

COMPETITION APPELLATE TRIBUNAL
NEW DELHI

Appeal No. 16/2017

[Under Section 53-B of the Competition Act 2002 against the order dated 16.02.2017 passed by the Competition Commission of India in Case No.63/2014]

CORAM

Hon'ble Shri Rajeev Kher
Member

Hon'ble Ms. Anita Kapur
Member

In the matter of:

Saurabh Tripathy,
2nd Floor, House No.1334,
Sector – 19,
Near – Delhi Public School,
Faridabad, Haryana – 120012.

.... Appellant

Versus

1. Competition Commission of India,
Through its Secretary,
18-20, The Hindustan Times House,
Kasturba Gandhi Marg,
New Delhi – 110001.

2. M/s Great Eastern Energy
Corporation Limited,
M-10, ADDA Industrial Estate,
Asansol, West Bengal – 713305.

.... Respondents

Appearances: Shri Sharad Gupta and Shri Vinayak Gupta,
Advocates for the Appellant.

Shri Saran Suri and Shri Suman N. Rawat,
Advocates with Shri Kamal Sultanpuri, Deputy
Director (Law) for Respondent No.1 - Competition
Commission of India.

Shri Ramji Srinivasan, Senior Advocate assisted by Shri Avinash Amarnath, Shri Sanjeev Kumar and Shri Tushar Bhardweaj, Advocates for Respondent No.2.

ORDER

This appeal was put up before us on 8th May, 2017 when we had directed that notice be issued to the Competition Commission of India (the Commission) as the Appellant in his appeal memo had stated that he received the certified copy of the impugned order dated 16.02.2017 on 26.04.2017 and he could file the appeal only on 28.04.2017. Since the appeal was filed beyond the prescribed period of limitation and a specific allegation was made that no certified copy of the impugned order was received by the Appellant, we issued notice to the Commission. Consequently, the Commission made its appearance through learned counsel, Shri Saran Suri today. We asked learned counsel for the Appellant to first convince us on the delay that has been caused in filing the appeal as the order appealed against was passed by the Commission on 16.02.2017 whereas the appeal was filed on 28.04.2017.

2. Learned counsel for the appellant argued that after filing the information both his and his client's addresses had changed. However, these changed addresses had not been registered with the Commission. Nevertheless, in all the communications filed after the actual change of address before the Commission, both his client and himself had stated their current addresses and the Commission could

have taken note of this change and served the certified copy of the impugned order on him at the changed address. He drew our attention to Regulation 22, which lays down the mode of services of notices etc. The Regulations 22(1) to 22(5) of the CCI (General) Regulations, 2009, which are relevant in the present case are quoted herein below:

“22.(1) Every notice or other document required to be served on or delivered to any person, under these regulations, may be served personally or sent by registered post, or by speed post or by courier service at the address furnished by him or her or it for service, or at the place where the person ordinarily resides or carries on business or occupation or works for gain.

(2) Additionally, this may also be sent through facsimile transmission or by electronic mail. The facsimile transmission shall contain a cover page giving details of the sender, the subject, date of transmission, and the recipient's name and telephone number.

(3) An endorsement made by a postal or courier employee that the addressee or his agent has

refused to take delivery of the notice shall be deemed to be proof of service by way of refusal.

- (4) In case, the postal or courier employee reports that the addressee has since left or is not available at the given address, the Commission relying on the information so furnished, may take a view as it may deem appropriate and may proceed to take steps for substituted service.
- (5) Where summons or notice was properly addressed, prepaid and duly sent by registered post acknowledgement due, and the acknowledgement having been lost or mislaid or for any other reason, has not been received by the Commission within thirty days from the date of issue of summons, the Commission may deem the service to be sufficient and may make a declaration accordingly.”

3. Learned counsel for the Commission argued that Regulation 10 clearly lays down the format and content of necessary information, which needs to be given in the information or reference which is filed before the Commission. It clearly mentions that ‘complete postal address in India for delivery of summons or notice with pin code’ has to be provided. He, therefore, argued that in case there was a change in the address of the Informant, it was the informant’s responsibility to

alter the address given in the information. Therefore, the Commission was not responsible to serve the certified copy of the impugned order on the changed address as it was not officially registered with the Commission. After listening to both the learned counsels, we also looked at Regulation 32 of the CCI (General) Regulations, 2009. It is quoted herein below:

“32. Final order. –

- (1) Every order of the Commission shall be signed and dated by the Members including a dissenting note by the dissenting Member, if that be the case.
- (2) Every order or decision of the Commission shall, as far as practicable, be made within twenty-one working days from the date of conclusion of final arguments.
- (3) A copy of the order duly certified by the Secretary or such other officer authorized by the Secretary shall be served on the parties to the proceeding as provided in regulation 22 within four weeks of the date of the order.”

