NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,

NEW DELHI

Competition Appeal (AT) No. 11 of 2021 & I.A. No. 2096 of 2021

IN THE MATTER OF:

Steel Authority of India Ltd. & Anr. ...Appellants

Versus

Competition Commission of India & Ors. ...Respondents

Present:

For Appellants: Mr. Rajshekhar Rao, Sr. Advocate, Mr. Samaksh Goyal, Ms. Aashna Chawla, Advocates.

For Respondents: Mr. Ashok Panigrahi, Sr. Advocate, Ms. Geetanjali Das Krishnan, Mr. Surajit Bhaduri, Advocates for R-2 to 6.
Ms. Srashti Parashar for R-1/CCI. Mr. Manu Chaturvedi, Mr. Sanyat Lodha, for R-1/CCI.
Ms. Sunaina Datta, Jt. Director, CCI. Mr. R. Chandrachud & Mr. D. Venkata Krishna, Advocates for R-7.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal has been preferred by Steel Authority of India Limited and Paradip Port Trust, under Section 53B of the Competition Act, 2002 (in short 'the Act') against the order dated 07.07.2021 passed by the Competition Commission of India (in short 'the Commission') by which information filed by the Appellants under Section 19(1)(a) of the Act against Respondent No. 2 to 7 has been closed under Section 26(2) of the Act holding that the averments / allegations in the information are bald, not supported by any kind of supporting material / documents and not sufficient to initiate investigation under Section 26(1) of the Act.

2. In brief, Steel Authority of India Limited /Informant No.1/Appellant No. 1 (in short 'SAIL') is a government owned company and is engaged in the manufacturing of high quality steel. Coal and Limestone, being the essential raw material in steel manufacturing is regularly imported by SAIL.

3. The Transport and Shipping Department, known as L&I Department of SAIL is the overall in charge of receiving imported raw materials at different ports such as Visakhapatnam, Paradip and Haldia which is further transported to various integrated steel plants through the railway. The port handing operations are managed by branch office of SAIL at each port which includes operation like stevedoring, shore clearance, stacking, wagon loading, etc. For any entity to conduct the business of stevedoring contractor has to possess a stevedoring license from the concerned port authority. Registration of agencies to provide stevedoring services is done by the respective port management.

4. According to the Informants, Paradip Port Trust register stevedores under Regulations issued by the Ministry of Shipping in exercise of its powers conferred under Section 124 and 132 of the Major Ports Act, 1963. Paradip Port Trust has published stevedores Regulations, 2009 on 21.05.2010 which contained detailed guidelines of issuance of stevedoring licenses, duties and responsibilities of stevedores, procedure of application for grant and renewal

of license, grounds and procedures for suspension of licenses, provisions for appeal etc.

5. The case of the Informants is that despite regulations in place on the port of Paradip, certain entities managed to establish an illegal cartel detrimental to free trade and competition.

6. It is the case of the Informants that the process of bidding for stevedoring contracts involved illegal cartelization among the bidders during the time period from 2012 to 2016.

7. It is alleged that though a transparent process of open tender is followed by SAIL for engaging the services of stevedoring contractor at the Paradip Port but still illegal cartelization seems to have occurred among stevedoring agencies at Paradip Port of which SAIL has become a victim.

8. It is further alleged in the Information that prior to the year 2016, there was a Management Committee of Stevedores at the port consisted of only nine stevedores, which controlled the labour pool available at the port. Most of the registered stevedores could not avail labour from the pool without permission of the Management Committee. This led to a situation where only few stevedores had monopoly in controlling the entire stevedoring business at Paradip Port. Works like supply of machinery, engagement of dumper/truck for transportation and labour supply were also dominated by these stevedores.

9. It is further alleged that in the year 2015, a new agency, namely, Seaways Shipping and Logistics Ltd. entered the market for carrying out stevedoring and intra-port operations for bulk cargo.

10. It is further alleged that the new entity was opposed by the already operating stevedores. The limestone contract for the year 2016-18 of SAIL also got awarded to the said new entrant and because of these developments, the cargo handling rates at Paradip Port for stevedores were reduced substantially.

11. It is alleged that entry of a new agency which was not a part of the already existing cartel of nine agencies was beneficial for all parties availing the services and brought the prices down.

