



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

Date of decision: 18th DECEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 9854/2023 & CM APPLs. 37860/2023, 37861/2023**

ULTRATECH CEMENT LTD.

..... Petitioner

Through: Dr. Abhishek Manu Singhvi, Sr. Advocate with Mr. Somasekhar Sundaresan, Ms. Nisha Kaur Oberoi, Mr. Mathew George, Mr. Sarthak Pande, Ms. Sambhavi Sinha, Ms. Shivangi Chawla, Mr. Samriddha Gooptu, Ms. Devika Dhawan and Mr. Aman Sharma, Advocates.

versus

COMPETITION COMMISSION OF INDIA & ANR Respondents

Through: Mr. Manish Vashisht, Sr. Advocate with Mr. Ranjan Sardana, Ms. Akanksha Kaul, Mr. Vanshay Kaul and Mr. Aman Sahani, Advocates for R-1.

Mr. Percival Billimoria, Senior Advocate with Ms. Anu Monga, Mr. Rahul Goel, Mr. Param Tandon, Mr. Shobhit Sharma, Mr. Paritosh Dhawan, Ms. Rachita Sood and Ms. Aditi Sharma, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Writ Petition has been filed under Article 226 seeking the issuance of a writ of certiorari or any appropriate writ for quashing the impugned Order dated 05.07.2023 issued by Respondent No.1, Competition Commission of India (CCI), allowing the impleadment application of the Respondent No. 2, Builders Association of India, in an ongoing proceeding



before the CCI titled, **Suo Moto Case No. 2 of 2019**, to investigate allegations of cartelisation and price manipulations of Grey Cement Manufacturers. The facts leading up to the passage of the impugned Order and the Petitioner's objections to it thereof are as follows:

2. The Petitioner, UltraTech Cement Limited, is a public company principally engaged in the business of manufacturing and marketing of grey cement, building and cement related products. The Respondent No. 1, Competition Commission of India (CCI) is a statutory authority constituted under the Competition Act, 2002. The Respondent No. 2, Builders Association of India, is an association of over 20,000 infrastructure development programmers and builders of real estate engaged in the purchasing of grey cements from grey cement manufacturing companies in the non-trade segment.

3. It is stated that CCI, prior to 01.07.2019, received multiple letters and emails from various participants in the market, including customer trade associations and dealers, alleging that the conduct of grey cement manufacturers had adverse competitive effects within the country. Among them was also a letter dated 08.02.2019 from Respondent No.2/Builders Association of India (BAI), alleging cartelisation by grey cement manufacturers causing abnormal increase of grey cement prices. It is stated that the CCI, on 01.07.2019, passed a Suo Moto Order under section 26(1) of the Competition Act, 2002, directing the Director General of the Competition Commission of India, to initiate investigations into the above-mentioned allegations levied against the several Grey Cement Manufacturers, during the period between December 2018 to May 2019, the proceedings of which were Suo Moto Case No. 02 of 2019.



4. It is stated that in furtherance of the investigation, the Director General of CCI was granted approval application of a warrant for search and seizure under section 41(3) of the Competition Act 2002 read with Section 240A of the Companies Act, 1956 by the Chief Metropolitan Magistrate, Patiala House District Courts, New Delhi, dated 01.12.2020 at the premise of five grey cement manufacturers, including that of the Petitioner. Between 09.12.2020 to 10.12.2020, the Director General conducted search and seizure operations at these premises, including that of the Petitioner. It is stated that on 29.11.2021, Respondent No 2/BAI applied to the CCI, seeking impleadment as an 'informant' in the proceedings of Suo Moto Case No. 02 of 2019. An Order dated 29.12.2021 was passed by the CCI rejecting BAI's application for impleadment in view of the fact that the matter was then at an advanced stage of investigation.

5. It is further stated that thereafter, BAI, on 09.04.2022, approached this Hon'ble Court by way of a writ petition being Writ Petition No 8958 of 2022 challenging CCI's Order dated 29.12.2021 which had rejected its application for impleadment as an 'informant'.

6. It is stated that the investigation report of the Director General was completed on 01.07.2022 and as on 11.07.2022, the Petitioner received a non-confidential version of the same *via* an Order of CCI. It is to be noted that the said Director General's report also appropriately considered statements and submissions made by BAI dated 28.01.2021 and 11.02.2021 before it. Moreover, the CCI, by way of an Order dated 26.07.2022, directed the opposite parties of the investigation, Grey Cement Manufacturers including the Petitioner herein, to file their respective objections/suggestions to the Director General's report, along with their financial statements by



16.09.2022. The Order dated 26.07.2022 also directed them to appear for final hearing before the CCI on 29.09.2022 and 30.09.2022. The Petitioner in compliance of the Order dated 26.07.2022 passed by CCI, filed the confidential and non-confidential versions of its responses to the Director General's report on 14.09.2022 and 16.09.2022.

7. On 26.09.2022, this Hon'ble Court disposed off the writ petition filed by BAI, being Writ Petition No. 8958 of 2022, with the liberty to approach CCI to participate in the proceedings before it in accordance with Regulation 25 of the Competition Commission of India (General) Regulations 2009, which elaborated the power of CCI to permit a person or enterprise to take part in proceedings. On the same day, *vide* Order dated 26.09.2022, the CCI adjourned the final hearing of the *Suo Moto* Case. No 02 of 2019 to 29.09.2022 and 30.09.2022.

8. It is stated that before the first date of the final hearing dated 29.09.2022, BAI on 27.09.2022 filed an application before CCI in terms of Section 18 and Section 36 of the Competition Act, 2002 read with Regulation 25 of the Competition Commission of India (General) Regulations 2009, seeking its impleadment as a 'party' to the proceedings. It is further stated that neither the Petitioner nor any other grey cement manufacturer was made a party in this application by BAI. In view of the above application, the CCI *via* Order dated 06.10.2022 directed that BAI be provided a copy of the *Prima Facie* Order as well as the Director General's report, and invited BAI to present its opinion, if any, on the report. It is subsequently stated that eight inspections of case records were conducted by CCI on the following dates, i.e. 14.10.2022, 01.11.2022, 10.11.2022, 23.12.2022, 20.02.2023, 17.05.2023, 12.06.2023 and 10.07.2023.



