products such as Maplitho, Coated Paper / Art Paper, Virgin Fiber based packaging, Copier Paper and Specialty Paper MICR / Ledger / Parchment.

* It is the case of the petitioner that the respondent no.3, the Sivakasi Master Printers Association filed Information Petition No.30 of 2014. The petitioner was arrayed as opponent No.6. It was the case of Information Petitioner that there was a cartel amongst the paper mills which would get-together and facilitate price rise every month. It was the case of the informant that in order to stop this tendency and unfair trade practice to reduce this collusive increase in

price, the Information Petitioner alleged contravention of Sections 3 and 4 of the Act. Similarly, the respondent No.4 – All India Federation of Masters and Printers filed Information Petition No.85 of 2015. The CCI clubbed the proceedings and by orders dated 1.8.2014 and 17.11.2015 directed the DG to undertake investigation *prima facie* opining that the petitioner seems to be indulging in contravention in the paper industry.

* Based on the orders so passed, the CCI carried out investigation and submitted a consolidated report dated 7.2.2019 which the petitioner received on 9.5.2019. Considering the report so filed, by the impugned order dated 2.5.2019, the CCI called upon the petitioner to file its objections / suggestions to the impugned report on or before 30.6.2019 and also issued directions to submit audited balance sheets and

profit and loss account / turn over for the last three financial years i.e. 2015-16 to 2017-18. It also directed the petitioner to submit details of the profits / revenue generated from unquoted writing and printing papers during 2015-16 to 2017-18 by way of affidavit supported by certificate of the Chartered Accountant. These proceedings are therefore under challenge.

4. Mr. Mihir Thakore, learned Senior Counsel and Mr. Devang Nanavati, learned Senior Counsel assisted by Mr. Nirag Pathak, learned advocate for the petitioner made the following submissions:

* Inviting the Court's attention to the provisions of Section 2 which defines the terms "agreement", "cartel," "relevant market," and "relevant product market" together with the provisions of Section 3, Mr. Thakore would submit that reading the entire petition

of the petitioners before the Commission, what is evident is that the concentration of the printers association was only to cartelisation in respect of writing paper and printing paper such as Maplitho, Cream Wove paper and Art Paper.

* Reading Section 19 of the Act, Mr. Thakore would submit that in accordance therewith the Commission has to inquire into any alleged contravention of the provisions contained in Sub Section (1) of Section 3 of the Act. Reading Sub Section (3) of the Act, Mr. Thakore would submit that the provision has to be read in light of the “Relevant Market” which is defined under Section 2(r) of the Act and with reference to the “Relevant Product Market” or the “Geographic Market” or both. Emphasizing the definition of the term “Relevant Product Market” Mr. Thakore would further submit that the CCI could not

have ordered investigation on the Information Petitions filed by the respondent Nos.3 and 4 when the Information Petitioners were only concerned with writing and printing paper such as Maplitho and Art Paper. Admittedly, the nature of inquiry was not in context of copier paper and therefore while ordering such investigation the CCI lost sight of the principles of interchangeability and / or sustainability by the consumer by reason of characteristics of the product, their prices and intended use. He would submit that no determination as to whether the agreements had appreciable adverse effect on competition would be done by the CCI without determining what is the relevant market. He would extensively invite the Court's attention to the pleadings in the Information Petition and the scope of investigation which was only restricted to writing and printing paper. He would submit that copier paper can never be used by the

printing industry and the observations in the Investigation Report bringing copier paper within its purview was misconceived.

* Mr. Thakore would submit that evidently the market that was meant to be relevant market would comprise of the varieties of writing and printing paper such as Maplitho, Cream Wove and Art Paper. The two orders passed u/S.26(1) of the Act after delineating the investigation completely in a misconceived manner brought within its sweep copier paper for the purpose of investigation though the investigation was in the writing and printing papers segment.

* Mr. Thakore would submit that as the name itself suggests copier paper is used for the purpose of photocopy and office printing and, therefore, the

consumers, selling points, use of the products etc. are completely different from the other varieties of paper which form the scope of investigation. He would rely on the provisions of Section 19(7) of the Act to submit that the Commission had to determine the relevant product market. He would assail the analysis of the Investigation Report stating that it proceeded on a completely wrong footing holding that there was interchangeability between Maplitho, Cream Wove and Copier papers. There was no reasoning, evidence or economic analysis for the conclusion so arrived at.

* Mr. Thakore would submit that writing and printing paper and copier paper have different specifications and therefore essentially are a different variety of paper. Writing and printing paper and the types are mutually exclusive distinct and different categories of product and, therefore, could not have

been used for the purposes of investigation as being products interchangeable and substitutable.

* Mr. Thakore on reading the Investigation Report would submit that the report itself records that Cream Wove is non surfaced size paper used for manufacturing of notebooks, bill books whereas Maplitho paper is used for map printing, label publishing, computer stationary etc. The Copier paper is surfaced sized paper. He would therefore submit that whereas Maplitho paper is used for printing maps and books whereas copier paper is directly used by consumers and therefore the end-use as well as the consumers for both the products are distinct and different.

* Mr. Thakore would submit that both respondent Nos.3 and 4 are in the field of printing and using

papers as raw materials such as Cream Wove Paper, Art Paper and Maplitho, hence, copier paper could not be the subject matter of their concern or relevance. The inquiry therefore could not go beyond the scope of the Information Petitions.

* Mr. Thakore would submit that from the impugned report and analysis it is an admitted fact that the petitioner is a minuscule player in the market for Maplitho paper as recorded in para 6.3.4 of the report.

* The petitioner company was not manufacturing Maplitho paper from 2011 to 2013 and thereafter it was doing so in a negligible quantity. This aspect was completely ignored by respondent No.2. Mr. Thakore would submit that on the analysis of email dumps of JK Paper and the Statements of its Officers it is clearly established that the prices that were discussed in the

meeting were of Maplitho. There is nothing to indicate that any agreement was entered into directly or indirectly determining the sale prices of copier paper.

* Mr. Thakore would submit that in the report it was an admitted fact that price parallelism analysis could not be conducted for the petitioner for the lack of data and therefore the CCI could not have drawn adverse inference against the petitioner. Mr. Thakore would rely on a decision in the case of **Competition Commission of India v. Coordination Committee of Artistes and Technicians of West Bengal Film and Television and others** reported in **2017(5) SCC, 17**. He would rely on paragraph Nos.35 to 39 thereof to submit that while determining the question of what is the relevant market, the parameters of this judgment were ignored.

* Mr. Thakore would submit that reading the orders dated 01.08.2014 and 17.11.2015, it was evident that the CCI was required to at least form a *prima facie* opinion. Reading the report would indicate that there was not even a whisper about copier paper. He would submit that the requirement of forming an opinion of a *prima facie* case based on material before the Commission is well established and reiterated in the case of **Competition Commission of India v. Steel Authority of India Limited** reported in **2010(10) SCC, 744**. He would rely on paragraph No.97 thereof.

* Mr. Thakore would submit that when the authorities passed orders on grounds extraneous to the legislation or if the authorities failed to apply their mind to the relevant facts and if relevant material for formation of opinion lacks the basis for such an

opinion, formation of such opinion is a matter which can be a subject matter of judicial review. In support of his submissions, Mr. Thakore would rely on the decision in the case of **Barium Chemicals Limited v. Company Law Board** reported in **AIR 1967, SC, 295(1)**. He would rely on paragraph Nos.21, 47 and 61 thereof. Reliance was also placed on the decision in the case of **Sharma Prashant Raje v. Ganpatrao and others** reported in **2000(7) SCC, 522** (Para 5 thereof). He also relied on a decision in the case of **Rohtas Industries Limited v. S. D. Agarwal and another** reported in **AIR 1969 SC, 707** (Paragraph Nos.39, 40 and 44 thereof).