12. The Informants have also alleged that despite best commercial practices and administration implemented by SAIL and Paradip Port Trust, illegal cartelization had occurred at Paradip Port and in this regard, named, Respondent No. 2 to 5.

13. It is alleged that three individuals are also shareholders and directors of Orissa Stevedores Ltd. (R7). It is alleged by the Informants that scrutiny of the tender documents by SAIL has revealed that both the legal entities (Respondent No. 2 and 7) despite having a common management being separate legal entities with different PAN number, STR Number, separate PFESI number and possessing separate experience certificates and distinct licenses from the Paradip Port Trust.

14. The Informants stated that though there is nothing in its regulations and tendering process to eliminate such entities with common directors or to restrict tendering process to one such entity but there seems to be illegal cartelization. It has also been mentioned in the information that there happened to be a murder of a senior executive of Seaways Shipping and Logistics Limited for which one of the partners of the firm (Respondent) was charged. Ultimately, it is submitted by the Informants that an enquiry was conducted by the Central Vigilance Commission (CVC) on other aspect of the matter but the CVC recommended that the Informants may file a joint information before the Commission which only has the jurisdiction.

15. With these broad information, the information was filed under Section 19(1)(a) with a prayer for investigation by the DG and to pass suitable orders which may bring to an end the alleged practice of cartelization in stevedoring at Paradip Port.

16. The Commission has closed the information under Section 26(2) of the Act because it has been found by it that the information contained only the bald allegation without any supported documents/material and was not fit for investigation under Section 26(1). In this regard, the Commission has observed that the information was considered in the ordinary meeting held on 29.06.2021. It has been found that information pertains to alleged cartel and anti competitive conduct pertaining to the years 2012-2016 and information, if any, relating to subsequent period has not been given. It has been found that the information contained general allegation of existence of

a cartel between the stevedores at Paradip Port without indicating the nature of the cartel, who all are members of cartel, how the cartel used to operate, restrictions brought about by the cartel in terms of Section 3(3) and how bids issued by SAIL have been manipulated or rigged by the members of the cartel. It has also been observed that the information contained only bald allegation and therefore, it came to an opinion that there exists no prima facie case and decided to close the same without referring it for investigation to DG.

17. Aggrieved against this order, the present appeal has been filed.

18. Counsel for the Appellant has narrated the aforestated facts and argued that information was filed on the advice of the CVC to approach the CCI because the CCI has the exclusive domain over the issues of bid rigging and cartelization. It is submitted that the information filed before the CCI was akin to a reference made by the Statutory Authority i.e. CVC, under Section 21 of the Act. It is submitted that CVC, in its letter dated 27.08.2020, after its independent inquiry, observed that serious issues of cartelization exist at Paradip Port. It is further submitted that CCI generally would not receive Information enclosing a request from the CVC to the CCI to exercise its powers to investigate certain issues, therefore, being an exceptional case, the CCI ought not to have closed the information at the prima facie stage but should have at least ordered for investigation. It is thus argued that the CCI should have treated the present information akin to a reference and investigated the same. It is further argued that it is clear from the scheme of

Section 21 of the Act that upon a statutory authority seeking the CCI's opinion, the CCI shall give its opinion which means that it cannot refuse to take steps to effectively answer the issue raised by way of a reference. It is also submitted that the CCI has no guidelines or yardstick at the time of making a prima facie opinion under Section 26(2). In this regard, it is submitted that two orders by the same forum of the CCI were passed on 01.07.2022 i.e. in the case of MB Geeta Education Society Vs. Varthana Finance Pvt. Ltd. and second Pankaj Rai Vs. NIIT Ltd. It is argued that the CCI closed the information on the prima facie opinion in the case of MB Geeta Education Society (Supra) and in the case of Pankaj Rai (Supra) despite being a chronic litigant who has initiated a number of legal proceedings in a multitude of legal fora against the opposite party, the CCI called him for a preliminary conference and permitted him to file written submissions. It is submitted that the CCI should have given some indulgence to the Appellant keeping in view the serious issue involved in the information which has been filed on the advice of the CVC.