9. On 05.07.2023, the CCI passed an Order, being the impugned order, impleading BAI as a party to the *Suo Moto* Case No. 2 of 2019, thereby noting that BAI has substantial interest in the outcome of the proceedings and that such an impleadment is necessary for a meaningful enquiry. It was also noted in the said order dated 05.07.2023 that BAI may be allowed to inspect the non-confidential records in the present matter in terms of Regulation 37(1) of the General Regulations.

10. The present writ petition has been filed by the Petitioner in view of the abovementioned facts thereof, praying that a writ in the nature of certiorari may be issued or any other appropriate writ to set aside the impugned Order dated 05.07.2023 passed by CCI which allowed the impleadment application of BAI and allowed its inspection of non-confidential records.

11. It is stated by the Petitioner that the inquiry proceedings of the CCI is an inquisitorial jurisdiction operating *in rem* and not *in personam*, i.e., it is unlike an adjudicatory jurisdiction where proceedings get converted into bilateral disputes with parties making opposite allegations. It is stated that the scheme of the Competition Act, 2002, allows a complainant to set the law in motion by providing information akin to a first information report under the criminal law, meaning post its initiation, the complainants do not have any further role to play. It is, therefore, stated that the impleadment of BAI, despite it being one among the many complainants on the basis of whose report investigation under *Suo Moto* Case No. 2 of 2019 was initiated with no special footing, has led to a change in the nature of the enquiry to one of an adversarial nature despite being initiated on *Suo Moto* basis by the CCI.



12. It is also stated that CCI, by way of an earlier Order dated 29.12.2021, had rejected the impleadment application of BAI and that the impugned Order dated 05.07.2023 allowing its impleadment is tantamount to a *de facto* review of the Order dated 29.12.2021, despite there not being any change in facts or circumstances in the intervening period. Moreover, it is stated that the CCI passed the impugned Order dated 05.07.2023 by stating that BAI has a substantial interest in the outcome of the proceeding and its opinions are necessary for a meaningful enquiry without establishing as to how it has reached its satisfaction of the same. It is further stated that such a power of reviewing and recalling of its orders does not vest with CCI as Section 37 which grants CCI the power to do so has been expressly taken away by way of a repeal, and thereby, the passage of the impugned Order dated 05.07.2023 is a clear violation of the provisions of the Act.

13. It is further stated that Section 57 of the Act lays out that no information relating to any enterprise being obtained by CCI for the purpose of the Act shall be disclosed without prior permission in writing of the enterprise and Section 36 of the Act accords the principles of natural justice to all proceedings before the tribunal. The Petitioner states that the impugned Order dated 05.07.2023 is contrary to the provisions of the Act insofar as access has been provided to BAI for inspection of the non-confidential records in the matter pertaining to Suo Moto Case No. 2 of 2019, which include submissions by the Petitioner. It is stated that such an access has been granted where neither any prior permission was granted by the Petitioner as under Section 57 of the Act, nor was the Petitioner or any affected party who have a direct and substantial interest in the matter present or given a prior notice and an opportunity of being heard. It is stated that the



principle of *Audi Alterum Partem* before passage of the impugned Order dated 05.07.2023 has been violated, thereby undermining the requirements of natural justice provided under Section 36 of the Act. It is also stated that such an impleadment done under Regulation 25 of the General Regulations 2009 which lay out the powers of the CCI to permit a person or an enterprise to take part in the proceedings is premised on a misinterpretation of a subordinate law in a manner which supersedes the provisional requirements clearly laid out in the parent Act being the Competition Act 2002, that is, it is done *ex-parte* in violation of the requirements under Section 57 and Section 36.

14. The Petitioner further states that allowing BAI to inspect the non-confidential records in the matter which may include materials and information seized during the search and seizure operations conducted by the Director General's Office between the dates 09.12.2020 to 10.12.2020, would imply that BAI gets access to competitively sensitive and commercially relevant information pertaining to the Petitioner which is not commonly available to third parties. It is stated that such a disclosure would amount to violation of the right to privacy enshrined under Article 21 of the Constitution. It is further stated that as under Regulation 35 of the General Regulation 2009, documents and materials obtained through search and seizure operations shall be marked 'confidential' as the case may be and that the participatory role accruing to BAI *via* the impugned Order dated 05.07.2023 would imply that BAI would be attending the final hearings before the CCI where the Petitioner would have to refer to certain 'marked' confidential information in order to put up an effective defence which goes against the veil of confidentiality and protection of parties' information



without their express consent as given under Section 57 read with Regulation 35. It is stated that the provisions under Regulation 25, which provides for the procedure for impleading a third party to the proceedings, should be read harmoniously with Section 57 of the Act and Regulation 35 of the General Regulations in a manner which does not overshadow the rights provided under the former. It is therefore stated that Regulation 37 of the General Regulations 2009, which allows for third parties to inspect records upon demonstration of sufficient cause, shall still remain subject to the provisions of Section 57 of the Act, whose requirements were not fulfilled in the present case as elaborated above.

15. It is further stated by the Petitioner that the impugned Order being a wholly unreasoned Order, fails to satisfy the two-fold test provided under Regulation 25 of the General Regulation 2009 for impleadment of a third party, i.e. firstly, there is no presence of a ‘substantial interest’ of the persons or enterprises, and secondly, there is no necessity to allow such a person or enterprise to present its opinion in ‘public interest’. It is stated that since the ends pursued by BAI are that of private commercial interests of its constituents being the builder of the construction industry, therefore, it ought to not be on different footing from the 21 other complainants based on whose complaints *Suo Moto* Case No 2 of 2019 was initiated, who have not been impleaded in the process. It is further stated that despite multiple complainants, cognizance of the issue was taken *Suo Moto* by the CCI and that at such an advanced stage of proceedings where the Director General had already submitted the Report dated 01.07.2022 to CCI, BAI given these facts and circumstances would not fall within the ambit of ‘parties concerned’ *stricto sensu* thereby for any non-impleadment to cause prejudice



to BAI. It is, therefore, stated that the impugned order impleading BAI is wholly perfunctory, unreasoned, excessive and untenable.