4. Sub-regulation (3) clearly lays out that a duly certified copy of the order shall be served in accordance with Regulation 22 within four weeks of the date of the order. We have already quoted Regulations 22 above. It is clearly laid out in Regulation 22(4) that in case, ‘a postal

or a courier employee reports that the addressee has since left or is not available at the given address, the Commission relying on the information so furnished may take a view as it may deem appropriate and may proceed to take steps for substituted service.' Thus, in such a situation, the Commission could have ordered substituted service when its order had not been served upon the party. In view of the above discussion, we felt that the delay in filing of this appeal could be satisfactorily explained. It may be seen that the Appellant filed the appeal within a couple of days of the date of receiving the certified copy of the impugned order. Having been satisfied on the issue of delay, we heard the learned counsel for the Appellant on the issue of admission.

5. The core of the argument of the learned counsel for the Appellant was that, Section 26 of the Act lays down the procedure to be followed for investigation/ inquiry when an information is filed before the Commission under Section 19. Section 26(8) does not lead to any positive action, and therefore, there is nothing to appeal against. In the present case, the Commission has examined the DG's report which had found substance in the information and found several violations of the Act in the Gas Sale and Purchase Agreement (GSPA) executed between the Respondent No.2 and the Appellant. While the Commission has disagreed with many of the conclusions drawn by the DG, the Commission has remained silent on several other conclusions drawn by the DG wherein he had found clear

violation of the Act. Therefore, as a matter of fact, the decision handed out by the Commission cannot be termed as one under Section 26(8), but is actually a decision under Section 27 and, therefore, appealable.

6. We drew the attention of the learned counsel to Section 53A(1)(a) of the Act, which delineates the appellate jurisdiction of this Tribunal. We also invited his attention to the existing jurisprudence on the subject discussed in M/s Jindal Steel & Power Ltd. vs. Competition Commission of India and others (Appeal No.45 of 2012 order dated 3rd April, 2013) and M/s. Arshiya Rail Infrastructure Ltd. vs. Competition Commission of India and others (Appeal No.136/2012 order dated 4th April, 2013), clearly establishing the exhaustive nature of the provisions of Section 53A(1)(a) which specifically mention the sections, violations of which are appealable. Shri Gupta reiterated his submission that the decision handed out by the Commission was not under Section 26(8) as is being made out but was actually a decision under Section 27. We drew his attention to the language of Section 27, which clearly states that once the Commission finds contravention of Sections 3 or 4, it shall proceed to decide the consequences of this finding on the parties who have violated the relevant provisions of the Act.

7. In the present case, it was quite clear that the Commission had differed with the DG specifically, on several of the stipulations of the GSPA. Shri Gupta's argument was that there was a specific

disagreement by the Commission in respect to some findings, but there was silence in respect to others, which in his view should be considered as acceptance of the DG's findings and should logically lead to passing of order under Section 27. Unfortunately, we are not inclined to accept this untenable interpretation of Section 27. In our opinion, supported by the existing jurisprudence, the jurisdiction of this Tribunal is quite clearly drawn in Section 53A(1)(a) and while we may find the scheme of Section 26 somewhat incomplete and unclear in some parts, the crux of the matter is that we are not in a position to intervene. Shri Gupta also argued that in case of Sunil Bansal vs. M/s Jaiprakash Associates Ltd. and others (Appeal No.21 of 2016 order dated 28th September, 2016), the Tribunal had very specifically commented upon the procedure followed by the Commission in its adjudicatory exercise and consequent violation of the principles of natural justice. He tried to construct an argument suggesting that the Commission should have, in findings where it did not agree with the DG, given notice to the parties for their objections/comments, but which was not done and thereby informant was not given an opportunity to respond to Commission's views on those findings. Thus the informant had no reason to believe that Commission had not accepted DG's conclusions and was, therefore, deprived of an opportunity to contest Commission's conclusions. This was denial of natural justice according to principles established by this Tribunal in earlier cases. We, however, notice that the appeal

memo contains no such allegation or prayer and clearly appears an afterthought not adequately supported by valid arguments.

8. A perusal of the impugned order shows that the Commission has looked at the GSPA at length and while it may not have commented upon some specific stipulations thereof, it cannot be said that it did not apply itself to those stipulations. Further para 95 of the impugned order clearly concludes that the Commission did not agree with the findings of the DG and, therefore, decided that no case of contravention of the provisions of Section 4 of the Act was made out. In these circumstances, we do not find ourselves in a position to accept Shri Gupta's arguments and find that the impugned order is of the nature wherein, according to the present scheme of the Act, the Tribunal is not empowered to adjudicate.

Consequently, the appeal is dismissed.

(Rajeev Kher)
Member

(Anita Kapur)
Member

15th May, 2017