* Mr. Thakore would submit that the investigation was only in reference to Maplitho, Cream Wove and Art Paper. Merely because the petitioner is a major player in the copier segment and a minuscule player in

Maplitho, no inference could be drawn on the aspect of interchangeability without there being any economic analysis thereto.

* Mr. Thakore would submit that the reliance placed by the respondents on the decisions in the case of **Competition Commission of India v. Grasim Industries Limited** reported in **2019 SCC, Online DEL, 10017 & Excel Crop Care Limited v. Competition Commission of India** reported in **2017(8) SCC, 47** is misconceived.

* Mr. Thakore would submit that there was no delay in approaching the Court. The petitioner has been denied the most crucial right of cross examination of the informants which was the root cause of the inquiry. The very basis of investigation / inquiry culminating into an investigation report is

based on a *prima facie* opinion. The very basis of the investigation was perverse and therefore the petitioner was well within its right to challenge the method and the manner investigation is undertaken. The delay of 4 years as contended by the respondents is misconceived as no details were provided and, therefore, unless and until it was made out by subsequent communications that the inquiry was proceeding on a stage different than it ought to take, the petitioner has approached this Court.

5. Mr. Devang Vyas, learned ASG assisted by Mr. K.M. Antani and Ms. Garima Malhotra, learned advocates for the respondent – Competition Commission of India made the following submissions:

* Mr. Devang Vyas would submit that it is worthy to note the conduct of the Petitioner for having

acquiesced to and actively participated in the proceedings before CCI and the DG for 6 (six) years.

* Mr. Devang Vyas would submit that It is submitted that the first Order under Section 26(1) of the Act in Case no. 30 of 2014 wherein CCI formed a *prima facie* case for directing investigation into the allegations against the Paper Mills including the Petitioner herein for contraventions of the provisions of the Act more particularly Section 3(1) read with Section 3(3)(a) of the Act in the paper industry, was passed way back in August 2014. The Petitioner became well aware of this Order and was also issued the 1st notice by the DG in this regard on 28.05.2015. He further submit that the second order under Section 26(1) of the Act came to be passed by CCI on 17.11.2015 in Case No. 85 of 2015, upon another information alleging similar allegations of cartel in the

Paper industry by paper mills in different varieties of paper wherein the Petitioner herein was once again arraigned as a Opposite party. He also submitted that the Petitioner accepted the aforesaid orders and never chose to challenge the same at the inception. The Petitioner accepted the said orders, acquiesced and participated in the proceedings pursuant to the Orders under Section 26(1) of the Act, hence, it does not now lie in the mouth of the Petitioner to challenge the said orders after 6 years on misconceived and baseless grounds of jurisdictional facts as sought to be propounded by the Petitioner.

* Mr. Devang Vyas would submit that merely because the investigation has brought to the fore contraventions of the provisions of the Act against the Petitioner and further due to rejection of the Application of cross-examination, the Petitioner has

sought to challenge the Investigation report of the DG coupled with the orders passed under 26(1) of the Act passed by CCI, which in respectful submission is nothing but a stealthy attempt to stall the inquiry which is now to be initiated by CCI and thereby abuse the process of law.

* Mr. Devang Vyas would submit that after having voluntarily furnished the information even for Copier Paper on affidavit, made statements on oath before the DG, the Petitioner cannot be allowed to contend before this Hon'ble Court that Copier paper was not part of the investigation.

* Mr. Devang Vyas would submit that the proceedings under Section 26(1) are administrative in nature and do not entail any civil consequences. Further, the Competition Commission only forms a

prima facie opinion of existence of the violations of the provisions of the Act and as such the proceedings at the stage of Section 26(1) of the Act are not adjudicatory in nature and hence the same cannot be assailed at this stage in any event and the Impugned Order is therefore not subject to judicial review at this stage. He has further submitted that the Hon'ble Supreme Court of India in **CCI vs SAIL (Supra)** has observed that an order passed under Section 26(1) of the Act is an administrative order and the Competition Commission has to form a *prima facie* opinion without entering into adjudicative or determinative process. The Hon'ble Apex Court further held that formation of the *prima facie* opinion under Section 26(1) of the Act is a direction simpliciter and it is administrative in nature, and a direction is like a departmental proceeding, which does not entail civil consequences. It is further submitted by Mr. Vyas that two (2)

separate Information Petitions under Section 19(1)(1) of the Act were filed before the CCI alleging collusive practices of Paper mills in the Paper Industry to simultaneously increase prices in different varieties of paper. These allegations of cartel in the first information (Case No.30 of 2014) were supported by material in the form of circulars and email. He further submitted that the Commission was of the opinion that there exists a *prima facie* case warranting an investigation for the contravention of provisions of Section 3(1) read with Section 3(3)(a) of the Act. Since, the 2nd information (Case No.85 of 2015) contained similar allegations of Cartel against the Paper mills in the Paper industry, CCI, issued the second order dated 17.11.2015 under Section 26(1) of the Act and tagged the same with Case no. 30 of 2014. Upon receipt of the direction from the Commission, the DG issued various notices to the Petitioner in Case

No. 30 of 2014 and Case no. 85 of 2015 under Section 41(2) read with Section 36(2) of the Act, wherein certain information / documents were sought from the Petitioner.

* Mr. Devang Vyas would submit that it is a settled position of law that, at the stage of either passing of the order u/S.26 (1) of the Act or even at the stage of submission of report by the DG u/S.26 (3) of the Act, no interference through exercise of writ jurisdiction may be warranted in as much as at such stages in the course of the proceedings, no right can be said to have been infringed of the person(s) subjected to such proceedings under the Act, much less their being a question of violation of a fundamental right. He further submitted that bare perusal of Section 26 read with Regulation 21 of the General, Regulations 2009 reveal that the Act provides for a robust procedure

affording the Party under Investigation an opportunity of producing evidence before the DG during the course of investigation, which has been done by the Petitioner in the present case. Further, such parties are also given an opportunity to give their objections or suggestions to the Investigation report once it is submitted by the DG to the CCI, which also has been done by CCI vide order dated 02.05.2019 which has frivolously been challenged by the Petitioner. Parties are also afforded a fair and reasonable opportunity of a personal hearing before the Commission for consideration of the said objections or suggestions to the Investigation report which has also been done so to the Petitioner as reflected in the Order dated 02.05.2019. Moreover, the Petitioners herein cannot be allowed to circumvent this procedure and abuse the process of law by invoking writ jurisdiction of this Hon'ble Court and raising grounds of objecting to the

correctness of the information or the merits and demerits of the DG's report, which can be espoused at the stage of filing its objections or suggestions to the DG's report and in a personal hearing before the CCI in case the DG's report brings out contraventions of provisions of the Act on part of the Petitioners. Mr. Vyas further submitted that after having participated in the investigation for 6 years, since the investigation report brought to the fore contraventions on part of the petitioner, the petitioner does not want to participate in the inquiry now to be initiated before the CCI and hence by way of the instant petition, the petitioner wants to avoid the inquiry which is being carried out in accordance with the provisions of the Act.

* Mr. Devang Vyas would submit that impugned orders under Section 26(1) of the Act merely directs an investigation, and this investigation conducted by

the DG is *quasi-inquisitorial* in nature and hence in any event does not affect the rights or liabilities of the petitioners. **[Competition Commission of India v. Grasim Industries, Para 27.3, 32.4 and 41 thereof].**

The purpose of the investigation is to examine the veracity of the allegations of Cartel against the Petitioner and determine anti-competitive effects of the petitioner's actions, if any. If the petitioner's conduct is not anti-competitive the same can be agitated before CCI as the petitioner has been provided with the opportunity to file its objections / suggestions to the DG's report and there is no reason for the petitioner to resist the proceedings which are now to be undertaken before the CCI and no prejudice would be caused to the petitioner by participating in the proceedings before the CCI. It is submitted that the statute itself grants full opportunity to the Petitioner to counter the DG's report by way of their objections and

suggestion and also a full oral hearing before CCI, which opportunity has been given by CCI to the Petitioner in the present case in compliance of the provisions of the Act.

