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LEGAL WORLD

- Jay Engineering Works Ltd. v. Industry Facilitation Council & Anr [SC]
- Dodal Electro Instruments v. The Micro and Small Enterprises Facilitation Council & Anr [Bom]
- Peninsula Holdings & Investments Pvt. Ltd. v. JM Financial Credit Solutions Limited & Anr [NCLAT]
- C Ganesh v. Ashok Seshadri & Anr [NCLAT]
- Accurate Engineering Company Pvt. Ltd. v. Vikram Vilasrao Salunke & Anr [NCLAT]
- C.C.L. Optoelectronics Pvt. Ltd. v. Bharat Sanchar Nigam Ltd [CCI]
- Liberty Infospace Pvt. Ltd. v. Alphabet Inc & Ors. [CCI]
- Swapan Dey v. Competition Commission of India & Anr [NCLAT]
- L&T Infra Investment Partners Advisory Pvt. Ltd. v. Bhoruka Power Corporation Limited [KANT]

Corporate Laws

Landmark Judgement

LMJ 11:11:2025

JAY ENGINEERING WORKS LTD. v. INDUSTRY FACILITATION COUNCIL & ANR [SC]

Civil Appeal No. 4126 of 2006

S.B. Sinha & Dalveer Bhandari, JJ. [Decided on 14/09/2006]

Equivalent citations: AIR 2006 SC3252; 2006 AIR SCW 4783; 2006 (6) COM LJ 209 SC; 2006 (8) SCC 677; (2006) 133 Comp Cas 670.

Execution of Award under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 against sick company- bank account attached - whether enforceable- Held, No.

Brief facts:

The Appellant was under BIFR and declared to be a sick company and a rehabilitation scheme was also sanctioned under the Sick Industrial Companies (Special Provisions) Act,1985 (for short "the 1985 Act"). The Respondent, a small scale unit, was a supplier to the Appellant and got an award from the Industry Facilitation Council under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 **(for short "the 1993 Act").**

The said award of the Council was put in execution. The bank account of the Appellant was attached by the District Court, Ratlam. A writ petition was filed by the Appellant herein before the Madhya Pradesh High Court questioning the same which by reason of the impugned judgment has been dismissed by a learned Single Judge. A Letters Patent Appeal preferred thereagainst was dismissed by the impugned judgment. The High Court in its impugned judgment proceeded on the premise that the 1993 Act could prevail over the 1985 Act.

Decision. Allowed.

Reason.

It is not in dispute that the award was made by the Council in favour of the Respondent No. 2. However, it is also not in dispute that the Board in terms of its order dated 8.4.2003 approved the Scheme. In the said Scheme, the award made in favour of the Respondents finds place in the category of 'Dormant Creditors'. The liabilities of the Appellant *vis-à-vis* the Respondent No. 2 was, therefore, indisputably a subject matter of the said Scheme. The High Court, in our opinion, committed an error in proceeding on the premise that the awarded amount had not been included and could not be included in the sanctioned rehabilitation scheme, the same being part of transactions which took place after 21.11.1997 ignoring the revised scheme made in the year 2003.

The High Court furthermore opined that inclusion of the Respondent as a deferred creditor in the fresh rehabilitation scheme dated 8.4.2003 also did not affect the situation in favour of the Appellant presumably on the premise that the 1993 Act was a special Act.

The 1993 Act was enacted to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith. The provisions of the 1993 Act, therefore, do not envisage a situation where an industrial company becomes sick and requires framing of a scheme for its revival.

The award of the Council being an award, deemed to have been made under the provisions of the 1996 Act, indisputably is being executed before a Civil Court. Execution of an award, beyond any cavil of doubt, would attract the provisions of Section 22 of the 1985 Act. Whereas an adjudicatory process of making an award under the 1993 Act may not come within the purview of the 1985 Act but once an award made is sought to be executed, it shall come into play. Once the awarded amount has been included in the Scheme approved by the Board, in our opinion, Section 22 of the 1985 Act would apply.

If the liabilities of the Appellant are covered by the Scheme framed under Section 22 of the 1985 Act, the High Court was clearly in error in coming to the conclusion that the provisions thereof are not attracted only because the debt had been incurred after the Company was declared to be a sick one.

The 1985 Act was enacted in public interest. It contains special provisions. The said special provisions had been made with a view to secure the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts for preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto.

Both the Acts operate in different fields. If the 1985 Act is attracted, the question of its giving way of the 1993 Act would not arise. Both the Acts contain non-obstante clauses. Ordinary rule of construction is that where there are two non-obstante clauses, the latter shall prevail. But it is equally well-settled that ultimate conclusion thereupon would depend upon the limited context of the statute. The endeavour of the court would, however, always be to adopt a rule of harmonious construction.