19. It is further submitted that the Appellant submitted all the evidence they had to the CCI, therefore, it was for the CCI to investigate the issue and not the Appellants. This submission has been made to counter the observations made by the Commission that the allegations made by the Appellant were not concrete but general in nature without giving details relating to the cartels whereas the Appellants had submitted documents before the Commission, prima facie, to show the existence of cartelization by

R2 to 7 wherein they submitted bids from two different entities having same directors/partners.

20. Counsel for the Commission/Respondent No. 1 has submitted that there is no error in the order of the Commission because no information regarding the nature of cartel, members of cartel, how the cartel operates, or how the bids issued by the Appellant No. 1 were manipulated or rigged by remaining Respondents or other parties is given. It is further submitted that Informants /Appellants have failed to identify specific instances of cartelization rather vague reference has been made in the information to 9 unidentified stevedores.

21. It is further argued that the contention of the appellant that linkages in ownership of two bidders is the main thrust to prove the illegal cartelization but the same is not sufficient to establish a prima facie case under Section 3 of the Act and has relied upon a decision of this Court in the case of Reprographic India, New Delhi Vs. CCI & Ors., Competition Appeal (AT) No. 09 of 2019 in which it has been held that "There may have been business linkages inter-se Respondents 2 and 3 but in absence of any material to suggest that these Respondents were engaged in the practice of bid rotation, no adverse inference suggestive of collusive bidding could be drawn against them."

22. Counsel for the Respondent No. 1 has further argued that the Informants/Appellants have failed to provide a holistic information though it is their duty to file information containing all material particulars and

supporting documents/evidence. It is rather argued that if informants does not disclose full facts in the information then it forfeits its right to question the discretion exercised by the Commission in not ordering an investigation under Section 26(1) and closing the case under Section 26(2) of the Act.

23. It is also submitted that the Appellants have tried to improve its case in appeal by belatedly arguing that the information filed by them was a reference under Section 21 of the Act or akin to it and has solely relied upon Office Memorandum dated 27.08.2020 of the CVC which is merely advising the Appellants to represent the matter to the Commission. It is submitted that the information cannot be construed a reference because recourse to a reference under Sections 21 and 21A is taken by statutory authority, inter alia, when they seek to resolve a potential conflict of jurisdiction by seeking an opinion whereas in the present case, CVC vide its office memorandum dated 27.08.2020, expressed his inability to look into the complaint which was made against the officers of the SAIL and had advised the Appellants to raise its grievance before the Commission. It is further submitted that a reference under Section 21 can only be made by the statutory authority to the Commission for which the procedure is prescribed in Regulation 33 of CCI (General) Regulations, 2009 (Regulations) which requires the reference to specifically contain the issue, or proposition of law or policy, to be set out for the opinion of the Commission alongwith other stipulations which were absent from the Information filed under Section 19 of the act.

24. It is further argued that the information was filed essentially under Section 19 of the Act, therefore, the provision attending Section 19 would apply and not the provisions of Section 21 which are sought to be applied because of the letter of CVC. It is further submitted that the Appellant has wrongly relied upon a decision in the case of Pankaj Rai (Supra) because in that case the Commission closed the first information filed by the Informant. Thereafter, the Informant unsuccessfully pursued various writ and appellate remedies before the High Court, Supreme Court and before this Court and having failed to challenge the Commission's order passed under Section 26(2) of the Act, he filed a second information which was substantially similar to the first information and in those circumstances, the Commission asked the Informant to appear for a preliminary conference and noted in its second closure order that the informant was precluded from filing further Information against the opposite party on similar facts. It is further submitted that the Appellants have no right of hearing or notice prior to closure of information and has relied upon a decision of the Supreme Court in the case of CCI Vs. Steel Authority of India, Civil Appeal No. 7779 of 2010. In this regard, it has been held that "Section 26(1), as already noticed, requires the Commission to form an opinion whether or not there exists a prima facie case for issuance of direction to the Director General to conduct an investigation. This section does not mention about issuance of any notice to any party before or at the time of formation of an opinion by the Commission on the basis of a reference or information received by it. Language of Sections 3(4) and 19 and for that matter, any other provision of the Act does not suggest that notice to

the informant or any other person is required to be issued at this stage. In contra-distinction to this, when the Commission receives the report from the Director General and if it has not already taken a decision to close the case under Section 26(2), the Commission is not only expected to forward the copy of the report, issue notice, invite objections or suggestions from the informant, Central Government, State Government, Statutory Authorities or the parties concerned, but also to provide an opportunity of hearing to the parties before arriving at any final conclusion under Section 26(7) or 26(8) of the Act, as the case may be."

