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

\+ W.P.(C) 5604/2015

TELEFONAKTIEBOLAGET LM ERICSSON (PUBL) ..... Petitioner
Through: Mr P. Chidambram, Sr. Adv. with Mr Anand Pathak, Mr Chander M. Lall, Mr Ravi Shakhar Nair, Mr Ashutosh Kumar, Ms Archana Sachdeva, Ms Shivangi Sukumar, Ms Sakshi Aggarwal, Mr B. Prashant Kumar, Mr Rukma George & Mr Akshay Nanda, Advs.

versus

COMPETITION COMMISSION OF INDIA & ANR .... Respondents
Through: Mr Avinash Sharma, Adv. with Dr. Satya Prakash, Advisor (Law) & Mr Ved Prakash Mishra, Director (Law) for R-1.
Mr Amit Sibal, Sr. Adv. with Mr Naval Satarawala Chopra, Mr Dev Robinson, Ms Monika Brar, Mr Aman Sethi, Mr Jogeshwar Misra & Ms J. Chatterjee, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 27.05.2015

Caveat No. 556-558/2015

1. Since the caveator/ respondent has entered appearance, caveats stand discharged.

CM Nos. 10098-10100/2015 (Exemptions)

2. Allowed subject to just exceptions.

WP(C) 5604/2015 & CM No. 10097/2015 (Stay)

3. I have heard learned counsels for the parties at some length. The challenge in the present petition is laid to the order passed by respondent

no.1, i.e., the Competition Commission of India, (in short the CCI), which is dated 12.05.2015. This order has been passed by CCI in exercise of its powers under Section 26(1) of the Competition Act, 2002 (in short the 2002 Act). The operative directions are reflected in paragraphs 16 and 17 of the impugned order. For the sake of convenience the same are extracted hereinafter.

> "..... 16. In the light of the above analysis, the Commission finds that a prima facie case of contravention of the provisions of Section 4 of the Act is made out against the Opposite Parties and it is a fit case to be investigated by the DG. Accordingly, the Commission directs the DG to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order.
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> 17. The Commission, however, makes it clear that nothing stated herein shall tantamount to an expression of opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observation made herein. In case the DG finds the conduct of the Opposite Parties in violation of the Act, the DG shall also investigate the role of the persons who are responsible for the conduct of the Opposite Parties so as to fix the responsibility of such persons under Section 48 of the Act...."

2. To be noted, the CCI while coming to the conclusion, which it has vide impugned order dated 12.05.2015, it has found a prima facie case of violation, by the petitioner, of the provisions of Section 4 of the 2002 Act. In other words, the CCI has come to a prima facie view that the petitioner's conduct is reflective of abuse of its dominant position. The direction issued, therefore, to the Director General (DG) is to investigate the conduct of the petitioner.

3. The proceedings before the CCI were triggered by the informant which is impleaded as respondent no.2 herein.

3.1 In so far as the petitioner is concerned, apart from the present case, the CCI dealt with two other matters, which were initiated at the behest of Micromax Informatics Ltd. (in short the Micromax), and Intex Technologies India Ltd. (in short the Intex). The case related to Micromax was numbered as case no. 50/2013, while that filed by Intex was numbered as case no. 76/2013. In those cases as well, the CCI, inter alia, had come to the conclusion that the petitioner herein had violated the provisions of Section 4 of the 2002 Act. Accordingly, the CCI had passed two separate orders, under Section 26(1) of the 2002 Act, in the cases involved in Micromax and Intex.

3.2 The DG in these two cases was, accordingly, inter alia, directed by the CCI, to carry on investigation against the petitioner herein.

3.3 In the case of Micromax the order passed by the CCI is dated 12.11.2013, while that which is passed in the case of Intex, is dated 16.01.2014.

3.4 Both orders were challenged by the petitioner herein by way of two separate writ petitions, which were instituted in this court. The Micromax's writ petition was numbered as: WP(C) 464/2014. In this writ petition an interim order was passed which is dated 21.01.2014. The writ petition in Intex's case was numbered as: WP(C) 1006/2014. In this writ petition challenge was laid to not only the order dated 16.01.2014, but also to an earlier order dated 28.11.2013, passed by the CCI. In this writ petition, like the earlier petition, an interim order dated was passed on 17.02.2014.

3.5 To be noted, the interim directions, which were passed by a learned Single of this court, vide order dated 21.01.2014, were substantially replicated in the order dated 17.02.2014. The operative directions contained, in the order dated 21.01.2014 are as follows:

> "...Consequently, till the next date of hearing while the petitioner may give information as called upon by the Director General of Competition Commission of India, no final order/ report shall be passed either by the Competition Commission of India or by its Director General.
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> Though the Director General of the Competition Commission of India is free to call any local officer of the petitioner for investigation purposes, but no officer stationed abroad shall be called without taking specific leave of this court.
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> It is also made clear that the observations made by the Commission shall not come in the way of the petitioner negotiating with the third parties or in the adjudication of the proceedings filed by either of the parties in this court...."

3.6 Against order dated 21.01.2014, two appeals were filed; one by the CCI and the second by Micromax. These appeals were numbered as LPA No. 182/2014 and 185/2014. The Division Bench, vide order dated 24.02.2014, while disposing of the appeals, modified only that part of the order dated 21.01.2014 which prohibited CCI from calling an officer of the petitioner, who was stationed abroad, without taking specific leave of the court. The Division Bench, thus, modified the direction to the extent that, in case, the DG, felt it was necessary to secure presence of any officer stationed abroad, he would in the first instance, notify the petitioner and, in the event the petitioner was of the view, that the request was unreasonable it would be open to it to move an application before the Single Judge, for

appropriate directions.

3.7 Since, an appeal was filed by Intex as well, against the order dated 17.02.2014, passed by the learned Single Judge (which appeal was numbered as LPA No. 255/2014), the said appeal was disposed of by the Division Bench vide order dated 24.03.2014, in line with its previous order dated 24.02.2014.

3.8 To complete the narrative, I am informed, that Intex had carried the matter in appeal to the Supreme Court. The Supreme Court vide order dated 08.05.2014, passed in SLP No. 11998/2014, while disposing of the appeal, requested the learned Single Judge to take a view in the matter, preferably before it closes for summer vacation, as it involved an issue pertaining to "jurisdiction".

3.9 I was informed during the proceedings held before me today, that the said writ petitions, i.e., WP(C) Nos. 464/2014 and 1006/2014 are being currently heard by the learned Single Judge.

4. In these circumstances, in my view, the petitioner can only hope to get an interim direction which is in line with the order dated 21.01.2014 and 17.02.2014. Accordingly, while the petitioner may supply information as requisitioned by the DG, neither the DG will submit a final report, nor will the CCI pass a final order in the matter. For the purposes of investigation, while the DG will be free to call upon any officer of the petitioner, who is locally located; in the case of those officers, who are stationed abroad, a request will be made to the petitioner, in the first instance. In the event the petitioner is of the view that the request is unreasonable, it would have liberty to move this court for appropriate orders.

5. Issue notice.

6. Mr Avinash Sharma accepts notice on behalf of respondent no.1, while Mr Naval Satarawala accepts notice on behalf of respondent no.2. Counter affidavit be filed within four weeks from today. Rejoinder, if any, be filed before the next date of hearing.

7. List on 16.11.2015.

8. Dasti.

RAJIV SHAKDHER, J

MAY 27, 2015
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