For the reasons aforementioned, the impugned judgment cannot be sustained. Before parting with this case, however, we may observe that we have not adverted to the question raised by the learned counsel for the Respondents as to whether the Board while implementing the scheme could reduce the quantum of the liability of creditors, as we are of the opinion that such a contention need not be gone into at this stage. It will, therefore, further be open to the Respondent

No. 2 to approach the Board, if any occasion arises therefor. The impugned judgments are set aside. The appeals are allowed. No costs.

LW 80:11:2025

DODAL ELECTRO INSTRUMENTS v. THE MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL & ANR [BOM]

Writ Petitions No.9081 & 82 of 2025

N.J.Jamadar,J. [Decided on 23/09/2025]

Micro Small and Medium Enterprises Development Act, 2006 – conciliation before MSEFC - MSEFC rendered award without closing the conciliation proceedings-whether correct-Held, No.

Brief facts:

The Petitioner is the buyer and Respondent No.2 is the MSME seller. Seller filed recovery application before the Micro and Small Enterprises Facilitation Council [MSEFC] and upon the conciliation process became a failure, the MSEFC passed an order directing the Petitioner to pay to the Respondent No.2 - seller, a sum of Rs.28,49,940/- and Rs.42,35,504/- respectively, along with interest as admissible under Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (the Act of 2006).

The Petitioner challenged the above order inter alia on the ground that MSEFC has without closing the conciliation proceeding and thereafter referring the matter to arbitration directly passed the order in favour of the seller respondent which is contrary to the provisions of Section 18 of the MSMED Act.

Decision: Partly allowed.

Reason:

This propels me to the main plank that the impugned orders have been passed by MSEFC in gross violation of the mandate of the provisions contained in Section 18(3) of the Act, 2006, in as much as the MSEFC had not at all resorted to arbitrate the dispute as warranted by the provisions contained in the Arbitration and Conciliation Act, 1996. The conciliation and arbitration proceedings were arbitrarily clubbed, which is in teeth of the express statutory provisions and the governing judicial precedents.

A perusal of the aforesaid provisions would indicate that the Parliament has devised a two stage mechanism for the resolution of the dispute. First, under sub-section (2) of Section 18, MSEFC was obligated to itself conduct the conciliation or refer the parties for conducting the conciliation. The mandate to either conciliate or refer the parties to conciliation was emphasised by the use of the word "shall", and by further providing that, once the parties are referred to conciliation, the provisions of Section 65 to 81 of the Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of the said Act, 1996. Upon the failure of the conciliation or termination of the conciliation proceedings, the next stage of arbitration was to be compulsorily resorted to by the MSEFC. Sub-section (3) of Section 18, MSEFC was empowered to itself arbitrate the dispute or refer the parties to arbitration. Once the parties were referred to arbitration, the provisions of the Arbitration and Conciliation Act, 1996 would then apply to the dispute resolution process.

From the perusal of the observations in the impugned order (extracted above), it becomes evident that the MSEFC has referred to initiation of conciliation proceedings. The consideration on the said point, stops at that. The impugned order does not indicate that the MSEFC reckoned that the conciliation proceedings did not succeed and stood terminated. Even if one were to presume that, on account of the non-appearance of the Petitioners, in the proceedings before the MSEFC, despite notices, the MSEFC construed, by implication, that the conciliation proceedings failed, yet, further question as to whether MSEFC resorted to itself arbitrate the dispute or refer the parties to arbitration, is neither answered by the impugned order nor any other material on record. It does not appear that the proceedings were recorded in the Reference that the MSEFC took upon itself the task of arbitration.

As noted above, once the stage of arbitration under Section 18(3) was reached, the dispute was required to be arbitrated in accordance with the provisions contained in the Arbitration and Conciliation Act, 1996. It does not appear that MSEFC adverted to any of the provisions contained in the Act, 1996. The parties were not called upon to file statements of claim and defence. Even when the Petitioner did not appear, the MSEFC was enjoined to follow the procedure contained in Sections 23 and 25 of the Act, 1996; which provides for the procedure to be adopted in the event of a default of a party.

Thus, I find substance in the submission that the impugned orders do not constitute an arbitration award, as envisaged by the provisions of the Act, 1996. The impugned orders, therefore, become unsustainable and susceptible to interference in exercise of the writ jurisdiction as the orders have been passed in breach of the mandatory provisions of the Act, 2006 and the Arbitration and Conciliation Act, 1996. Failure to adopt express statutory provisions in conformity with which only the decisions were required to be rendered, furnishes a surer foundation for the exercise of the writ jurisdiction.