* Mr. Devang Vyas would submit that the Act read with Regulations of 2009, provides with the detailed procedure to be adopted on submission of the Investigation report by the DG. In compliance of the said procedure, uncontrovertibly the Commission has addressed an order dated 02.05.2019 as per Section 26(4) of the Act read with Regulation 21 (7) of the 2009 Regulation and thereby forwarded the Copy of Investigation report to the Petitioner and further invited objections to the same from the petitioner. Thereafter, the said suggestions / objections to the Investigation report of the DG shall be placed before CCI for consideration and the Petitioner shall be afforded an opportunity of personal

hearing along with filing of any documents before the Commission as per Regulation 21(8) of the General Regulations of 2009 before any final order is passed by the Commission, which has also been done in the present case. He further submitted that it is well-established principle that a High Court will ordinarily not interfere with an on-going inquiry while exercising its inherent powers under Article 226 of the Constitution of India. As such, it is evident that the Petitioners by way of the present Writ Petition are attempting to shackle the inquiry before CCI.

* Mr. Devang Vyas would submit that the clinching evidence of cartelization between the Petitioner and other Paper Mills for increase of prices in different varieties of paper including Copier Paper has come to fore during investigation.

6. Having considered the submissions made by the learned advocates for the respective parties, it will be necessary to reproduce the relevant dates and events preceding the passing of the impugned orders. The relevant dates and events are as under:

DATE	EVENTS
Year 2014	Information filed by M/s Sivakasi Master Printers as per provisions of Section 19(1)(1) of the Competition act, 2002 (“the Act”) against eight Opposite Parties including the Petitioner herein alleging that the Paper Mills have formed a cartel to increase the prices of the paper simultaneously in different varieties of paper in contravention of the provisions of Section 3 of the act. The Opposite Parties are the paper mills/paper manufacturing companies operating at different parts of the country. Case registered as Case no. 30 of 2014.
01.08.2014	CCI passed an order under Section 26(1) of the Act in Case 30 of 2014, directing an investigation to be carried by the DG into the information after forming of a <i>prima facie</i> opinion that the Opposite Parties including the Petitioner herein (arraigned as

	<p>Opposite Party no.6) have colluded for increase of prices in different varieties of paper and thereby warranting investigation for anti-competitive practices under the provisions of Section 3(1) read with Section 3(3)(a) of the Act and hence CCI directed the DG to carry out investigation into any contravention of the provisions of the Act <u>in the paper industry.</u></p>
Year 2015	<p>One more information filed under Section 19(1)(a) of the Act by M/s All India Federation of Master Printers alleging collusive practices by forming a cartel on part of the Paper Mills for simultaneously increasing prices in different varieties of paper.</p>
17.11.2015	<p>CCI directed an investigation to be carried by the DG into another information received against the Paper Mills including the Petitioner herein (who was arraigned as Opposite Party no.6), after forming of a <i>prima facie</i> opinion that Opposite Parties have colluded for increase of prices in different varieties of paper and thereby warranting investigation for anti-competitive practices under the provisions of Section 3(1) read with Section 3(3)(a) of the Act to carry out investigation into any contravention of the provisions of the Act <u>in the paper industry.</u></p>

	<p>It is pertinent to note that this information filed was not restricted to a particular state but alleged contraventions prevalent in several regions of the Country and the eight of the Opposite Parties arraigned in Case no. 30 of 2014 were also opposite parties in this information. Considering the similarity of facts and allegations, CCI clubbed this Case no. 85 of 2015 with Case no. 30 of 2014 in terms of proviso to Section 26(1) of the act read with Regulation 27(1) of the Competition Commission of India (General) Regulations, 2009.</p>
<p>28.05.2015 To 09.03.2018</p>	<p>The Petitioner, uncontrovertibly, actively participated in the proceedings before the DG, provided information as per the Notices issued by the DG and the officers of the Petitioner company deposed before the DG on oath where their statements were recorded by the DG. [<u>Refer the date wise table of participation details by the Petitioner before the DG @ Pg 112 – 115]</u></p> <ul style="list-style-type: none"> - Petitioner provided the details regarding all types of paper <u>including copier paper on Affidavit – Sr. 5, 10 and 11 at Page 115].</u> - Officers of the Petitioner

	<p>Company – Mr. Saikat Basu (Chief General Manager – Sales-Paper) and Mr. Santosh Wankhoo (Vice President – Marketing and Sale) were deposed on Oath before DG on 14.11.2017 and 12.12.2017 respectively [<u>Refer Sr. 13 and 14 @Pg 129 read with para 8.36.1 @Pg 316 to Para 8.38 2Pg 324</u>].</p> <p>- Email dumps exchanged by the Petitioner with the other Paper manufacturers were shared by Petitioner [<u>Refer Para 5.6 @Pg 130 – Relv @Pg 131 read with Para 8.35.2 @Pg 311 to Para 8.35.11 @Pg 316</u>].</p>
<p>Year 2015 to Year 2018</p>	<p>Officers of various other Opposite Parties to Case No. 30 of 2014 and Case No. 85 of 2015 were deposed and email dumps also received from the Opposite Parties to the Cases.</p>
<p>14.11.2017 12.12.2017</p>	<p>Officers of the Petitioner Company – Mr. Saikat Basu (Chief General Manager – Sales-Paper) and Mr. Santosh Wankhoo (Vice President – Marketing and Sale) were deposed on Oath before DG on 14.11.2017 and 12.12.2017 respectively [<u>Refer Sr. 13 and 14 @Pg 129</u>].</p>

07.02.2019	Director General-CCI, filed the Investigative report in Case No.30 of 2014 and Case No.85 of 2015.
02.05.2019	CCI, in accordance with the procedure provided under the Competition Act, 2002 (“the Act”) under Section 26 (8) read with Regulation 21(7) of General, Regulations 2009, forwarded the copy of the Director General’s report to the parties arraigned as Opposite Parties in the in case 30 of 2014 and Case no. 85 of 2015 and gave the Opposite Parties including the Petitioner, an opportunity to file their respective objections / suggestions, if any to the DG’s report along with synopsis by 30.06.2019 and the date of oral hearing before CCI was fixed on 15.07.2019.
25.06.2019	The Petitioner filed an application before CCI seeking cross-examination of the Informant.
04.07.2019	CCI, upon due consideration of the Application for cross-examination filed by the Petitioner, concluded that the Application failed to meet the requirements of Regulation 41(5) of the General, Regulations 2009, as Petitioner failed to point out the prejudice caused and why was it necessary and expedient for the Petitioner to cross examine the Informant and hence, the application

	stood rejected. However, it is imperative to note that liberty has been granted by CCI under this very order itself to the Petitioner to file Affidavit in rebuttal to dispute the conclusions drawn by the DG based upon the depositions or by incorporating such rebuttal in the objections pertaining to recording of depositions by the DG.
15.07.2019	Petitioner filed another application before CCI culling out the excerpts of the deposition of the informant.
18.07.2019	Only upon receipt of the order of CCI rejecting the Application for Cross examination as the Application failed to point out the prejudice caused and why was it necessary and expedient for the Petitioner to cross examine the Informant, the Petitioner addressed a letter to CCI contending the prejudice caused.