16. It is also stated that permitting BAI to access the DG Report and to provide its written statement on non-confidential version of the DG Report at such a final stage of proceeding, when investigation has already concluded on 26.07.2022, would further delay the existing proceedings before the CCI and is likely to cause other frivolous complainants seeking applications for impleadment on the claim of being ‘interested parties’.

17. It is further stated that BAI additionally has the recourse to file a new complaint under Section 19 of the Competition Act to initiate a fresh inquiry by the CCI and has the remedy under Section 53N of the Competition Act to seek compensation as an interested party in the ongoing proceedings by approaching the National Company Law Appellate Tribunal without the need for impleadment and granting access to the Director General’s Report since any injury that may be suffered by BAI would merely be monetary in nature. Therefore, such an impleadment, despite the presence of an efficacious alternate remedy, is stated by the Petitioner as being unwarranted and untenable.

18. Per contra, learned Counsel for the CCI contends that the impugned Order is in fact a reasoned order passed under Regulation 25 of the General Regulations 2009 after taking into consideration the detailed submissions made by BAI that it is the largest consumer of cement bearing direct impact of the anti-competitive practices in the grey cement industry and is thereby a necessary party with substantial interest for a meaningful enquiry. It is also contended that the action of impleadment does not impact the legal rights of the Petitioner whose interest is limited to providing inputs and information



to CCI, facilitating the arrival of a just conclusion, but merely that of BAI as a party being impleaded.

19. The learned Counsel for the Respondents further states that the application of principles of natural justice is not absolute and depends on the nature of the duty to be performed by the authority based on facts and circumstances. Reliance has been placed on the Judgment of the Apex Court in Competition Commission of India v. Steel Authority of India Ltd., (2010) 10 SCC 744, which held that the CCI when passing an Order under Section 26(1) of the Act, based on information received under Section 19(1) of the Act, are not required to give notice to the informant, affected party or any other person at that stage, state that the right of hearing and recording of detailed reasons was not intended under Section 26(1), where impact to the Petitioner and other similarly placed enterprises is much higher, and could not be read into the intention of Regulation 25 of the General Regulations where the Petitioner's impact is much lesser and only an 'opinion' is sought as opposed to 'suggestions / objections' from the Opposing parties. It is also stated that the general effect of Section 19(1)(a) of the Act, where an informant files information to establish a *prima facie* case against the Opposite Party, is akin to the effect of Regulation 25 where the applicant satisfies the CCI of its substantial interest in ongoing proceedings and seeks impleadment. It is, therefore, stated that where hearing opposing parties before admitting information against them is not envisaged under the former, it cannot be read into the intention of the latter provision either.

20. It is stated by the CCI that BAI is only allowed access to non-confidential information and has not been made part of the confidential ring,



thereby excluding commercially sensitive information. It is also stated that the Order dated 06.10.2022 directing that BAI be provided a copy of the *Prima Facie* Order and the Director General's report and inviting BAI to present its opinion, if any, was shared by CCI with all opposing parties. It is stated that no objections were received by any other party towards the said Order dated 06.10.2022, and that the CCI even received applications from some of the Opposite Parties seeking opportunity to respond to BAI's opinion. It is also stated by the learned Counsel for the CCI that compensation under Section 53N of the Act, its object and its purpose are vastly different from the rights granted under Regulation 25 for impleadment, thereby making them incomparable as an alternate efficacious remedy.

21. Learned Counsel for the CCI also contends that there was a change in circumstances between the Order dated 20.12.2021 passed by the CCI rejecting impleadment of BAI *prima facie* without going into merits and the impugned Order dated 05.07.2023 as the investigation of the Director General which was then at an advanced stage was duly completed and placed before the CCI and that considering this change in circumstances, this Hon'ble Court in its Order dated 26.09.2022 had held that it is open to any party having substantial interest in the proceeding outcome of the *Suo Moto* Case No. 2 of 2019 to seek right of audience before the CCI and present the consideration of its opinion, which is what was carried out by BAI in the present case and accepted by CCI.

22. Heard the learned Senior Counsel for the parties, and perused the material on record.



23. The Competition Act, 2002 operates with the objective of providing a legislative framework for prevention of practices with adverse effects on the competition in the country and work towards protecting the interests of consumers and to ensure freedom of trade in the market. It seeks to ensure fair competition in the country via the prohibition of trade practices which cause adverse effects and is facilitated through the establishment of a quasi-judicial body, Competition Commission of India, investigations through Director General for the Commission and vests the Commission with powers granted by the Act to levy penalty upon contravention of its provisions, ordering division of dominant enterprises and order demergers that adversely affect competition. Section 64 of the Competition Act 2002, gives the Commission power to make regulations consistent with the Act and rules made thereunder to carry on the purposes of the Act. In exercise of the said power under Section 64, the Competition Commission of India has brought out the Competition Commission of India (General) Regulations 2009.

24. Under Section 18 of the Act, it is the duty of the CCI to eliminate practices which have adverse effects on competition. Section 19(1) of the Act provides that the CCI may conduct enquiry into alleged contraventions of the provisions contained in the Act on receipt of information or reference made to it by the government or any statutory authority. The relevant Sections of the Act are provided in extraction below:

"18. Duties and functions of Commission.--Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom



of trade carried on by other participants, in markets in India:

Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country:

Provided further that, the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with any statutory authority or department of Government.

19. Inquiry into certain agreements and dominant position of enterprise.

(1) The Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on--

(a) [receipt of any information, in such manner and] accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

(b) a reference made to it by the Central Government or a State Government or a statutory authority.

2[Provided that the Commission shall not entertain an information or a reference unless it is filed within three years from the date on which the cause of action has arisen:

Provided further that an information or a reference may be entertained after the period specified in the first proviso if the Commission is satisfied that there had been sufficient cause for not filing the information or the reference within such period after recording its reasons for condoning such delay.]



(2) Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).

(3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:--

- (a) creation of barriers to new entrants in the market;
- (b) driving existing competitors out of the market;
- (c) foreclosure of competition;
- (d)[benefits or harm] to consumers;
- (e) improvements in production or distribution of goods or provision of services;
- (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:--

- (a) market share of the enterprise;
- (b) size and resources of the enterprise;
- (c) size and importance of the competitors;
- (d) economic power of the enterprise including commercial advantages over competitors;
- (e) vertical integration of the enterprises or sale or service network of such enterprises;
- (f) dependence of consumers on the enterprise;
- (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;



- (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;*
- (i) countervailing buying power;*
- (j) market structure and size of market;*
- (k) social obligations and social costs;*
- (l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;*
- (m) any other factor which the Commission may consider relevant for the inquiry.*

(5) For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market" and "relevant product market".

