NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

IA NO.803 OF 2023

IN

COMPETITION APPEAL (AT) NO.68 OF 2018

In the matter of:

Saara Traders Pvt Ltd & Anr Applicant

Vs

Competition Commission of India & Others Respondent

For Appellant:Ms Aditi Sharma, Advocate.

For Respondent:Mr Avinash Sharma, Ms Akanksha Kapoor, Advocates for R1.
Ms Sriashti Prashar, Advocate.

ORDER

HYBRID MODE

15.04.2025: This IA No.803/2023 has been filed by the appellant praying therein to direct the release of the Fixed Deposit Receipts deposited by the Appellants for the amounts of Rs.2,32,263/- and Rs.74,513/- in the name of Ld. Registrar, NCLAT alongwith the interest accrued thereon, in favour of the Appellants.

2. It is the submission of the learned counsel for the Appellant this appeal was filed against an impugned order dated 31.05.2018 passed by the Competition Commission of India, in Case No.03/2016. By the impugned order the Commission had imposed a penalty on the Appellants herein. The appellant filed this appeal challenging the impugned order dated 31.05.2018 and this Tribunal *vide* order dated 17.09.2018 had passed the following order:-

"In the meantime, if all the Appellants deposits their respective penalty amount, as ordered on 16th July, 2018, by the extended date i.e. 20th August, 2018 by way of FDR, in the name of Registrar, NCLAT, the impugned order(s) in respect of them shall remain stayed. Appellants-"Sanjay Agencies", Lahs Green India Pvt Ltd, will also deposit the amount @ 10% of the penalty and full amount by the individuals, within the same period."

3. The said amount was deposited by the Appellants in favour of the Ld. Registrar, NCLAT. This appeal was decided alongwith other appeals *vide* order dated 23.12.2022 and it was held as under:-

25. Now coming to the discretionary jurisdiction of the CCI in considering the turnover on the higher level i.e. 10% which is maximum percentage prescribed under Section 27(b) of the Act is concerned we are of the opinion that though CCI is empowered to take turnover upto 10% but while taking up such percentage i.e. maximum as prescribed in the Act it was required for the CCI to elaborately assign reason for coming to the conclusion for maximum penalty. It may not be held that CCI in no case can impose higher penalty upto 10% but in such situation it would be required for the CCI to afford full opportunity to the concerned party to address the CCI as to why such higher penalty may not be imposed. On going through the impugned order we find no indication as to whether the appellants were asked to explain regarding exemplary penalty i.e. maximum 10% or detailed reasons has been assigned for the same. It is true that in respect of imposing penalty discretion has been given to the CCI, but at the same time it is settled that discretion may not be exercised indiscreet manner. We are of the opinion that though discretionary jurisdiction may not be interfered with but in view of facts and circumstances particularly the fact that discretion by the CCI in the present case has not been exercised in a reasonable manner it would be a fit case for remanding back the matter to CCI to examine the issue to afford opportunity to the appellants to address on the point as to whether instead of exemplary penalty i.e. upper limit of 10%, the appellants are entitled to get the said percentage reduced or not. Without interfering with the merit of the case the appeals are remitted back to the CCI to reconsider the penalty in view of observations given hereinabove and pass appropriate order in accordance with law after giving full opportunity to the appellants on the point of penalty.

The matter is remanded to CCI to examine the issue of penalty by affording an opportunity to the Appellant. CCI had filed an appeal before the Hon'ble Supreme Court *vide* Civil Appeal No.1985/2023 which appeal was also dismissed on 19th February, 2025, hence this application.

4. It is submitted by the appellant since the CCI is deciding about the quantum of penalty afresh hence the FDR deposited in pursuance to the order dated 17.09.2018 be released.

5. The learned counsel for CCI appeared and submitted they have no objection if the FDR are released in favour of the Appellants.

6. Considering the submissions the application is allowed and the Ld. Registrar, NCLAT may release the FDR alongwith interest accrued thereon in favour of the Appellant.

7. IA No.803/2023 is disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

bm/md