7. The perusal of the impugned orders would indicate that the CCI based on Information Petitions filed under Section 26 of the Act undertook an inquiry in accordance with provisions of Section 19 thereof. Thereafter, in accordance with the procedure under

Section 26(8) of the Act read with Regulation 21(7) of the Competition Commission of India (General Regulations), 2009 the CCI forwarded a copy of the Director General's report to the opposite parties in the respective cases, one of them being the petitioner. The report was so forwarded so that the petitioner is given an opportunity to file its objections / suggestions to the report. The order also indicates that an opportunity of oral hearing was to be provided. These investigation reports dated 17.2.2019 and the order accompanying the report dated 2.5.2019 are on record. These reports preceded an investigation carried out by the Director General into the information provided by the Information Petitioners. Reading Section 26 of the Act indicates that on a receipt of a Reference from the Central Government or a State Government or an information received u/S. 19, if the Commission is of the opinion that there exists a *prima facie* case it shall

direct investigation to be made in the matter.

8. The impugned orders dated 1.8.2014 and 17.11.2015 only recorded a *prima facie* opinion that the parties have colluded and formed a cartel for increase of prices in different varieties of paper and thereby warranting investigation for anti-competitive practices under the provisions of Section 3(1) read with Section 3(3)(a) of the Act in the paper industry. What is evident therefore that the information filed was neither restricted to a particular set of manufacturers but was in context of the entire paper industry connected with different varieties of paper. The relevant provisions of the Act namely; Sections 2(b,c,r and t) and Section 19 are reproduced hereunder:

Section 2(b) -

“agreement includes any arrangement or understanding or action in concert,

- *Whether or not, such arrangement, understanding or action is formal or in writing; or*
- *Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.*

Section 2(c)- “cartel” *includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves limit control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;”*

Section 2(r)- “relevant market” *means the market which may be determined by the Commissioner with reference to the relevant product market or the relevant geographic market or with reference to both the markets;”*

Section 2(t)—“relevant product market” *means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;”*

Section 19 of the Act provides for inquiry in certain anti-competitive

agreements and the procedure to conduct such inquiry under Section 19 either on its own motion or on information received or on a reference made by Central Government, State Government or statutory authority. The CCI has to satisfy itself that, there exists a *prima facie* case before directing the Director General to conduct an investigation as provided under Section 26(1) of the Act.

9. Section 26 of the Competition Act, 2002 reads as under:

26. Procedure for inquiry under Section 19:

(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under Section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:

Provided that if the subject matter of an information received is, in the opinion of the Commission,

substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

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

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

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

Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to

in subsection (3) to the Central Government or the State Government or the statutory authority, as the case may be.

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

(6) If, after consideration of the objections and suggestions referred to in sub section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub section (5), if any, the Commission is of the opinion that further investigations is called for, it may

direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

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

10. What is evident from the chronology of dates and events set out hereinabove is that pursuant to the Information Petitions filed, the CCI in exercise of powers u/S.26(1) of the Act formed a *prima facie* case for directing investigation into the allegations against the paper mills. In context of the paper industry the order was passed in August, 2014 and November, 2015 respectively. These orders were accepted by the petitioners at the relevant point of time and the

petitioner continued to voluntarily participate in the proceedings before the DG. This is evident from the extract of the Investigation Report on record. At pages 112 to 115 when the report is examined the following dates indicate that the petitioner responded to all the notices of the DG, provided all types of details including copier paper on affidavit and Officers of the petitioner Company deposed on oath before the DG on 14.11.2017 and 12.12.2017, email dumped were exchanged by the petitioner with other paper manufactures. The relevant details are as under:

(1) 28.5.2015 - Notice alongwith questionnaire sent seeking information.

(2) 15.6.2015 - The petitioner submitted details about their Company in their submissions.

(3) On an additional questionnaire handed over on the same, on 30.6.2016 the petitioner furnished details.

(4) 30.6.2015 / 20.7.2015 and 3.12.2015, pursuant to the request of the CCI the petitioner submitted brief on trade discount, additional discount, month wise domestic sales, annual reports for 2014-15.

(5) 28.12.2015, 7.4.2016, 26.4.2016, 18.8.2017, 21.8.2017, 4.9.2017 pursuant to notices and questionnaire seeking certain details, ledger accounts, pan details, copies of bills and invoices etc. were submitted.

(6) 25.1.2018, 5.2.2018, 28.2.2018,

9.3.2018, 16.3.2018 – on notices for clarification on types of paper manufactured, the petitioner submitted details including on the copier variety. It also submitted certificate in terms of Section 65(B) of the Indian Evidence Act and cost audit reports of 2009 to 2014.

11. What is therefore apparent from these events is that the petitioner actively participated with the investigation. Only after rejection of an application for cross examination, by the impugned order dated 4.7.2019 did the petitioner approached this Court to challenge the Investigation Report in addition to the orders passed u/S.26(1) of the Act on the ground that “copier paper was never a part of the inquiry.”
12. What is evident from the list of dates and details set out in the DG’s report is that the petitioner continued

to participate on all fronts including that of the product related to copier paper. Having voluntarily furnished the information including the information on copier paper, at this stage of the investigation when the objections and suggestions of the petitioner have been invited the petitioner cannot be allowed to set up a case that the copier paper was never a part of investigation.

13. The provisions of Section 26(1) of the Act indicate that on receipt of an information, if the Commission is of the opinion that there exists *prima facie* case, it shall cause an investigation at the hands of the DG. This Court in exercise of powers under Article 226 of the Constitution of India, even as per the case of the petitioner would interfere when the order lacks material, in light of the decisions cited by the learned advocates for the petitioner. However, as held by the

Supreme Court in the case of **Competition Commission of India v. Steel Authority of India** reported in **2010 SCC, 744**, in paragraph Nos.31, 38, 87, 91 & 93 of the judgment, Hon'ble Supreme Court has observed as under:

“31. We would prefer to state our answers to the points of law argued before us at the very threshold. Upon pervasive analysis of the submissions made before us by the learned counsel appearing for the parties, we would provide our conclusions on the points noticed supra as follows:

1) In terms of [Section 53A\(1\)\(a\)](#) of the Act appeal shall lie only against such directions, decisions or orders passed by the Commission before the Tribunal which have been specifically stated under the provisions of [Section 53A\(1\)\(a\)](#). The orders, which have not been specifically made appealable, cannot be treated appealable by implication. For example taking a prima facie view and issuing a direction to the Director General for investigation would not be an order appealable under [Section 53A](#).

2) Neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor any party can claim, as a matter of right, notice and/or hearing at

the stage of formation of opinion by the Commission, in terms of [Section 26\(1\)](#) of the Act that a prima facie case exists for issuance of a direction to the Director General to cause an investigation to be made into the matter. However, the Commission, being a statutory body exercising, inter alia, regulatory jurisdiction, even at that stage, in its discretion and in appropriate cases may call upon the concerned party(s) to render required assistance or produce requisite information, as per its directive. The Commission is expected to form such prima facie view without entering upon any adjudicatory or determinative process. The Commission is entitled to form its opinion without any assistance from any quarter or even with assistance of experts or others. The Commission has the power in terms of Regulation 17 (2) of the Regulations to invite not only the information provider but even 'such other person' which would include all persons, even the affected parties, as it may deem necessary. In that event it shall be 'preliminary conference', for whose conduct of business the Commission is entitled to evolve its own procedure.

3) The Commission, in cases where the inquiry has been initiated by the Commission suo moto, shall be a necessary party and in all other cases the Commission shall be a proper party in

the proceedings before the Competition Tribunal. The presence of the Commission before the Tribunal would help in complete adjudication and effective and expeditious disposal of matters. Being an expert body, its views would be of appropriate assistance to the Tribunal. Thus, the Commission in the proceedings before the Tribunal would be a necessary or a proper party, as the case may be.