(6) The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:--

- (a) regulatory trade barriers;*
- (b) local specification requirements;*
- (c) national procurement policies;*
- (d) adequate distribution facilities;*
- (e) transport costs;*
- (f) language;*
- (g) consumer preferences;*
- (h) need for secure or regular supplies or rapid after-sales services.*
- [(i) characteristics of goods or nature of services;*
- (j) costs associated with switching supply or demand to other areas.]*

(7) The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:--



- (a) physical characteristics or end-use of goods 5[or the nature of services];*
- (b) price of goods or service;*
- (c) consumer preferences;*
- (d) exclusion of in-house production;*
- (e) existence of specialised producers;*
- (f) classification of industrial products.*
- (g) costs associated with switching demand or supply to other goods or services;*
- (h) categories of customers."*

25. The procedure for inquiry as required under Section 19 is elaborated under Section 26 of the Act read with Regulation 21 of the General Regulation of 2009, which involves a *prima facie* opinion of the CCI based on the receipt of a reference, information received or suspicion arising out of its own knowledge, conduction of investigation by the Office of the Director General, including further investigation thereof by the said office or the CCI itself before. Section 26 of the Act and Regulation 21 of the General Regulation of 2009 read as under:

"Section 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.

2[(2A) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order.]

(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.

[(3A) If, after consideration of the report of the Director General referred to in sub-section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.

(3B) The Director General shall, on receipt of direction under sub-section (3A), investigate the matter and submit a supplementary 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 3[sub-section (3) and (3B)] 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 3[sub-section (3) and (3B)] 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 3[sub-section (3) and (3B)] 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 or 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 investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made 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 3[sub-section (3) and (3B)] 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.]"

"Regulation 21 of the General Regulation of 2009.

21. *Procedure for inquiry under section 26 of the Act. –*

(1) On receipt of the report of the Director General, the Secretary shall place the said report before the Commission within seven days for further orders and, in accordance with the direction of the Commission, forward copies of non confidential version thereof to the Central Government or the State Government or statutory authority or the parties concerned, as the case may be.

(2) If the report of the Director General finds no contravention of the provisions of the Act, the Secretary shall within seven days convey the directions of the Commission for inviting objections or suggestions to be filed within seven days from the Central Government or the State Government or the statutory authority, or from the parties concerned, as the case may be on such report of the Director General.

(3) If the Commission orders closure of the matter on consideration of the objections or suggestions, if any, referred to in sub-regulation (2), and agrees with the findings of the Director General, the Secretary shall convey the orders of the Commission to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(4) If the Commission, on consideration of the objections or suggestions, referred to in sub-regulation (2), directs further investigations in the matter by the Director General or further inquiries in the matter to be made by an officer of the Commission so authorized



by it, the Secretary shall convey within seven days the directions of the Commission to the Director General or the officer so authorized, as the case may be.

(5) On an application made by the officer authorized by the Commission justifying the production of specified books or other documents, as may be required to make further inquiries under sub-regulation (4), the Commission may direct any person to produce such specified books or other documents relating to any trade carried out by such person or enterprise, as per the provisions of sub-section (4) of section 36 of the Act. Explanation. – For the purpose of this sub-regulation, the word “officer” shall include the experts and professionals mentioned under sub-section (3) of section 17 or sub-section (3) of section 36 of the Act.

(6) On receipt of the report of the Director General on further investigation or report of the authorized officer on further inquiries, as the case may be, the Secretary shall with the approval of the Chairperson fix the meeting of the Commission within seven days for consideration thereof.

(7) If the report of the Director General mentioned under sub-regulation (1) finds contravention of any of the provisions of the Act, the Secretary shall obtain the orders of the Commission for inviting objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be

(8) On consideration of the objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, or the report of further investigation or further inquiries, as the case may be, if the Commission is of the opinion that further inquiry is called for, the Secretary shall fix



the meeting of the Commission for consideration thereof, after issue of notice as per regulation 22, to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(9) The Secretary shall keep the Director General informed of the dates of the meetings of the Commission for inquiry under sub-section (7) or sub-section (8) of section 26 of the Act for appearing in person or through any of his officers in accordance with the provisions of section 35 of the Act."

26. During the process of enquiry by the Commission, Regulation 25 of the General Regulations 2009 allows the Commission the power to permit a person or enterprise to take part in proceedings given that they have a substantial interest attached to the outcome of the proceedings and that allowing them to take part is seen as a necessity in view of public interest. Regulation 25 thereof is given as below:

" 25. Power of Commission to permit a person or enterprise to take part in proceedings.

(1) While considering a matter in an ordinary meeting, the Commission, on an application made to it in writing, if satisfied, that a person or enterprise has substantial interest in the outcome of proceedings and that it is necessary in the public interest to allow such person or enterprise to present his or its opinion on that matter, may permit that person or enterprise to present such opinion and to take part in further proceedings of the matter, as the Commission may specify.

(2) The application referred to in sub-regulation (1) shall be accompanied by proof of payment of fees, in accordance with regulation 49.



(3) The application referred to in sub-regulation (1) shall contain, –

(a) legal name of the person or the enterprise making the request;

(b) address in India for service of notice or documents;

(c) telephone number, facsimile number and electronic mail address, if available;

(d) the mode of service of notice or documents to be used;

(e) a concise statement of the matters in issue in the proceedings which affect the person or the enterprise making the request;

(f) documents or affidavits or evidence in support of the statement, with a list thereof.

(4) On an order made under sub-regulation (1), –

(a) on an application made by a party, Secretary shall furnish to the person or enterprise permitted to participate in the proceedings, copies of such documents previously filed in the matter by other parties as may be decided by the Commission within ten days of the order;

(b) the person or enterprise permitted to participate in the proceedings shall furnish copies of all documents filed under sub-regulation (3) to all other parties to the proceedings within ten days of the order."