25. It has been further held in the same judgment that "Formation of a prima facie opinion departmentally (Director General, being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself) does not amount to an adjudicatory function but is merely of administrative nature. At best, it can direct the investigation to be conducted and report to be submitted to the Commission itself or close the case in terms of Section 26(2) of the Act, which order itself is appealable before the Tribunal and only after this stage, there is a specific right of notice and hearing available to the aggrieved/affected party."

26. Counsel for Respondent Nos. 2 to 6 has argued that jurisdiction of the Commission, when invoked under Section 19, has to be assessed on the anvil of Regulation 10 of the CCI (General) Regulations, 2009. He has particularly referred to Regulation 10(2) to contend that the Appellants have failed to provide the statement of facts, details of the alleged contraventions of the Act

together with a list enlisting all documents, affidavits and evidence as the case may be, in support of each of the alleged contraventions. It is argued that the Commission has rightly dismissed the application on the ground that allegation made in the information are baseless and are not supported with any document or material. He has also repeated the arguments raised by the Respondent No. 1 that in order to constitute violation of Section 3 it is incumbent upon the Appellants to mention as to who are the members of the said cartel, what was their modus operandi and how they had manipulated the price causing adverse effect on the markets. He has also reiterated that no right of hearing at the stage of forming a prima facie opinion is granted. In this regard, he has referred to Regulation 17 of the Regulations, 2009 that a preliminary conference is called for forming an opinion as to whether a prima facie case is exist in the information which has been done in this case because ordinary meeting was held on 29.01.2021 by the Commission. He has further submitted that the information cannot be equated with reference under Section 21 which has to be made by the Government authority whereas it was only an advise. It is further submitted that the Appellants have suppressed the prevalence of the Paradip Port Clearing, Forwarding and Handling Workers (Regulation of Employment) Scheme, 1994 (CFH Scheme) and further the factum of amendment made to the CFH Scheme on 15.02.2016 vide a resolution dated 05.02.2016. It is also submitted that scheme has been referred to at the stage of rejoinder by the Appellants. Clause 14 of the CFH Scheme permitted all licensed stevedores to be members of the Management Committee was only brought forward by the additional affidavit on 23.01.2025. It is also submitted that the change in the market has not only by M/s Seaways Shipping Logistics Ltd. but due to the amendment of the CFH Scheme. It is further submitted that the Management Committee of CFH Scheme comprises of 9 members whereas only two members have been arrayed as party and the Appellant failed to array the seven other members which have been alleged to be a part of the cartel during the alleged years 2012-16.

27. Counsel for the Respondent No. 7 has also argued on the same lines on which the Respondent No. 1 and 2 to 6 have already made their submissions that the information was bereft of any details / evidence as to how Respondent No. 2 to 7 were indulging in collusive bidding in the tender process by the Appellant during the said period of four years. It is further submitted that the Appellants have been asking for investigation without giving any material to the Commission setting forth the path for the said investigation. He has also supported the contentions made by the other Respondents in so far as the argument of the Appellants about treating the information as a reference under Section 21 and that no hearing is required at the stage of deciding prima facie case etc.

28. We have heard Counsel for the parties and perused the record with their able assistance.

29. Counsel for the Appellant has, during the course of hearing labored much on OM dated 27.08.2020 of the CVC and argued that the Information is based on said OM which has the trapping of reference, therefore,

Commission should have treated the information as a reference and decided the same in accordance with law. In order to appreciate this argument, it would be relevant to refer to Office Memorandum which is reproduced as under:-

Annexure F Annexure 64-C 101

Urgent/Confidential (958)

Telegraphic Address :
"SATARKTA: New Delhi

E-Mail Address
cenvigil@nic.in

Website
www.cvc.nic.in

EPABX
011-24600200

फैक्स / Fax :
011-24651186

सत्यमेव जयते

Dy. No. 503
Dated 24/8/20
Office of CVO, SAIL

केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION

सतर्कता भवन, जी.पी.ओ. कॉम्पलैक्स,
ब्लॉक–ए, आई.एन.ए., नई दिल्ली–110023
Satarkta Bhawan, G.P.O. Complex,
Block A, INA, New Delhi-110023

सं. / No.................................