4) During an inquiry and where the Commission is satisfied that the act is in contravention of the provisions stated in [Section 33](#) of the Act, it may issue an order temporarily restraining the party from carrying on such act, until the conclusion of such inquiry or until further orders without giving notice to such party, where it deems it necessary. This power has to be exercised by the Commission sparingly and under compelling and exceptional circumstances. The Commission, while recording a reasoned order inter alia should : (a) record its satisfaction (which has to be of much higher degree than formation of a prima facie view under [Section 26\(1\)](#) of the Act) in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed; (b) It is necessary to issue order of restraint and (c) from the record

before the Commission, it is apparent that there is every likelihood of the party to the lis, suffering irreparable and irretrievable damage or there is definite apprehension that it would have adverse effect on competition in the market. The power under [Section 33](#) of the Act to pass temporary restraint order can only be exercised by the Commission when it has formed prima facie opinion and directed investigation in terms of [Section 26\(1\)](#) of the Act, as is evident from the language of this provision read with Regulation 18(2) of the Regulations.

5) In consonance with the settled principles of administrative jurisprudence, the Commission is expected to record at least some reason even while forming a prima facie view. However, while passing directions and orders dealing with the rights of the parties in its adjudicatory and determinative capacity, it is required of the Commission to pass speaking orders, upon due application of mind, responding to all the contentions raised before it by the rival parties.

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.

87. Now, let us examine what kind of function the Commission is called upon to discharge while forming an opinion under [Section 26\(1\)](#) of the Act. At the face of it, this is an inquisitorial and regulatory power. A Constitution Bench of this Court in the case of [Krishna Swami vs. Union of India \[\(1992\) 4 SCC 605\]](#) explained the expression 'inquisitorial'. The Court held that the investigating power granted to the administrative agencies normally is inquisitorial in nature. The scope of such investigation has to be examined with reference to the statutory powers. In that case the Court found that the proceedings, before the High Power Judicial Committee

constituted, were neither civil nor criminal but sui generis.

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.*

93. *We may also usefully note that the functions performed by the Commission under [Section 26\(1\)](#) of the Act are in the nature of preparatory measures in contrast to the decision making process. That is the precise reason that the legislature has used the word 'direction' to be issued to the Director General for investigation in that provision and not that the Commission shall take a decision or pass an order directing inquiry into the allegations made in the reference to the Commission."*

Though the learned counsel for the petitioner too had relied on paragraph No.97 of the said decision in context of his submission that the view should be recorded by the Commission in reference to the information furnished, reading the said decision would indicate that once a *prima facie* opinion is found by the Commission, no interference can be made by this Court.

14. Even otherwise, what has been held by the Supreme

Court is that exercise of powers by the CCI u/S.26(1) of the Act are not adjudicatory in nature and the formation of *prima facie* opinion is only an administrative process which does not entail civil consequences.

15. Reading the facts on hand would indicate that on the basis of two separate informations provided under Section 19 of the Act where it was alleged that the opposite parties were engaging in collusive practices in the paper industry by jointly engaging in increasing of prices in different varieties of paper, the Commission found a *prima facie* opinion warranting an investigation forming a *prima facie* opinion that an investigation for contravention of provisions of Section 3(1) read with Section 3(3)(a) of the Act existed.

16. Reading the investigation reports and the orders passed under Sections 26(1) read with Section 26(3) of the Act would indicate that the order is an administrative order which only forms a *prima facie* opinion. The petitioner has been given an opportunity of producing evidence before the DG during the process of investigation and by the orders impugned the DG has called upon the petitioner to file its objections / suggestions to the investigation report. It cannot be said therefore that the petitioners' doors are closed. After affording a reasonable opportunity and considering the objections and suggestions, the Commission based on the investigation reports will take an appropriate decision.
17. In the case of **CCI v. Grasim Industries (Supra)**, Delhi High Court in paragraph Nos.28 and 34 held as under:

“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.”

The Court had considered the decisions of **Barium Chemicals Limited (Supra)** and **Rohtas Industries Limited (Supra)**. In the words of the Delhi High Court an order of the CCI under Section 26(1) of the Act only triggers the investigation.

18. The High Court in its writ jurisdiction cannot delve into the merits and demerits of the report when as is also evident from the impugned order by which the request of the petitioner for cross examination of witnesses has been rejected that the CCI has granted liberty to the petitioner to file affidavits in rebuttal to dispute the conclusions drawn by the DG based on the depositions etc.

19. In the decisions in the case of **Flipcart Internet Pvt. Ltd. v. CCI and Amazon Seller Services v. CCI**, the **Karnataka High Court through the Division Bench Writ Appeal 562 of 2022 dated 23.7.2021**, paragraph Nos.17, 19 to 24, 27, 28, 40, 45 and 47 held as under:

“17. In the considered opinion of this Court, the CCI certainly have a jurisdiction to take appropriate steps to curb the anti competitive practices and a detailed mechanism is provided under the Act itself to ensure that no

anti competitive practices are undertaken. The appellants, it appears, do not want to participate at all in the proceedings initiated by the CCI and do not want the CCI to proceed ahead in accordance with law. This Court really fails to understand as to why the appellants do not want to participate in the enquiry, in which the appellants will have an opportunity to produce the material before the Director General on the basis of which, after hearing the appellants and after following the due process of law, the Director General shall be able to conduct an enquiry.

19. The Hon'ble Supreme Court has held that in order to avoid anti-competitive agreements, which causes harm to consumers by fixing the prices, limits outputs or allocating the markets, the Indian Parliament has enacted [Competition Act 2002](#). The competition law enforcement deals with anti- competitive practices and in those circumstances, once the CCI forms a prima facie opinion on receipt of a complaint which is given under [Section 26\(1\)](#) of the Act of 2002, directs the Director General to conduct an investigation, at that 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 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.

Therefore, at this stage, in the considered opinion of this Court, the issues and grounds raised in respect of anti- competitive practices as argued by the learned counsel for the appellants does not arise. The appellants are certainly entitled for opportunity of hearing as provided under the Statute and the present petitions/appeals are certainly premature.

20. The Hon'ble Supreme Court in the same case of Excel Crop Care Ltd.,(supra), in paragraph 108 has held as under;

"108. It is well settled that the [Competition Act, 2002](#) is a regulatory legislation enacted to maintain free market so that the Adam Smith's concept of invincible hands operate unhindered in the background. [CCI v. SAIL, (2010) 10 SCC 744] Further, it is clear from the Statement of Objects and Reasons that this law was foreseen as a tool against concentration of unjust monopolistic powers at the hands of private individuals which might be detrimental for freedom of trade. Competition law in India aims to achieve highest sustainable levels of economic growth, entrepreneurship, employment, higher standards of living for citizens, protect economic rights for just, equitable, inclusive and sustainable economic and social development, promote economic democracy, and support good governance by restricting

rent seeking practices. Therefore, an interpretation should be provided which is in consonance with the aforesaid objectives."

21. In the light of the aforesaid, in order to achieve the object of the Act of 2002, the question of interference does not arise. The appellants do have a right to participate in the proceedings and/or under an obligation to produce all the material as desired during the enquiry by the Director General.