The upshot of aforesaid consideration is that the Petitions deserve to be partly allowed and the impugned orders are required to be quashed and set aside and the References under Section 18 of the Act, 2006 are required to be remitted back to the MSEFC for afresh decision in accordance with law.

LW 81:11:2025

PENINSULA HOLDINGS & INVESTMENTS PVT. LTD. v, JM FINANCIAL CREDIT SOLUTIONS LIMITED & ANR [NCLAT]

Company Appeal (AT) (Ins.) No. 1393 of 2025

Ashok Bhushan & Indevar Pandey. [Decided on 29/10/2025]

Insolvency and Bankruptcy Code, 2016 - Section 7 CIRP application by financial creditor - admitted by NCLT- whether correct- Held, Yes.

Brief facts:

This appeal has been filed challenging the Order passed by the NCLT (Adjudicating Authority). By the said order, the Adjudicating Authority admitted the application filed under Section 7 of the Code by JM Financial Credit Solutions Limited (Financial Creditor) and Respondent No.1 herein, against Hem Infrastructure and Property Developers Pvt. Ltd., (Corporate Debtor) thereby initiating the Corporate Insolvency Resolution Process (CIRP) and appointing Mr. Rajesh Jhunjhunwala as the Interim Resolution Professional (IRP) Respondent No.2 herein.

The Appellant, being a shareholder of the Corporate Debtor, has approached this Appellate Tribunal on the grounds that the order of admission suffers from grave factual and procedural errors; that no legally enforceable financial debt or valid guarantee existed; and the Adjudicating Authority failed to consider the commercial futility of initiating CIRP against a non-operational Special Purpose Vehicle (SPV) incapable of resolution under the Code.

Decision: Dismissed.

Reason:

We have heard learned counsels and perused the pleadings, documents, and authorities relied upon and based on the same, we frame the following two issues for determination:

(i) Whether the present Appeal filed under Section 61 of the Code by the Appellant, who claims to be a shareholder and preference shareholder of the Corporate Debtor, is maintainable in law?

Based on the discussion above, we observe the following:

(i) The Appellant has filed the present appeal purely in its capacity as a shareholder of the Corporate Debtor, as admitted in its pleadings. It is also admitted in the pleadings that the Appellant as well as Corporate Debtor were passive investors, without any assets or personnel. In such a situation, it is not possible for such entities to exercise control over the AOP as claimed;

(ii) The Appellant has not demonstrated any direct legal injury caused by the admission order, apart from a reflective or derivative loss to its investment;

(iii) Preference shareholding, without an explicit debt-creating agreement, does not confer the status of a financial creditor or aggrieved person;

(iv) The decision of the 3-member Bench of this Tribunal in 'Park Energy Pvt. Ltd. v. State Bank of India (2025 SCC Online NCLAT 1289)' and EPC Constructions (2023) squarely applies to the present case.

Accordingly, we hold that the present appeal is not maintainable, as the Appellant is not a "person aggrieved" under Section 61 of the code. The Appellant's shareholder status, whether equity or preference, does not confer any locus to challenge the admission of the Corporate Debtor's insolvency.

(ii) Whether the impugned order dated 14.07.2025 admitting the Corporate Debtor into CIRP suffers from any legal infirmity?

We have carefully perused the impugned order dated 14.07.2025. The scope of inquiry at the stage of admission under Section 7 of the IBC is limited, the Adjudicating Authority is required to ascertain only (a) the existence of a financial debt, and (b) occurrence of a default. If both are proved on record, admission is mandatory; no equitable discretion lies to reject a petition on other grounds. This position has been repeatedly emphasized by the Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank [(2018) 1 SCC 407' and E.S. Krishnamurthy v. Bharath Hi-Tech Builders Pvt. Ltd. [(2022) 3 SCC 161'.*

In the present case, it is undisputed that JM Financial Credit Solutions Ltd. extended certain financial facilities to M/s Hem Bhattad (AOP), and that the Corporate Debtor stood as a corporate guarantor for those facilities. The guarantee deed is not denied. Upon default by the AOP in repayment, the liability of the guarantor immediately crystallized. Section 128 of the Indian Contract Act, 1872, makes the liability of a surety coextensive with that of the principal debtor, unless the contract provides otherwise. There is nothing on record to show that the guarantee was conditional or limited.

