

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Competition Appeal (AT) No. 23 of 2021**

**IN THE MATTER OF:
United Breweries Ltd.**

...Appellant

Vs.

**Competition Commission of India &
Ors.**

...Respondents

Present

For Appellant:

Mr. Gopal Subramaniam, Sr. Advocate with Ms. Sonam Mathur, Mr. Rahat Dhawan, Ms. Shivangi Chawla, Ms. Parumita Pal, Mr. Samriddha Gooptu, Mr. Pavan Bhushan, Ms. Ujwala Uppaluri and Mr. Saksham Dhingra, Advocates.

Ms. Nisha Kaur Uberoi, Advcoate

For Respondents:

Mr. Balbir Singh (ASG) with Mr. Balaji Subramanian, Mr. Arav Kapoor, Ms. Ishani Banerjee, Ms. Monica Benjamin and Ms. Surbhi Singh, Advocates for R-1.

Ms. Shama Nargis (Deputy Director Law, CCI)

Mr. Afreen Abbassi, Advocate (for R-4, Carlsberg India)

Mr. Subodh Prasad Deo and Ms. Rinki Singh, Advocates for R-5

**ORDER
(Virtual Mode)**

22.12.2021: The Learned Senior Counsel for the Appellant contends that the impugned order passed by the first Respondent/CCI suffers from serious fundamental flaws including violation of the Principles of Natural Justice, failure to meet the prescribed legal and Jurisdictional standard necessary to find a contravention of Section 3 of the Competition Act, 2002 and non-adherence to binding precedents of the Hon'ble Supreme Court of India.

The Learned Senior Counsel Mr. Gopal Subramanian, appearing for the Appellant submits that in the impugned order the First Respondent/CCI had imposed a disproportionate and arbitrary penalty of Rs. 7,51,83,28,719/- upon the Appellant while granting a reduction by 40% in the penalty on account of the without prejudice 'Leniency Application filed by the Appellant under Section 46 of the Competition Act, 2002 read with Competition Commission of India(Lesser Penalty) Regulations, 2009 ('Lesser Penalty Regulations').

The Learned Senior Counsel for the Appellant comes out with a plea that an erroneous endorsement of the incomplete investigation report, without an independent enquiry by the Respondent/Commission, as required under Section 26 (8) of the Act, the impugned order came to be passed in violation of the Principles of Natural Justice.

It is represented on behalf of the Appellant that the first Respondent/CCI had accepted the recommendations of the 'Director General' without conducting any further enquiry as per Section 26(8) of the Act on the market conditions or the legal, commercial and economic evidence furnished by the Appellant. In fact, there is an abdication of the statutory responsibility by the first Respondent/CCI.

The other contention raised on behalf of the Appellant is that even the rudimentary element of Section 3(3) of the Competition Act, 2002 was not considered and established by the first Respondent/CCI namely viz; the existence of an agreement among the Competitors and such agreement having caused or likely to cause and AAEC in India, as enjoined under the Act.

It is projected on the side of the Appellant that the filing of a Leniency Application does not absolve the first Respondent/Commission from satisfying the Jurisdictional pre-requisites necessary for a violation of Section 3 of the Act. In fact, the filing of 'Leniency Application' by the Appellant is not to be construed, as an admission of Anti-Competitive Conduct.

The Learned Senior Counsel for the Appellant forcefully contends that the Appellant has a good prima facie case and the 'Balance Of Convenience' is in favour of the Appellant and if the impugned order is not stayed by this 'Tribunal' then very serious prejudice and hardship will be caused to the Appellant.

By way of Reply Mr. Balbir Singh Learned ASG appearing for the first Respondent contends that the impugned order passed by the first Respondent is a tenable, valid, just and sustainable one in the eye of law and therefore, the same is not to be stayed by this 'Tribunal' by means of an interim order in the interest of justice.

At this stage, without delving deep any further, this 'Tribunal' on mere running of the eye in respect of the various grounds raised in the 'Memorandum of Appeal' both on facts and on legal plane is of the considered opinion that the controversies/contentions raised require an elaborate and in depth examination, of course, at the time of final hearing of the Appeal.

In view of the above, this 'Tribunal' keeping in mind the pivotal fact that the Appellant has filed the instant Appeal being aggrieved with the impugned order dated 24.09.2021 passed by the Respondent in suo moto case no. 6/2017, during the pendency of the 'Appeal' to prevent an aberration of justice and in furtherance of substantial cause of justice stays the impugned order dated 24.09.2021 in suo moto case no. 6/2017 subject to the payment of 10% of the penalty amount of Rs. 7,51,83,28,719/- levied by the first Respondent/CCI, by way of 'Fixed Deposit Receipt' to and in favour of the Registrar, NCLAT within three weeks from the date of passing of this order.

In the interregnum, it is open to the Learned Counsels for the Respondent No. 1,4,5 to file Reply and to file Rejoinder by the Learned Counsel for the Appellant before the Office of the Registry not only through e-filing but also through the hard copy and the copy of the same shall be exchanged between them.

Let notice be issued to Respondent No. 2 & 3 by speed post returnable by 29.03.2022. Let the requisites together with process fee be filed by the Learned Counsel for the appellant on or before 05.01.2022. The Appellant is require to furnish the mobile no. and e-mail address of the Respondent No. 2 & 3, in that event, the notice may also be issued by the Office of Registry in that mode.

List the case 'For Admission (After Notice)' on **29th March, 2022.**

[Justice M. Venugopal]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

sr/gc
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