27. It is contended by the learned Counsel for the Petitioner that the Order dated 05.07.2023 to implead BAI as a party to the proceedings under Suo Moto Case No. 2 of 2019 is improper as it fails to satisfy the conjunctive two-fold test given under Regulation 25 of 'substantial interest' and 'public interest' and that in absence of its satisfaction as reflected in the inadequacy of reasoning given in the impugned Order dated 05.07.2023 to that effect,



the actions of the CCI in impleading BAI are illegal and unacceptable cannot be accepted.

28. It is trite law that Writ Courts while exercising its jurisdiction under Article 227 of the Constitution of India do not substitute the opinions arrived at by statutory bodies with their own, unless the decision arrived at by the statutory bodies are beyond their jurisdiction or there is a failure to exercise jurisdiction vested in them or the order passed is so perverse and illegal that it finds itself in contravention of Wednesbury principles. The nature and scope of the jurisdiction under Article 226 of the Constitution of India has been crystallised in several judgements of the Supreme Court.

29. The Apex Court in Jagdish Mandal v State of Orissa, (2006) SCC Online SC 1373, has held as under:

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes."



30. The Apex Court in State of Punjab v. Mehar Din, (2022) 5 SCC 648, has held as under:

"25. The law on the subject is settled that the Courts being the custodian of fundamental rights are under an obligation to interfere where there is arbitrariness, irrationality, unreasonableness, malafides and bias, if any, but at the same time, the Courts should exercise the power of judicial review with a lot of restraint, particularly in contractual and commercial matters."

31. In Bank Of India And Anr v. Degala Suryanarayana, (1999) 5 SCC 762, the Supreme Court has held as under:

*"11. The Court exercising the jurisdiction of judicial review would **not interfere with the findings of fact** arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. **The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.**"*

(emphasis supplied)

32. In State of Haryana v. Rattan Singh, (1977) 2 SCC 491, the Apex Court has observed as under:

*"4.The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there **some evidence or was there no evidence** — not in the sense of the technical rules governing regular court*



*proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, **sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny.** Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record."*

(emphasis supplied)

33. In the present case, the impugned Order passed under Regulation 25 of the General Regulations 2009, also brings attention to the submissions made by BAI ,including considerations and records of BAI as an association with the largest consumers of cement. The relevant portions of the submissions made by BAI as a part of the impugned Order dated 05.07.2023 are extracted as below:

"3. In its application dated 27.09.2022, BAI had inter-alia stated that Regulation 25 of the General Regulations empowers the Commission to permit persons/ enterprises to take part in the proceedings before it, upon being satisfied that such person/ enterprise has substantial interest in the outcome of the proceedings and if the Commission is of the view that it is necessary in the public interest to allow such person/ enterprise to present its opinion in the matter.

4. BAI has submitted that its application was filed on the basis of the directions of the Hon'ble High Court of Delhi in W.P. (C) 8958/2022 [Builders Association of India vs. Cab wherein vide order dated 26.09.2022, the Hon'ble High Court disposed of the aforesaid writ petition granting liberty to BAI, without prejudice to the rights and contentions available under law, to approach the Commission.



5. It was also highlighted that BAI had earlier applied to the Commission to be impleaded as a party vide application dated 07.12.2021. It stated that the said application was disallowed by the Commission, vide order dated 29.12.2021, on the ground that the investigation by the DG was "at an advanced stage". As per BAI, the Commission had recognized BAI's substantial interest as well as public interest in the present proceedings/ subject matter but because of the advanced stage of the investigation, its application was not allowed at that stage.

6. It was further submitted that BAI is an all-India association of builders and is directly and substantially affected by the anti-competitive conduct of the cement manufacturers. It was further submitted that BAI is the largest consumer of cement and, therefore, suffers a direct impact every time the cement manufacturers engage in anti-competitive and unfair practices. Further, BM stated that it has an insight into the entire cement manufacturing and construction industry and has time and again agitated against the anti-competitive conduct of the cement manufacturers (including before this Commission). It is submitted that BAI's submission and opinions are pivotal to understand the issues faced by the consumers of the cement manufacturers, i.e., the construction industry. It was further submitted that unless 13AI is allowed to act as an interested party by this Commission, it shall not be in a position to lead evidence/ submissions/ analysis/ data/ information etc. The same is also in the interest of justice as well as for enabling effective adjudication/ investigation of the present case. "

34. In view of the settled position of law, this Court is not inclined to substitute its conclusion to the one arrived at by the Board which is based on the material on record before the Commission.



35. The contention of the Petitioner that the conclusion arrived at by the CCI that impleading BAI would cause prejudice to them and that the conclusion arrived at by the CCI that their impleadment is essential for conducting a meaningful enquiry does not merit consideration. It is observed by the court that contentions of both sides has been recorded, reasons have been given by the CCI for arriving at the conclusion that making BAI a party to the proceedings of the Suo Moto Case No. 2 of 2019 is in consonance with the satisfaction of the two-fold test of bearing substantial interest in the outcome of the proceedings and is necessary in light of public interest. This Court does not deem it right to delve into the adequacy of the evidence noted by the CCI nor does it find the consideration of such evidence by the commission in reaching its conclusion unreasonable.

36. The allegation of the Petitioner that the impugned order dated 05.07.2023 is devoid of adequate reasoning towards the satisfaction of the requirements under Regulation 25 of the General Regulations 2009 and it is, therefore, unreasoned cannot be accepted. As noted by the Supreme Court in Union of India and Ors. Versus E.G. Nambudiri, **1991 AIR SC 1216**,

"8. ...Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for its decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of



*natural justice that reasons should be given for decisions. See: Regina v. Gaming Board for Great Britain ex p. Benaim and Khaida [1970] 2 QB 417 at 431. **Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen, it is therefore **desirable that reasons should be stated.*****" (emphasis supplied)

37. However, it is also stated by the Apex Court in Rangi International Ltd. v. Nova Scotia Bank, (2013) 7 SCC 160, that:

"3. The Competition Commission as well as the Competition Appellate Tribunal are exercising very important quasi-judicial functions. The orders passed by the Commission and the Appellate Tribunal can have far-reaching consequences. Therefore, the minimum that is required of the Commission as well as the Appellate Tribunal is that the orders are supported by reasons, even briefly. However, the impugned orders are bereft of any reasons in support of the conclusions. We are, therefore, constrained to hold that the impugned orders challenged herein cannot be sustained."