The appellants want to crush the proceedings at a preliminary stage in a similar manner like quashing of FIR as prayed in a petition filed under [Section 482](#) of the Cr.PC. Earlier, almost in every criminal case, petitions were filed for quashment of the First Information Report (FIR) and in those circumstances, the Hon'ble Supreme Court has laid down parameters for quashment of the criminal proceedings/ FIR in the case of [State of Haryana and others v. Bhajan Lal and others](#), reported in AIR 1992 SC 604. Similarly, in Revenue matters as well as in case of violation of other Statutes on issuance of show cause notices, the aggrieved persons started rushing to Courts and in those circumstances, the Hon'ble Supreme Court in the case of [Union of India & Anr., vs. Kunisetty](#)

Satyanarayana, reported in (2006) 12 SCC 28, has passed the following;

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh* ([1996] 1 SCC 327/JT [1995] 8 SC 331), *Special Director vs. Mohd. Ghulam Ghouse* (AIR 2004 SC 1467), *Ulagappa vs. Divisional Commissioner, Mysore* (2001(10) SCC 639), *State of U.P. vs. Brahm Datt Sharma* (AIR 1987 SC 943) etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment

or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. *Writ jurisdiction is discretionary jurisdiction and hence such discretion under [Article 226](#) should not ordinarily be exercised by quashing a show-cause notice or charge sheet.*

16. *No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.*

22. *The Hon'ble Supreme Court in the aforesaid case has held that unless and until the show cause notice is vague or has been issued by an authority not competent to do so, interference can be done in the matter. In the present case, the order passed by the CCI directing an enquiry is the first stage of initiating process under the CCI Act and the enquiry is yet to commence. The appellants do not want to participate in the enquiry for the reasons best known to them.*

23. *The present case is not a case where the mala fides are alleged against the Regulator, nor there is any jurisdictional infirmity. The*

order passed under [Section 26\(1\)](#) is neither an adjudication, nor determinative, but merely an inquisitorial, departmental proceedings in the nature of a direction to the Director General to make an investigation. It is neither a judicial nor a quasi judicial proceedings as held by the Hon'ble Supreme Court in the case of CCI v. SAIL. Paragraphs 31, 38, 87 and 91 of the judgment reads as under;

"31. We would prefer to state our answers to the points of law argued before us at the very threshold. Upon pervasive analysis of the submissions made before us by the learned counsel appearing for the parties, we would provide our conclusions on the points noticed supra as follows:

(1) In terms of [Section 53-A\(1\)\(a\)](#) of the Act appeal shall lie only against such directions, decisions or orders passed by the Commission before the Tribunal which have been specifically stated under the provisions of [Section 53-A\(1\)\(a\)](#). The orders, which have not been specifically made appealable, cannot be treated appealable by implication. For example, taking a prima facie view and issuing a direction to the Director General for investigation would not be an order appealable under Section 53-A.

(2) Neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor can any party claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of [Section 26\(1\)](#) of the Act that a prima facie case exists for issuance of a direction to the Director General to cause an investigation to be made into the matter.

However, the Commission, being a statutory body exercising, inter alia, regulatory jurisdiction, even at that stage, in its discretion and in appropriate cases may call upon the party(s) concerned to render required assistance or produce requisite information, as per its directive. The Commission is expected to form such prima facie view without entering upon any adjudicatory or determinative process. The Commission is entitled to form its opinion without any assistance from any quarter or even with assistance of experts or others. The Commission has the power in terms of Regulation 17(2) of the Regulations to invite not only the information provider but even "such other person" which would include all persons, even the affected parties, as it may deem

necessary. In that event it shall be "preliminary conference", for whose conduct of business the Commission is entitled to evolve its own procedure.

(3) The Commission, in cases where the inquiry has been initiated by the Commission suo motu, shall be a necessary party and in all other cases the Commission shall be a proper party in the proceedings before the Competition Tribunal. The presence of the Commission before the Tribunal would help in complete adjudication and effective and expeditious disposal of matters. Being an expert body, its views would be of appropriate assistance to the Tribunal. Thus, the Commission in the proceedings before the Tribunal would be a necessary or a proper party, as the case may be.

(4) During an inquiry and where the Commission is satisfied that the act is in contravention of the provisions stated in [Section 33](#) of the Act, it may issue an order temporarily restraining the party from carrying on such act, until the conclusion of such inquiry or until further orders without giving notice to such party, where it deems it necessary. This power has

to be exercised by the Commission sparingly and under compelling and exceptional circumstances. The Commission, while recording a reasoned order inter alia should:

(a) record its satisfaction [which has to be of much higher degree than formation of a prima facie view under [Section 26\(1\)](#) of the Act] in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed;

(b) it is necessary to issue order of restraint; and

(c) from the record before the Commission, it is apparent that there is every likelihood of the party to the lis, suffering irreparable and irretrievable damage or there is definite apprehension that it would have adverse effect on competition in the market. The power under [Section 33](#) of the Act to pass temporary restraint order can only be exercised by the Commission when it has formed prima facie opinion and directed investigation in terms of

Section 26(1) of the Act, as is evident from the language of this provision read with Regulation 18(2) of the Regulations.

(5) In consonance with the settled principles of administrative jurisprudence, the Commission is expected to record at least some reason even while forming a prima facie view. However, while passing directions and orders dealing with the rights of the parties in its adjudicatory and determinative capacity, it is required of the Commission to pass speaking orders, upon due application of mind, responding to all the contentions raised before it by the rival parties.

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.

87. Now, let us examine what kind of function the Commission is called upon to discharge while forming an opinion under [Section 26\(1\)](#) of the Act. At the face of it, this is an inquisitorial and regulatory power. A Constitution Bench of this Court in [Krishna Swami v. Union of India](#) [(1992) 4 SCC 605] explained the expression "inquisitorial". The Court held that the investigating power granted to the administrative agencies normally is inquisitorial in nature. The scope of such investigation has to be examined with reference to the statutory powers. In that case the Court found that the proceedings, before the High-Power Judicial Committee constituted, were neither civil nor criminal but *sui generis*.

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 (the 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 or hearing is not contemplated under the provisions of [Section 26\(1\)](#) of the Act."

24. Keeping in view [Sections 19](#) and [26](#) of the Act of 2002, the order is certainly administrative in nature and has been passed at a preliminary/preparatory stage.

27. Keeping in view the law laid down by the Hon'ble Supreme Court in the case of CCI v. SAIL, the order passed under [Section 26\(1\)](#) does not set into motion an unstoppable process that necessarily culminates into an

adjudication against the entity against whom an enquiry is initiated. In fact, [Section 26](#) of the Act of 2002 read as a whole, discloses a comprehensively and thoughtfully construed, stepwise scheme which contemplates not only a fair hearing to the concerned parties at the appropriate stage, but it is characterized by an inherent robustness by which the proceedings may culminate in closure.

28. In the present case, earlier also there was an information submitted against the appellants and the matter is ended in closure (AIOVA case). The Director General after conducting an enquiry recommended closure by submitting an investigation report and the same was accepted by the CCI. Therefore, the appellants should not feel shy in participating in the enquiry, which is yet to commence by the Director general and all the grounds raised by the appellants shall be available before the Director General as well as before the CCI. The order passed under [Section 26\(1\)](#) is only the starting point of the process and the appellants want to crush the process at the threshold and the CCI is not being permitted by the appellants to proceed ahead in the matter.

40. We are dealing with a limited issue relating to an order passed under [Section 26\(1\)](#) of the Act of 2002 by the CCI setting the machinery in motion for conducting an enquiry by the Director General and

therefore, as the enquiry is yet to commence, wherein all grounds raised in the present petitions/appeals can be looked into, hence, the present petitions/appeals are premature.

45. It is also contended by the learned Senior counsel appearing for the appellants that the harm is going to be caused to the business reputation of the appellants and before passing an order under [Section 26\(1\)](#) of the Act of 2002, the appellants should have been invited for a discussion.