The Appellant's arguments regarding the AOP's role, alleged passive participation, or business equities are irrelevant in the context of Section 7 adjudication. Hence, the impugned order suffers from no legal infirmity, procedural defect, or misapplication of law. The challenge to the same is devoid of merit.

LW 82:11:2025

C GANESH v. ASHOK SESHADRI & ANR [NCLAT]

Company Appeal (AT) (CH) (Ins) No.361/2025

Sharad Kumar Sharma & Jatindranath Swain. [Decided on 29/10/2025]

Section 6(5) of the Insolvency and Bankruptcy Code, 2016 read with Sections 230 - 232 of the Companies Act, 2013- Settlement and scheme of arrangement during liquidation proceedings of the corporate debtor- scheme cancelled on the ground of noncompliance of payment terms and extension of time was refused - whether correct -Held, No.

Brief facts:

The Appellant is the successful proponent of the scheme of arrangement of the Corporate Debtor which was under liquidation under CIRP. Due to certain reasons

the payment obligation was rendered impossible and the Appellant filed an application seeking extension of time which was refused and the scheme was rejected. Hence the present appeal.

Decision: Allowed.

Reason:

We too had an occasion to deal with the similar issue about the purpose and object of extension of time under the Scheme of Arrangement in the matters of *Comp App (AT) (CH) (Ins) Nos.304 & 306/2025, M/s. Prakash Oil Depot vs G. Madhusudhan Rao & Anr.*

Owing to the basic objective, which could be discernible from the provision contained under Section 231(1)(b) of Companies Act, we are of the opinion that, where the settlement is a process contemplated under law and where the scheme has been approved by the Learned Adjudicating Authority, in order to effectively resolve the controversy on vital issues between the parties, this will be a fit case to exercise our power which is reserved to be exercised by us under Section 231(1)(b), which has been extracted above, since it gives ambit of authority to the Tribunal, as well as the Appellate Tribunal to pass any orders or to make any such modifications, which may be necessary under/facts of a case to carry on the necessary steps for ensuring the implementation of the Scheme of Arrangement. Looking into the time constraints, delayed filing with ROC and the other contributing factors resulting to the delayed payment, this will be a fit case where we could exercise our discretion of extension of time. Owing to the above, the Company Appeal (AT) (Ins) No.361/2025 is allowed. The impugned order dated 02.06.2025 is hereby quashed, and IA(IBC)/2232(CHE)/2024, would stand allowed, and as a consequence thereto, further 60 days' time is granted to the Appellant to make full and final payment, including the additional expenditures and the interest which would have accrued during this period along with the liquidation charges, within a period of 60 days from the date of uploading of the order. The drafts which were presented by the Appellant in IA No.1085/2025 (as detailed in para 16 of this order) would be immediately handed over to the respondents before the Learned Adjudicating Authority, within 3 days of uploading of this order, failing which, the impugned order will take its own effect as per law. All pending interlocutory applications would stand closed.

LW 83:11:2025

ACCURATE ENGINEERING COMPANY PVT. LTD. v VIKRAM VILASRAO SALUNKE & ANR [NCLAT]

Company Appeals (AT) No. 211& 212 of 2023

Yogesh Khanna & Ajai Das Mehrotra. [Decided on 15/10/2025]

Companies Act, 2013 - Sections 397, 398, 402 and 403-mediation- compromise entered into and consent terms agreed – later application moved to declare that the consent terms are unenforceable- NCLT rejected the application-whether correct - Held, Yes.

Brief facts:

On or about 14/06/2014, the Respondents filed a Petition No.56 of 2014 under Sections 397, 398, 402 and 403 of the Companies Act, 1956. The Appellant appeared in the said Petition and contested it by filing Replies. The Ld. NCLT appointed Shri. M. R. Bhat as a Mediator and he commenced mediation. The said mediation concluded in terms of the Minutes of Meeting dated 12/12/2022, but these Minutes even though were signed by the Appellant as well as by the Respondents were allegedly never acted upon and hence it is alleged the mediation failed.

On 09/01/2023, the Appellant sent an email to the Learned Mediator explaining the circumstances in which the mediation was carried out and raised objections that the Learned Mediator, without offering any opinion on the contentions raised by the Appellant, proceeded to finalise the Mediation by insisting upon the compliance of incomplete consent terms. The Learned Mediator submitted three detailed Reports to the Learned National Company Law Tribunal, Mumbai. The Appellants then preferred 2 IAs applications seeking rejection of the consent terms. The Respondents preferred not to file Reply to the said Applications;

Ld. NCLT, Mumbai heard the parties and passed a common Order, thereby rejecting the applications preferred by the Appellant and disposed the Transfer Company Petition No.56 of 2014. Hence the instant Appeal.