38. The desirability and importance of orders to be reasoned is appreciated duly by this Court. However, this Court sees no merit in breaking down the adequacy of the reasoning unless it is *prima facie* malafide, perverse or arbitrary, as noted above. In the present case, the submissions made by BAI to CCI that it is an all India association of builders, the largest consumer of cement, and suffers a direct impact every



time the cement manufacturers engage in anti-competitive practices is incorporated within the impugned Order dated 05.07.2023.

"6. It was further submitted that BAI is an all-India association of builders and is directly and substantially affected by the anti-competitive conduct of the cement manufacturers. It was further submitted that BAI is the largest consumer of cement and, therefore, suffers a direct impact every time the cement manufacturers engage in anti-competitive and unfair practices. Further, BM stated that it has an insight into the entire cement manufacturing and construction industry and has time and again agitated against the anti-competitive conduct of the cement manufacturers (including before this Commission). It is submitted that BAI's submission and opinions are pivotal to understand the issues faced by the consumers of the cement manufacturers, i.e., the construction industry. It was further submitted that unless 13AI is allowed to act as an interested party by this Commission, it shall not be in a position to lead evidence/ submissions/ analysis/ data/ information etc. The same is also in the interest of justice as well as for enabling effective adjudication/ investigation of the present case. "

39. The said observation is deemed to be adequate reasoning of the impugned order and the submission of the Petitioner that the order is unreasoned and, therefore, ought to be set aside on procedural grounds of natural justice can neither be accepted by this Court on the ground that there exists lack of reasoning, nor on the grounds of inadequacy of reasoning.

40. The learned Counsel for the Petitioner alleges that the requirements under Section 36 of the Act, which mandates that procedures followed by CCI ought to be in consonance with the principles of natural justice, were not followed in the present case as the impugned order dated 05.07.2023



was passed by CCI ex-parte on the basis of an application by BAI dated 27.09.2022. Section 36 of the Act is as extracted below

"36. Power of Commission to regulate its own procedure.--

(1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

(2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavit;*
- (d) issuing commissions for the examination of witnesses or documents;*
- (e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such record or document from any office.*

(3) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary to assist the Commission in the conduct of any inquiry by it.

(4) The Commission may direct any person--



(a) to produce before the Director General or the Secretary or an officer authorised by it, such books, or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;

(b) to furnish to the Director General or the Secretary or any other officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act."

41. It is alleged by the learned Counsel for the Petitioner that the principle of Audi Alterum Partem, which forms the essence of natural justice, was not followed by CCI in the present case. It is contended that the Petitioner was neither given due notice of the consideration of making BAI a party as under Regulation 25 of the Competition Regulation 2009 nor were they presented an opportunity of being heard before the impleadment of a third party to the *Suo Moto* Case No. 2 of 2019. The allegations of the Petitioner ought to be weighed here on the pointed question as to whether fulfilment of requirements under principles of natural justice were or were not followed in the present case, that is, whether there exists any procedural fallacy which renders the impugned Order dated 05.07.2023 improper and invalid in law.

42. In Biecco Lawrie Ltd. & Anr vs State Of West Bengal & Anr, (2009) 10 SCC 32, the Supreme Court held as under:



"13. It is fundamental to **fair procedure** that both sides should be heard - audi alteram partem, i.e., hear the other side and it is often considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. **One of the essential ingredients of fair hearing is that a person should be served with a proper notice, i.e., a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence.** Denial of notice and opportunity to respond result in making the administrative decision as vitiated. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice to be adequate must contain the following: (a) time, place and nature of hearing; (b) legal authority under which hearing is to be held; (c) statement of specific charges which a person has to meet. However in *The State of Karnataka & Anr. v. Mangalore University Non-Teaching Employee's Association & Ors.* [(2002) 3 SCC 302] the requirement of notice will not be insisted upon as a mere technical formality when the party concerned clearly knows the case against him and is not thereby prejudiced in any manner in putting up an effective defence, then violation of the principle of natural justice cannot be insisted upon." (emphasis supplied)

43. The Supreme Court in Mahipal Singh Tomar v. State of U.P., (2013) 16 SCC 771, held as under:

"15. In administrative law, the rules of natural justice have traditionally been regarded as comprising the principles of Audi alteram partem and nemo judex in causa sua. **The first of these rules required the maker of a decision to give prior notice of the proposed decision to the persons affected by it and an opportunity to them to make representation.** The second rule disqualified a person from judging a cause



*if he has direct pecuniary or proprietary interest or might otherwise be biased. **The first principle is of great importance because it embraces a rule of fair procedure or due process. Generally speaking, the notion of fair hearing extends to the right to have notice of other side's case, the right to bring evidence and the right to argue.** The premise on which the courts extended their jurisdiction against the administrative action was that the duty to give every victim a fair hearing was as much a principle of good administration as of good legal procedure."*

(emphasis supplied)

44. It is, therefore, a reiteration of the well-established principle that a fair procedure very much includes the presentation of an appropriate notice to all involved parties. However, the contention of the Petitioner that such a notice was not provided to the Petitioner prior to the passing of the impugned Order dated 05.07.2023 by the CCI cannot be accepted by this Court. As stated by the Petitioner, prior to the passing of the impugned Order dated 05.07.2023, on an application by BAI dated 27.09.2022 seeking permission to be impleaded as a 'party' and participate in the proceedings in the *Suo Moto* Case No. 2 of 2019, the CCI, via its Order dated 06.10.2022, had allowed BAI to be provided a copy of the Order dated 01.07.2019 of the CCI to initiate investigation by the Office of the Director General and the non-confidential version of the DG report dated 01.07.2022. This order dated 06.10.2022 also directed that its copy be forwarded to the Opposite Parties through their respective authorised representatives. The relevant paragraphs of the Order dated 06.10.2022 are extracted below.

"7. Having considered the request made in BAI's application, the Commission is of the view that BAI may be provided a copy of the order dated 01.07.2019



passed by the Commission under Section 26(1) of the Act and non-confidential version of the DG report dated 01.07.2022 submitted by the DG. The Commission directs BAI to present its opinion, if any, in writing in the matter within 6 weeks of the receipt of this order.