दिनांक / Dated..........................

019/STL/017/458367

27.08.2020

OFFICE MEMORANDUM

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Sub: Complaint against the then Director (Finance) and then CMD, SAIL-reg.

SAIL may refer to their letter No. CV/Comp/760/2019/CMO/30 dated 07.03.2020 on the above cited subject.

2. The case has been examined in the Commission and it is observed that the matter of cartelisation (stevedoring in shipping) needs a institutional change. Therefore, CVO, SAIL and CVO, Paradip Port Trust are advised to jointly represent the matter before Competition Commission of India, which has exclusive domain in matter of cartelization and bid rigging to inquire, investigate, interpret and pass orders/ directions to abide orders and impose penalty.

3. The receipt of this OM may be acknowledged.

Pl fix date for VC with CVO Paradip Port Trust.
29/8/20

Vivek Khare
27.08.2020

(Vivek Khare)
Director

ED

29/8/2020
CGM Slc (Vig.)

Steel Authority of India Ltd.
(Shri A.J. Kurian, CVO),
2nd Floor Ispat Bhawam, Lodhi Road,
New Delhi – 110003.

Paradip Port Trust
(Smt. Preeti Mahto, CVO)
Administrative Department
Madhuban Paradip Port,
Orissa-754142.

Copy of SAIL's letter No. CV/Comp/760/2019/CMO/30 dated 07.03.2020 is enclosed

30. It is needless to mention that OM is regarding a complaint against the then director (finance) and then CMD, SAIL because it bears a reference of the letter of SAIL dated 07.03.2020 on the subject mentioned hereinabove.

31. On this complaint, it has been observed by the CVC that the matter of cartelization (stevedoring in shipping) needs an institutional change. However, CVC advised the CVO, SAIL and CVO, Paradip Port Trust to jointly represent the matter before the Commission because it has exclusive domain in the matter of cartelization and bid rigging to inquire, investigate, interpret etc. and to pass orders / directions to abide by the orders and impose penalty.

32. The OM dated 27.08.2020 has become one of the reasons for the Appellants to file information under Section 19 of the Act. Section 19 of the Act is reproduced as under:-

> "**Inquiry into certain agreements and dominant position of enterprise**
>
> **19.** (1) The Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or sub-section (1) of section 4 either on its own motion or on—
>
> (a) 29[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) 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 by hindering entry into the market;

(d) accrual of benefits to consumers;

(e) improvements in production or distribution of goods or provision of services; or

(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;

(I) 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.

(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;

(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."

33. Section 19(1) provides that the Commission may enquire into the alleged contravention of Section 3(1) or 4(1) on receipt of any information in such manner. The procedure for filing of the information is prescribed under Regulation 12 and 13 of the Regulations which are also reproduced as under:-

"12. Procedure for filing of information or reference. –

(1) Information or reference or responses thereto to the Commission shall be presented to the Secretary or to an officer authorized in this behalf by the Secretary, in person or sent by registered post or courier service or facsimile transmission addressed to the Secretary or to such authorized officer.

(2) Any separate or additional document(s) that a party to the proceedings wishes to rely upon in support of it's information, or reference shall be filed in the form of a "Paper Book", at least seven days prior to the date of the ordinary meeting, after serving the copies of the said document(s) on the other parties to the proceedings, with documentary proof of such service. Such documents shall be serially numbered, prefaced by an index and shall be supported by a verification.

(3) An information(s) or reference sent by post or courier service or facsimile transmission under sub-regulation (1) shall be deemed to have been presented to the Secretary or to the officer authorized by the Secretary, on the day on which it is received in the office of the Secretary or the authorized officer, as the case may be.

13. Procedure for filing of information or reference in electronic form. –

Subject to the provisions of regulation 12, information or a reference to the Commission may be sent by a person or an enterprise to the Secretary in an electronic form duly authenticated with digital signature by the subscriber as and when so desired by the Commission through a public notice.

Explanation – For the purpose of this regulation, –

(a) “digital signature” means the digital signature as defined under clause (p) of section 2 of the Information Technology Act, 2000 (21 0f 2000);

(b)"electronic form" with reference to an information or a document means the electronic form as defined under clause (r) of section 2 of the Information Technology Act, 2000 (21 0f 2000);

(c) “subscriber” means the subscriber as defined under clause (zg) of section 2 of the Information Technology Act, 2000 (21of 2000).”