47. In the light of the aforesaid, in the considered opinion of this Court, by no stretch of imagination, the process of enquiry can be crushed at this stage. In case, the appellants are not at all involved in violation of any statutory provisions of Act of 2002, they should not feel shy in facing an enquiry. On the contrary, they should welcome such an enquiry by the CCI. The writ petitions filed against the order dated 13.1.2021 and the present writ appeals are nothing but an attempt to ensure that the action initiated by the CCI under the Act of 2002 does not attain finality and the same is impermissible in law as the Act of 2002 itself provides the entire mechanism of holding an enquiry, granting an opportunity of hearing, passing of a final order as well as appeal against the order passed by the CCI. In the considered opinion of this Court, the present writ appeals filed by the appellants are devoid of merits and

substance, hence, deserve to be dismissed and are accordingly, dismissed.”

20. Even in the case of **Amazon Seller Services Pvt. Ltd.**

v. CCI v. CCI, a single bench in writ petition 3363 of

2020 dated 11.6.2021 held as under:

“58. Petitioners have pleaded in extenso and submitted elaborate arguments on the merits of the matter. But, in a writ petition filed under [Article 226](#) of the Constitution of India, seeking judicial review, the High Court can examine only the decision making process with the exception namely the cases involving violation of fundamental human rights. The law on the point is fairly well settled. It may be profitable to recall following opinion of Lord Greene in Associated Provincial Picture Houses Ltd., Vs. Wednesbury Corporation²³ :

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretion often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to

He must speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in Short v. Poole Corporation [1926 Ch 66] gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

59. In G. Veerappa Pillai, Proprietor, Sathi Vilas Bus Service, Porayar, Tanjore District, Madras Vs. Raman and Raman Limited, Kumbakonam, Tanjore District and Three Others.²⁴, it is held that writs referred to in [Article 226](#) are intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction

vested in them, or there is error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it is not so wide or large AIR 1952 SC 192 W.P No.3363/2020 C/W W.P No.4334/2020 as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made.

60. In T.C. Basappa Vs. T. Nagappa and Another²⁵, it is held that a tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. Quoting Morris J, it is held as follows:

10. "The essential features of the remedy by way of certiorari have been stated with remarkable brevity and

clearness AIR 1954 SC 440 W.P No.3363/2020 C/W W.P No.4334/2020 by Morris, L.J. in the recent case of Rex v. Northumberland Compensation Appellate Tribunal [(1952) 1 KB 338 at 357]. The Lord Justice says:

"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown."

61. In *G.B. Mahajan and others Vs. Jalgaon Municipal Council and others*²⁶, the Hon'ble Supreme Court of India speaking through Justice M.N. Venkatachaliah (as he then was), referring to Prof. Wade's comment on *Wednesbury* doctrine, has held that the point to note is that a thing is not unreasonable in the legal sense merely because Court thinks it unwise. Prof. Wade's comment reads thus:

"This has become the most frequently cited passage (though most commonly cited only by its nickname) in administrative law. It explains how 'unreasonableness', in its classic formulation, covers a multitude of sins. These various errors commonly result

from paying too much attention to the mere words of the Act and too little to its general scheme and purpose, and from the fallacy that unrestricted language naturally confers unfettered discretion. 26 (1991)3 SCC 91 (at para 44) W.P No.3363/2020 C/W W.P No.4334/2020 Unreasonableness has thus become a generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category of errors commonly described as 'irrelevant considerations', and mistakes and misunderstandings which can be classed as self-misdirection, or addressing oneself to the wrong question"

Further, following observations of Lord Scarman in Nottinghamshire County Council Vs. Secretary of State for Environment have also been quoted and they aptly apply to these cases.

"... But I cannot accept that it is constitutionally appropriate, save in very exceptional circumstances, for the courts to intervene on the ground of "unreasonableness" to quash guidance framed by the Secretary of State and by necessary implication approved by the House of Commons, the guidance being concerned with the limits of public expenditure by local authorities and the

incidence of the tax burden as between taxpayers and ratepayers. Unless and until a statute provides otherwise, or it is established that the Secretary of State has abused his power, these are matters of political judgment for him and for the House of Commons. They are not for the judges or your Lordships' House in its judicial capacity."

"For myself, I refuse in this case to examine the detail of the guidance or its consequences. My reasons are these. Such an examination by a court would be justified only if a prima facie case were to be shown for holding that the Secretary of State had acted in bad faith, or for an improper motive, or that the consequences of his guidance were so absurd that he must have taken leave of his senses"

(Emphasis	supplied)	W.P
No.3363/2020	C/W	W.P
No.4334/2020		

62. *Noted jurist, Shri. V. Sudhish Pai, in his Article 'Is Wednesbury on the Terminal decline?'²⁷ has opined that the Wednesbury test, long established as ground of judicial review will be applicable in examining the validity of the exercise of administrative discretion. After analyzing the law with regard to Constitutional review in UK and the cases*

involving human rights, he has stated that it is quite inappropriate to speak of the decline or demise of Wednesbury test. He has concluded that Wednesbury Principles are still alive as follows:

"In the ultimate analysis, it can be said that the Wednesbury principles are still alive and applicable in judicial review of administrative discretion where no constitutional/fundamental rights are involved. Wednesbury, is but a facet and an enduring facet of the larger landscape of judicial review.

These issues and aspects are not a matter of mere semantics but are the constitutional underpinnings of the exercise of judicial power and the limits thereof."

27 (2008)2 SCC J-15 W.P No.3363/2020 C/W W.P No.4334/2020

63. In the case on hand, the informant has filed information and appended material papers, which according to the informant support its allegations. It was submitted by the learned Additional Solicitor General that the Commission has also called upon the informant to file a Certificate under [Section 65B](#) of the Indian Evidence Act and the penalty

for incorrect information is upto Rs. One Crore under Section 44 of the Competition Act.

64. It is expected that an order directing investigation be supported by 'some reasoning' (CCI Vs. SAIL para 97), which the Commission has fulfilled. Therefore, it would be unwise to prejudge the issues raised by the petitioners in these writ petitions at this stage and scuttle the investigation. Therefore, the impugned order does not call for any interference. Accordingly, point (c) is answered.”

21. The order u/S.26(1) merely directs an investigation. It does not effects the rights and liabilities of the petitioner. The CCI is to examine the validity of the allegations as to whether the petitioner’s conduct is anti-competitive. The petitioner has been provided an opportunity to file its objections and suggestions to the DG report and the petition therefore is certainly misconceived.

22. In the case of **Samir Agrawal v. Competition Commission of India** reported in 2021(3) SCC, 136, Hon'ble Supreme Court in paragraph Nos.14 to 15, 17, 19, 20 and 23 held as under:

“14. A reading of the provisions of the Act and the 2009 Regulations would show that “any person” may provide information to the CCI, which may then act upon it in accordance with the provisions of the Act. In this regard, the definition of “person” in Section 2(l) of the Act, set out hereinabove, is an inclusive one and is extremely wide, including individuals of all kinds and every artificial juridical person. This may be contrasted with the definition of “consumer” in Section 2(f) of the Act, which makes it clear that only persons who buy goods for consideration, or hire or avail of services for a consideration, are recognised as consumers.

15. A look at Section 19(1) of the Act would show that the Act originally provided for the “receipt of a complaint” from any person, consumer or their association, or trade association. This expression was then substituted with the expression “receipt of any information in such manner and” by the 2007 Amendment. This substitution is not without significance. Whereas, a complaint could

be filed only from a person who was aggrieved by a particular action, information may 23 be received from any person, obviously whether such person is or is not personally affected. This is for the reason that the proceedings under the Act are proceedings in rem which affect the public interest. That the CCI may inquire into any alleged contravention of the provisions of the Act on its own motion, is also laid down in Section 19(1) of the Act. Further, even while exercising suo motu powers, the CCI may receive information from any person and not merely from a person who is aggrieved by the conduct that is alleged to have occurred. This also follows from a reading of Section 35 of the Act, in which the earlier expression “complainant or defendant” has been substituted by the expression, “person or an enterprise,” setting out that the informant may appear either in person, or through one or more agents, before the CCI to present the information that he has gathered.