8. The Secretary is directed to forward a copy of this order to BAI and the Opposite Parties, through their respective authorised representative(s). The Secretary is also directed to provide soft copies of the order dated 01.07.2019 passed by the Commission under Section 26(1) of the Act and non-confidential version of the DG report dated 01.07.2022 submitted by the DG. The Secretary is further directed to list the matter thereafter before the Commission in one of the ensuing meetings."

45. It is therefore clear that the Petitioner being one of the Opposite Parties in the *Suo Moto* Case No. 02 of 2019, through the receipt of the Order dated 06.10.22 by CCI, had full knowledge of BAI being provided with the copy of the non-confidential version of the DG report dated 01.07.2022 and the presentation of its opinion on the same. This was prior to passing of the impugned Order dated 05.07.2023 which had formalised the impleadment of BAI as a party to the proceedings. There certainly existed reasonable time between the Order dated 06.10,2022 and the impugned Order thereof. A reading of the Order dated 06.10.2022 indicates that it provides sufficient notice to the Petitioner regarding the impleadment of BAI as a party in the proceedings. The Petitioner was in full knowledge of the Order dated 06.10.2022 which ordered for the disclosure of the non-confidential report of the Director-General to BAI.

46. The learned Counsel for the Petitioner has also argued that since competition law is a right *in rem* and not *in personam*, the CCI by



impleading BAI as an interested party to be heard under Regulation 25 of the General Regulations 2009, including the right to lead evidence, give submissions, place analysis and data, furnish information and/or seek examination/ cross examination of witness/opposite parties, has converted itself into a bilateral dispute resolution forum between the Petitioner and BAI. It is further contended that the impugned Order dated 05.07.2023 which impleads BAI was passed *ex-parte*, despite the fact that the decision of CCI affected the rights of the Petitioner by doing so. At this juncture, the pointed question which arises from these contentions is whether the decision of impleadment of BAI by CCI affects the rights of the opposite parties involved in the proceedings of the Suo Moto Case No. 02 of 2019, keeping in mind the nature of proceedings under the competition law framework.

47. The CCI has the power to enquire into agreements and dominant position of enterprises under Section 19 of the Act and the procedure for the same is given under Section 26 of the Act read with Regulation 21 under the General Regulations 2009. The nature of the proceedings under the ambit of this Act *vis-à-vis* the parties and their involved interests thereof was noted by the Apex Court in Samir Agarwal v Competition Commission of India, (2021) 3 SCC 136 in paragraph 14 and 20, which read as under:

"14. 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 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.

20. Clearly, therefore, given the context of the Act in which the CCI and the NCLAT deal with practices which have an adverse effect on competition in derogation of the interest of consumers, it is clear that the Act vests powers in the CCI and enables it to act in rem, in public interest." (emphasis supplied)

48. The attributes of actions *in rem* were elucidated by the Supreme Court in Booz-Allen & Hamilton Inc v. SBI Home Finance Ltd. & Ors, (2011) 5 SCC 532, while dealing with arbitrability of disputes, wherein it has been observed as under:

"23. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and Judgment in rem refers to a judgment that determines the status or condition of property which operates



directly on the property itself. (Vide : Black's Law Dictionary)." (emphasis supplied)

49. The Apex Court in Vidya Drolia v Durga Trading Corporation, (2021) 2 SCC 1, has held as under:

"A judgment in rem determines the status of a person or thing as distinct from the particular interest in it of a party to the litigation; and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided. Such a judgment "settles the destiny of the res itself" and binds all persons claiming an interest in the property inconsistent with the judgment even though pronounced in their absence. By contrast, a judgment in personam, "although it may concern res, merely determines the rights of the litigants inter se to the res". Distinction between judgments in rem and judgments in personam turns on their power as res judicata i.e. judgment in rem would operate as res judicata against the world, and judgment in personam would operate as res judicata only against the parties in dispute." (emphasis supplied)

50. An impleadment of a party even at subsequent stages, therefore, is not a conclusive effective determination of any rights and obligations of parties involved, but is merely an action effectuating the enablement of the CCI to reach an informed conclusion on the question of violations under the competition law framework in the country. This is more so relevant in the present scheme of the Competition Act, 2002, under which proceedings are in the nature of rights *in rem*, as seen above, thereby making the nature of the impleadment not for the benefit of the party being impleaded but rather for the benefit of the CCI to conclusively reach an appropriate decision on the matter before it. This can be clearly seen from the language of



Regulation 25 which places the complete onus of satisfaction on CCI as to the twin-test of substantial interest in the proceedings outcome and the necessity in public interest. It is therefore noted that the nature of the proceedings before CCI being that of ‘*in rem*’ and not ‘*in personam*’ does not bear a bar on the impleadment of BAI and the provisions of the General Regulations 2009 being Regulation 25 which grants the power to CCI to allow persons or enterprises to take part in the proceedings as done in the present case with *Suo Moto Case No. 2 of 2019*.

51. Furthermore, the power to review the orders of CCI, which were given under Section 37 of the Act, had subsequently been repealed by the Competition Amendment Act, 2007. The Petitioner contents that the impugned Order accepting the impleadment application of BAI dated 05.07.2023 is a review of the previous Order dated 29.12.2021 whereby CCI had rejected the initial impleadment application of BAI.

52. The power to review, as understood under the provisions of Code of Civil Procedure, 1908, under Section 114 has been observed by the Apex Court in Krishna Swami v. Union of India, (1992) 4 SCC 605, at para 40 which reads as under:

"40. This Court in Keshav Mills Co. Ltd. v. CIT [(1965) 2 SCR 908 : AIR 1965 SC 1636] laid that (SCR pp. 921-22)

"In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be constant endeavour and concern of this Court to introduce and maintain an element of certainty and



continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations: What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision



happens to be a unanimous decision of a Bench of five learned Judges of this Court.”

53. In S. Madhusudhan Reddy v V. Narayana Reddy, **2022 SCC OnLine SC 1034**, while dealing with the application for review of judgement under Order XLVII, the Apex Court observed as under:

"13. A glance at the aforesaid provisions makes it clear that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason."