34. As per Section 26(1), on receipt of reference from the Central Government or a state Govt. 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. However, the opinion on the existence of a prima facie case, Regulation 16 and 17 of the Regulations provide as under:-

“16. Opinion on existence of prima facie case. –

(1) The Secretary, after scrutiny and removal of defects, if any, in an information or reference, as the case may be, shall place the same before the Commission to form its opinion on existenceof a prima facie case.

(2) In cases of alleged anti-competitive agreements and/or abuse of dominant position, the Commission shall, as far as possible, record its opinion on existence of a prima facie case within sixty days.

(3) The Commission shall, as far as possible, hold its first ordinary meeting to consider whether prima facie case exists,

within fifteen days of the date of placement of the matter by the Secretary under sub -regulation (1).

17. Preliminary conference. –

(1) The Commission may, if it deems necessary, call for a preliminary conference to form an opinion whether a prima facie case exists.

(2) The Commission may invite the information provider and such other person as is necessary for the preliminary conference.

(3) A preliminary conference need not follow formal rules of procedure."

35. In so far as the argument of the Appellant that the information should have been treated as a reference, it is worthwhile to refer to Regulation 2(j) of the Regulations which defines the reference, which is reproduced as under:-

"(j) "reference" means a reference–

(i) received in the Commission from the Central Government or a State 2 Government or a statutory authority under clause (b) of sub- section (1) of section 19 of the Act, or

(ii) received in the Commission from a statutory authority under section 21 of the Act for opinion, or

(iii) sent to a statutory authority for opinion by the Commission under section 21A of the Act, or

(iv) received in the Commission from the Central Government or a State Government for opinion under sub-section (1) of section 49 of the Act."

36. The reference by statutory authority is provided under Section 21 which read as under:-

"**Reference by statutory authority**

21. (1) Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission:

[**Provided** that any statutory authority, may, suo motu, make such a reference to the Commission.]

[(2) On receipt of a reference under sub-section (1), the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.]"

37. According to the aforesaid provision, the reference has to be made by the statutory authority in respect of an issue to the Commission.

38. Regulation 33 of the Regulations provides as to what should be the particulars of the reference made under Section 21. Regulation 33 is also reproduced as under:-

"33. Reference from statutory authority or the Central Government or a State Government. –

(1) A reference from statutory authority under section 21 of the Act or The Central Government or State Government under section 49 of the Act for opinion made to the Commission shall contain such particulars as may be specified by the Commission.

(2) Without prejudice to sub-regulation (1), a reference from statutory authority under section 21 of the Act, shall contain:- (a) the specific proposition of law or fact or specific issue or policy or any other matter relating to competition on which the opinion is solicited; (b) background and historical data relevant for the determination of the proposition or the issue or the policy or any other matter; (c) duly authenticated copies of the relevant statutes including the rules, the regulations, the notifications, the orders as considered necessary, if applicable; (d) duly authenticated and updated list of the parties with their complete

addresses, telephone numbers, fax numbers, e-mail addresses; (e) proof of having informed the parties concerned about the matter having been referred to the Commission for opinion under section 21 of the Act, if applicable.

(3) The time to be reckoned for giving opinion on such reference under section 21 of the Act shall be subject to the proviso to sub-regulation (5) of regulation15.

(4) On being satisfied that the reference is complete, the Secretary shall place it during an ordinary meeting of the Commission and seek necessary instructions regarding the parties to whom notice of meeting is to be issued.

(5) The Secretary shall give notice of the ordinary meeting to the said parties giving not less than seven days, in the manner specified, to take part in the proceedings.

(6) The parties to whom the notices are issued under sub-regulation (5), may file comments or reply to the notice after having served a copy thereof to each party at least seven days prior to the date of the ordinary meeting, if applicable.

(7) The Commission may call upon a representativ e of the statutory authority or the Central Government or the State Government or an expert in the field for discussion or evidence as it may consider necessary in the matter.

(8) The Commission may collect particulars and information from any person or enterprise or Central or State Government or statutory authority, which in its opinion is relevant to the reference received by the Commission.