17. The 2009 Regulations also point in the same direction inasmuch as regulation 10, which has been set out hereinabove, does not require the informant to state how he is personally aggrieved by the contravention of the Act, but only requires a statement of facts and details of the alleged contravention to be set out in the information filed. Also, regulation 25

shows that public interest must be foremost in the consideration of the CCI when an application is made to it in writing that a person or enterprise has substantial interest in the outcome of the proceedings, and such person may therefore be allowed to take part in the proceedings. What is also extremely important is regulation 35, by which the CCI must maintain confidentiality of the identity of an informant on a request made to it in writing, so that such informant be free from harassment by persons involved in contravening the Act.

*19. With the question of the Informant's locus standi out of the way, one more important aspect needs to be decided, and that is the submission of Shri Rao, that in any case, a person like the Informant 25 cannot be said to be a "person aggrieved" for the purpose of Sections 53B and 53T of the Act. Shri Rao relies heavily upon *Adi Pherozshah Gandhi (supra)*, in which Section 37 of the Advocates Act, 1961 came up for consideration, which spoke of the right of appeal of "any person aggrieved" by an order of the disciplinary committee of a State Bar Council. It was held that since the Advocate General could not be said to be a person aggrieved by an order made by the disciplinary committee of the State Bar Council against a particular advocate, he would have no locus standi to appeal to the Bar Council of India. In so*

saying, the Court held: “11. From these cases it is apparent that any person who feels disappointed with the result of the case is not a “person aggrieved”. He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him. That the order is wrong or that it acquits some one who he thinks ought to be convicted does not by itself give rise to a legal grievance....” (page 491)

20. It must immediately be pointed out that this provision of the Advocates Act, 1961 is in the context of a particular advocate being penalized for professional or other misconduct, which concerned itself with an action in personam, unlike the present case, which is concerned with an action in rem. In this context, it is useful to refer to the judgment in *A. Subash Babu v. State of A.P.*, (2011) 7 SCC 26 616, in which the expression “person aggrieved” in Section 198(1)(c) of the Code of Criminal Procedure, 1973, when it came to an offence punishable under Section 494 of the Indian Penal Code, 1860 (being the offence of bigamy), was under consideration. It was held that a “person aggrieved” need not only be the first wife,

but can also include a second “wife” who may complain of the same. In so saying, the Court held: “25. Even otherwise, as explained earlier, the second wife suffers several legal wrongs and/or legal injuries when the second marriage is treated as a nullity by the husband arbitrarily, without recourse to the court or where a declaration sought is granted by a competent court. The expression “aggrieved person” denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. Section 494 does not restrict the right of filing complaint to the first wife and there is no reason to read the said Section in a restricted manner as is suggested by the learned counsel for the appellant. Section 494 does not say that the complaint for commission of offence under the said section can be filed only by the wife living and not by the woman with whom the subsequent marriage takes place during the lifetime of the wife living and which marriage is void by reason of its taking place during the life of such wife. The

complaint can also be filed by the person with whom the second marriage takes place which is void by reason of its taking place during the life of the first wife.”
(page 628)

23. Obviously, when the CCI performs inquisitorial, as opposed to adjudicatory functions, the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to sub-serve the high public purpose of the Act.”

23. In the case of **Excel Crop Care Limited v. CCI** reported in **2017(8) SCC, 47**, paragraph Nos.44 and 45 read 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:

“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 :-

“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 becomes 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 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.”

24. Both the learned advocates for the respective parties had extensively relied on a decision in the case of **CCI v. Coordination Committee of Artist (Supra)**. Mr. Thakore had relied on this decision in the context of “Relevant Market” to submit that the first and the foremost aspect that needs determination is what is the relevant market in which the competition is affected.

This was argued with regard to the degree of interchangeability between all the products. It was his case that there cannot be interchangeability between copier paper and printing and writing paper. Section 3 of the Act was therefore necessarily to be kept in mind and delineation was mandatory.

25. In a clarificatory order passed by the Hon'ble Supreme Court on 07.05.2018 in Misc. Application No.490 of 2017 in Civil Appeal No.6691 of 2014, the Supreme Court held as under:

“This application is preferred by the Competition Commission of India seeking certain clarifications with regard to the judgment dated 07.03.2017 rendered in this appeal. The Competition Commission was concerned with the information received in respect of the agreement which was entered into between Co-ordination Committee of Artists and Technicians of W.B. Film and Television and it was to be decided as to whether such an agreement was indeed competitive agreement within the meaning of

Section 3(3)(b). Clause (b) of sub-Section (3) deals with those agreements which limits or controls production, supply, markets, technical development, Signature Not Verified investment or provision of services. In that context the law on the Digitally signed by ASHWANI KUMAR Date: 2018.05.23 16:15:26 IST Reason: aspect of 'relevant market' has also been discussed. It may be mentioned that though the Competition Commission had found the agreement to be anti-competitive, the Appellate Tribunal had upset the order of the Competition Commission, against which the Appeal was preferred by the Competition Commission of India. This Court has restored the order of the Competition Commission of India thereby setting aside the judgment of the Appellate Tribunal. While doing so, the question of 'relevant market', was also considered and in para 30 of the judgment, the following question was formulated:

“It is for this reason, the first and foremost aspect that needs determination is: 'What is the relevant market in which competition is effect?’” In the present application filed by the Competition Commission of India it is contended that an impression is given that the question of relevant market has to be determined in all types of cases under [Section 3](#) of the Competition Act, which may not be the correct position. We find that our judgment dated 07.03.2017 needs some

clarification in this behalf, which we hereby give in the following manner:

In paragraph 8 of the judgment, it is noted that sub-section (3) of [Section 3](#) of the Act creates a legal presumption as to the appreciable adverse affect of competition whenever there exists agreements of the type enumerated in the said sub-section. It is also noted in paragraph 13 that the appreciable adverse affect on the competition is to be seen in the context of 'relevant market' as defined in [Section 2\(r\)](#) of the Act. Thereafter, question as to what would constitute 'relevant market' for the purpose of enquiry into the impugned activity of Coordination Committee has been formulated and answered.

As mentioned above, the submission of the applicant is that though paragraph 8 of the judgment rightly records that anti-competition agreements listed under [Section 3\(3\)](#) are per se treated as adversely affecting the competition to an appreciable extent, the aforesaid reading of the issue in respect of 'relevant market' may give an impression that there is also a necessity to delineate relevant market in all such cases. We clarify that such delineation is not mandatory in terms of the statutory scheme of the Act, particularly having regard to the statutory presumption contained in [Section 3](#) of the Act itself. We, therefore, clarify the observations made in paragraphs 13, 30 and 32 of the judgment

dated 07.03.2017, to the limited extent that the determination of 'relevant market' is not a mandatory pre-condition for making assessment of the alleged violation under [Section 3](#) of the Act.

The application stands disposed of with the aforesaid clarification.”

26. Reading of the clarificatory order indicates that the Supreme Court held that the determination of “Relevant Market” is not a mandatory pre-condition for making assessment of the alleged violation u/S. 3 of the Act.

27. Reading the provisions of Regulation 43 of the CCI Regulations too also provide an insight to the fact that if the Commission requires any document to be produced or any witness to be examined, it will give sufficient opportunity to adduce additional evidence.

28. For the aforesaid reasons therefore, the petition deserves to be *dismissed* and accordingly, it is *dismissed*. *Interim Relief* stands vacated forthwith. No order as to *costs*. *Rule* is discharged.

(BIREN VAISHNAV, J)

FURTHER ORDER

Mr.Devang Nanavati learned Senior Advocate requests that the interim relief granted by this Court be extended.

The request for extension is rejected.

(BIREN VAISHNAV, J)

VATSAL