54. It is to be noted at this juncture that after the rejection of the initial impleadment application of BAI dated 29.11.2021 via an Order dated 29.12.2021 by CCI, BAI approached this Hon'ble Court by way of Writ Petition titled, W.P. No. 8958 of 2022, whereby this Hon'ble Court, in its Order dated 26.09.2022, granted liberty to BAI to approach CCI to participate in the proceedings before Suo Moto Case No. 2 of 2019 in terms of Regulation 25 of the General Regulations 2009 which may be considered by CCI. It is only in view of this Order did BAI, on 27.09.2022, file a fresh application before CCI seeking permission to be impleaded as a party in terms of Section 18 and Section 36 of the Act read with Regulation 25 of the General Regulations 2009. This was finally accepted via the impugned Order dated 05.07.2023.

55. The application dated 27.09.2022 is therefore, not in the nature of a review application of a previous decision without any intervening facts and



circumstances, but it is a fresh impleadment application filed in view of the liberty granted by this Hon'ble Court in its Order dated 26.09.2022. Moreover, the adequacy of the satisfaction of CCI at this juncture, keeping in mind the context of the case such as orders by this Hon'ble Court including the proceedings of the Suo Moto Case No. 2 of 2019 being at a different stage than before, cannot be interjected by this Court via its writ jurisdiction. The power of such a satisfaction is solely to be exercised by the CCI as laid out in paragraphs 27 to 29 above.

56. The procedural safeguards for sharing information obtained under the proceedings of CCI with different parties to such proceedings within the framework of the Competition Act is dealt with under Section 57 of the Act. The intent of the provision as extracted below can be construed in the backdrop of enquiries under the Act being more often than not, necessarily conducted on the basis of sensitive commercial information of the players involved to determine whether they are indeed offending parties under the Act. It is also substantiated by Regulation 35, which elucidated on the confidentiality status of information obtained via the proceedings, the identity of the informants, obtaining the status of confidentiality and so on.

*"Section 57. Restriction on disclosure of information
No information relating to any enterprise, being an information which has been obtained by or on behalf of 1[the Commission or the Appellate Tribunal] for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force."*

57. The Petitioner contended that the impugned Order dated 05.07.2023 is *ultra vires* Section 57 of the Act as it entails sharing information obtained



via the course of the proceeding in the Suo Moto Case No. 2 of 2019, despite lack of written consent of the enterprises involved. The part of the impugned Order as mentioned is extracted below:

"13. On an overall appreciation of the reasons mentioned by BAI in its application dated 27.09.2022, the Commission is satisfied that BAI has substantial interest in the outcome of the proceedings and that it is necessary to allow it to present its opinion in this matter for a meaningful inquiry. The Impleadment Application of BAI is, thus, allowed in terms of Regulation 25(1) of the General Regulations and it is made a party to the matter henceforth.

14. Further, in view of the aforesaid direction of the Commission regarding impleadment and the request made by the BAI in its application dated 21.10. 2022, it may be allowed to inspect the non confidential records in the matter in terms of Regulation 37(1) of the General Regulations. Accordingly, the applications dated 21.10 2022 and 27.10.2022 are disposed of "

58. The impugned Order categorically mentions that in addition to the application for impleadment by BAI, the request made by BAI to allow the inspection of non-confidential record ought to be done in terms of Regulation 37(1) of the General Regulations 2009. The said provision is extracted below:

*"37. Inspection and certified copies of documents. –
(1) Subject to the provisions of Section 57 and regulation 35, a party to any proceeding of an ordinary meeting of the Commission may on an application in writing in that behalf, addressed to the Secretary, be allowed to inspect or obtain copies of the documents or records submitted during proceedings on payment of fee as specified in regulation 50."*



59. It is therefore clear that the impugned Order passed by CCI does not ensue the grant of confidential records of proceedings to BAI. Moreover, it is also clear that the grant of non-confidential information is also explicitly recorded to be done within the bounds of Regulation 37(1) which can only be exercised subject to conformity with the safeguards enumerated within Section 57 of the Act and Regulation 35 of the General Regulations 2009 as noted above. The contention of the Petitioner that adequate safeguards under Section 57 have been ignored by CCI in its passing of the impugned Order cannot be accepted by this Court. The requisite procedural provisions on sharing information with parties to the proceedings have been duly paid attention to and followed by CCI as far as the impugned Order dated 05.07.2023 challenged in the present Writ is concerned.

60. Finally, the Petitioner's claim that a compensation application may be filed by BAI under Section 53N of the Act instead of pressing for impleadment under Regulation 25 and that it is an effective alternate remedy, cannot be accepted by this Court. Section 53N is as extracted below:

" 53N. Awarding compensation.-- (1) Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any findings of the Commission or under section 42A or under sub-section (2) of section 53Q of the Act, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State



Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by enterprise.

(2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission, if any, and also be accompanied with such fees as may be prescribed.

(3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise:

Provided that the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

(4) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Appellate Tribunal, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Appellate Tribunal and the order of the Appellate Tribunal thereon.

Explanation.--For the removal of doubts, it is hereby declared that--



(a) an application may be made for compensation before the Appellate Tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (a) of sub-section (1) of section 53A of the Act, has determined in a proceeding before it that violation of the provisions of the Act has taken place, or if provisions of section 42A or sub-section (2) of section 53Q of the Act are attracted;

(b) enquiry to be conducted under sub-section (3) shall be for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal on whether any violation of the Act has taken place."

61. It is evident that the stage at which compensation under Section 53N can be invoked is that of an Appellate Stage, post the final orders of CCI in any proceedings initiated before it. Therefore, at the present stage of proceedings in the Suo Moto Case No. 2 of 2019, invoking Section 53N is neither an option for the Petitioner, nor is there any reason to prefer an application for compensation when there exists a carved out provision in the form of Regulation 25 which allows the party to take part in the proceedings before the CCI after its satisfaction. The fact that the proceedings under the Competition Act apply *in rem* is of no consequence when the CCI is adjudicating the allegations regarding the cartelization and price manipulation.

62. In the view of the above, this Court is not inclined to entertain the present Writ Petition which prays for quashing of the impugned Order dated 05.07.2023 passed by the CCI. This Court is not in agreement with the



contentions put forth by the Petitioner, and the petition is therefore dismissed. Pending applications, if any, also stand dismissed.

DECEMBER 18, 2023
Am/Rahul

SUBRAMONIUM PRASAD, J