(9) The Commission may form an opinion and send the same to the concerned parties and seek their objections and/or suggestions thereon within the time decided by it and after considering such objections or suggestions it shall give its final opinion to the statutory authority or the Central Government or the State Government, as the case may be."

39. Similarly, Section 21A deals with the reference by the Commission which is also reproduced as under:-

[Reference by Commission]

21A. (1) Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority:

Provided that the Commission, may, *suo motu*, make such a reference to the statutory authority.

(2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons there for on the issues referred to in the said opinion.]

40. Regulation 34 deals with the reference by the commission to statutory authority for opinion which is also reproduced as under:-

"**34. Reference by the Commission to statutory authority for opinion.** –

(1) A reference from the Commission to any statutory authority for opinion under section 21A of the Act shall contain,–

(a) the specific proposition of law or fact or specific issue relating to competition on which the opinion is solicited;

(b) background and historical data relevant for the determination of the proposition or the issue;

(c) duly authenticated copies of the Act, the relevant rules and regulations framed thereunder, the notifications and the orders, if any, passed by the Commission in the pending matter as considered necessary;

(d) duly authenticated and updated list of the parties with their complete addresses, telephone numbers, fax numbers, e-mail addresses etc.;

(e) proof of the Secretary having informed the parties concerned about the matter having been referred to the statutory authority for opinion under section 21A of the Act;

(f) the Secretary shall certify that the reference being forwarded is in conformity with clauses (a) to (e);

(2) Where the statutory authority seeks additional information in the reference made, the Secretary shall, as far as practicable, provide such additional information to the concerned statutory authority within fifteen days of receipt of the same from the statutory authority.

(3) In case the opinion is not received from the statutory authority within sixty days of forwarding a reference under sub-regulation (1) or sub-regulation (2), the Secretary shall place the matter during an ordinary meeting of the Commission for further orders;

(4) On receipt of the opinion from the statutory authority by sub-section (2) of section 21A of the Act, the Secretary shall place the same during an ordinary meeting of the Commission for orders."

41. In the backdrop of the aforesaid provisions i.e. Act and Regulations pertaining to the Section 19 which deals with filing of the information and Section 21 which deals with the reference by statutory authority, it does not lie in the mouth of the Appellants to contend that the information filed under Section 19 is akin to a reference as both the information and reference travels in different directions and does not meet at any common place, therefore, the argument raised by the Appellant that the information filed under Section 19 should be treated as a reference under Section 21 is hereby repelled. The mere fact that the entire argument of the Appellant is directed towards the treating the information as a reference would itself shows that the information is lacking in particulars for the prima facie opinion and for investigation.

42. The other argument of the Appellant about an opportunity of hearing before the prime facie opinion has been formed, suffice it to say that this issue is covered by the decision in the case of Steel Authority of India (Supra). The relevant paragraphs of the said order have already been reproduced in the earlier part of this order.

43. In so far as in the case of Pankaj Rai (Supra) is concerned, it has been adequately explained that why in the second information submitted by that Informant the Commission asked him to appear for preliminary conference, therefore, the decision in the case of Pankaj Rai delivered by Commission cannot set up by the Appellants.

44. After having held that the information cannot be considered as a reference and that no right for hearing is available before a prima facie case is decided, what is left out is the information, which has to be seen on its face value to find out as to whether the allegations/averments made in it prima facie sets out the case for investigation. In this regard, the Commission has categorially held in the impugned order that the information supplied is bereft of any material regarding the nature of cartel, who all are the members of the cartel, how the cartel operates, restrictions brought about by the cartel under Section 3(3) and how bids issued by SAIL have been manipulated or rigged by the members of the cartel.

45. It has rightly been held by the Commission that the information should have been filed by the Informants only after ascertaining at their end, the facts and evidence available with them that a prima facie discloses the

existence of a cartel as defined under Section 2(c) of the Act which is operating in the manner in violation of Section 3(1) of the Act.

46. In the absence of material particulars, the Commission cannot be called upon to make inquiry. The Appellants have also not explained as to why they have not impleaded the other members of the CFH Scheme and only chosen R2 to 7.

47. Thus, looking from any angle, we do not find it to be fit case for interference and the same is hereby dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

New Delhi
21st March, 2025
Sheetal