

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**PRINCIPAL BENCH****NEW DELHI****COMPETITION APPEAL (AT) NO.43 OF 2022****In the matter of:**

Indian Netizens and Internet Entrepreneurs
Welfare Association (INEWA) (Non-Government
Organisation)

Appellant

Vs

The Secretary, CCI

Respondent

For Appellant: Mr Varun Bajaj, Ms Shivaarti Bajaj, Mr Vishesh Dhundia, Mr. Sagar Jaggal, Ms Vinshi Jasoria, Advocates.

For Respondent: Mr Samar Bansal and Mr. Sri Harsha Peechara, Advocates.

ORDER

11.11.2022: Heard Mr. Varun Bajaj, alongwith Ms Shivaarti Bajaj, learned counsel for the Appellant and Mr. Samar Bansal alongwith Mr Sri Harsha Peechara, learned counsel for the Competition Commission of India (hereinafter referred to as 'CCI').

This is a peculiar appeal which was not required to be entertained by the Registry itself. The appellant has preferred this appeal against an order dated 22.06.2022, whereby application filed by the appellant before the Learned CCI in Case No.16/2021 has not been entertained by the CCI. The said case was initiated on the basis of an information filed by one National Restaurant Association of India (NRAI) making allegation of cartelisation and abuse of dominance and anti-competitive agreement against the Zomato and Swiggy. Both entities are arrayed as party No.1 and 2 respectively in Case No.16/21.

On receipt of information application, by assigning detailed reasons containing in 32 pages, Learned CCI vide its order dated 4.4.2022 formed an opinion of prima facie case for its investigation and directed Director General to investigate the case.

While investigation was going on an application dated 09.06.2022 was filed by the Appellant, i.e. Annexure IV which starts from Page No.64. It is evident from the application dated 9.6.2022 that mainly the following two prayers were made by the appellant:

- a) Addition of following as party to the present case, namely, Indian Netizens and internet Entrepreneurs Welfare Association.
- b) Immediate grant of interim stay on DG investigation (defined) in present case till adjudication of NRAI's Grave Conflict of Interest.

It is noticed that the application dated 9.6.2022 was filed under Section 35 of the Competition Act, 2002 read with Regulation 24 and 25 of the Competition Commission of India (General) Regulations, 2009 which is evident from running page 70 of the main petition. On examination of the Section 35 and Section 53A(a) of the Act it is evident that an order passed on a petition filed under Section 35 of Competition Act is not appealable.

The learned CCI by the impugned order while rejecting the application granted applicant liberty to submit the documents/information/or any other evidence in its possession before the DG in a timely manner, if so desired. The operative portion of the order dated 22.06.2022 passed by the CCI is quoted hereinbelow:

“Today, the Commission considered the aforesaid application and averments made therein and observed that the matter is currently pending investigation before the DG. The Commission observed that INIEWA has failed to show any satisfactory cause, in terms of Regulation 25 of the General Regulations, as to why its application be allowed and accordingly decided to reject the application. INIEWA is, however, at liberty to submit the documents/information/or any other evidence in its possession before the DG a timely manner, if so desired.”

The aforesaid order dated 22.06.2022 has been assailed by the appellant primarily on the ground that neither before passing order an opportunity was given to submit documents nor personal hearing was given to the appellant. It has also been argued that no reasons has been assigned. Mr Bajaj, learned counsel submits that if an order assigns no reasons and no opportunity is given which violates the principle of natural justice, the same is required to be interfered with and as such he has assailed the order.

Learned counsel for the appellant tried to persuade that the appellant for larger interest of general consumer wanted to be added as party in the said proceeding so that he may produce material to proceed in accordance with law. According to him the order being non-speaking order and violative of principle of natural justice is needed to be interfered with.

Mr. Samar Bansal, learned counsel for the Respondent submits that the application filed by the appellant itself is not tenable due to the reason that once after forming prima facie opinion, the learned CCI directed the Director General to conduct investigation and thereafter investigation is in

progress, if any party having some information or documents they are at liberty to produce such material before the Director General. At the same time one may not claim to be added as party. Learned Counsel further submits that the appellant has made prayer for stay of the investigation. He further submits that on the basis of prayer in the application for the stay of investigation, an inference can be drawn that the appellant is not interested in fair investigation rather he wants to stall the investigation by the DG.

Be that it may without going into the merit of the case we have examined the appeal on its maintainability. The NCLAT is a statutory Appellate Body and assigns with the jurisdiction of entertaining an appeal which is squarely covered under Section 53A of the Competition Act. It is apt to reproduce Section 53A and 53B of the Competition Act, 2002 as follows:-

53A Appellate Tribunal. —

The National Company Law Appellate Tribunal constituted under Section 410 of the Companies Act, 2013 (18 of 2013) shall on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017) be the Appellate Tribunal for the purposes of this act and the said Appellate Tribunal shall-

(a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of this Act;

(b) 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 finding of the Commission or under section 42A or under sub-section (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.”

53B Appeal to Appellate Tribunal. —

(1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.]

Once Legislation in its wisdom has decided to frame as to which order can be assailed before the Appellate Tribunal, the Appellate Tribunal being a statutory body is bound to exercise its jurisdiction within the ambit of the Act. The order assailed in the present appeal is not under either Section as enumerated in Section 53A(a) of the Act and as such it is difficult to entertain the present appeal.

At this juncture it would be profitable to quote para 41 of the judgement of the Hon'ble Supreme Court reported in CCI Vs Steel Authority of India reported in **(2010) 10 SCC 744**.

“The provisions of Sections 26 and 53A of the Act clearly depict the legislative intent that the framers never desired that all orders, directions and decisions should be appealable to the Tribunal. Once the

legislature has opted to specifically state the order, direction and decision, which would be appealable by using clear and unambiguous language, then the normal result would be that all other directions, orders etc. are not only intended to be excluded but, in fact, have been excluded from the operation of that provision. The presumption is in favour of the legislation. The legislature is deemed to be aware of all the laws in existence and the consequences of the laws enacted by it. When other orders have been excluded from the scope of appellate jurisdiction, it will not be permissible to include such directions or orders by implication or with reference to other provisions which hardly have any bearing on the matter in issue and thus make non-appealable orders appealable.”

In view of law set at rest by Hon’ble the Supreme Court and on examination of the impugned order we are of the considered opinion that said order cannot be assailed while invoking the jurisdiction of the Appellate Authority under Section 53B of the Act. Accordingly without recording any opinion on the merit of the case, we are not inclined to entertain this appeal.

The appeal stands dismissed.

(Justice Rakesh Kumar)
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member (Technical)

Bm/gc