Decision: Dismissed.

Reason:

We have heard the arguments advanced by both the Learned Counsels. The third and final report makes it amply clear the consent terms were duly signed on 07.01.2023 and even Annexures 1 and 2 appended to the consent terms dated 07.01.2023 were also signed by both the brothers and thus a final copy of the consent terms dated 07.01.2023 along with its annexures; after according satisfaction to the process, was filed by the Ld. Mediator on record before the Ld. NCLT. Thus as is evident, the contesting parties viz. two brothers had signed such annexures and such properties viz. plant and machinery were only to be distributed between these two brothers. In fact, the consent terms not only dealt with the plant and machinery alone of the two business but was a wholesome settlement between the parties wherein two separate companies along with two separate properties were to be distributed amongst the two brothers and that the appellant Ms. Sonali Prashant Shinde was to get an amount in lieu thereof. Admittedly she got the money and raised a dispute only to an extent the amount given to her

by her brothers be treated as a gift and hence cannot agitate issues not related to her to render a legal settlement void, especially when she had received the entire sum under the consent terms.

Lastly an objection was raised by the appellant that there was a breach of Rule 25 and 26 of the Mediation Rules, 2016 and as such the entire settlement needs to be quashed. Reading of Rule 25 stipulates following three factors: a) the agreement must be reduced to writing, b) it must be signed by the parties, and c) it must be submitted to the proper authority with a proper covering letter. In the instant matter, it is clear from the record after entering the duly signed consent terms by the parties, the mediator had forwarded the consent terms dated 7.1.2023 along with his letter dated 18.03.2023 to the Ld. NCLT.

On facts also, it is evident when the Tribunal was seized of the matter, both the Appellants in Company Appeals No. 211 and 212 had filed applications to revoke the consent terms on 15th May and on 8th July 2023. Thereafter, the Tribunal heard the entire matter, the mediator's report and the applications to revoke the consent terms together and passed the impugned order on 03.10.2023. The Ld. Tribunal rather recorded in Paragraph 16 of the impugned order, that this is a just settlement between the parties. Thus, the requirement of Rule 25 and 26 stood satisfied, while passing the Impugned Order dated 03.10.2023. Thus on the basis of above we find no merit in these appeals and accordingly the appeals are dismissed.

Competition Laws

LW 84:11:2025

C.C.L. OPTOELECTRONICS PVT. LTD v. BHARAT SANCHAR NIGAM LTD [CCI]

Case No. 19 of 2025

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag.

[Decided on 07/10/2025]

Competition Act, 2002 – Section 4- abuse of dominance- tender process –disqualifying the OP from participating in the bidding/tender process – whether abuse of dominance– Held, No.

Brief facts:

The Informant participated in Tender floated by the OP for the supply of 2,00,000 units of Splice Closure for Optical Fiber Cables and was unsuccessful. It has been alleged that the Informant was disqualified by the OP from participating in the bidding/tender process, deliberately by mentioning contradictory and inconsistent terms and conditions in the Tender Document. The Informant alleged that the said act was manifestly done with the ulterior motive to favour a particular company to qualify for the bidding process and to stop and prevent the Informant from qualifying for the said bidding process. Therefore, the present complaint was filed alleging violations of section 4 of the Act by abusing dominance.

Decision: Dismissed.

Reason:

The Commission now deems it appropriate to examine whether the OP is dominant in the relevant market, and if yes, whether it has abused its dominant position in contravention of the provisions of Section 4 of the Act. In this regard, the Commission notes that, though the OP is a major public provider of telecommunication services in the relevant market, there are significant number of other players available in the relevant market like Reliance Jio Infocom Ltd. (40.07%); Bharti Airtel Ltd. (32.01%); Vodafone Idea Ltd. (14.37%); Bharti Hexacom Ltd. (2.41%); while the OP (Bharat Sanchar Nigam Ltd.) has a market share of only 2.09% in the relevant market. Based on the market share of the OP in the delineated relevant market, the Commission is of the view that the OP does not hold a dominant position in the relevant market within the meaning of Section 4 **of the Act.**

Notwithstanding the above, the Commission examined the allegations of the Informant, to ascertain if the conduct of the OP is in contravention of the provisions of the Act.

With regard to the disqualification of the Informant from the Tender dated 12.12.2024, the Commission notes that the Informant was exempted from 'Bidder Turnover Criteria' (₹664 lakhs for 3 years) and 'Experience Criteria' but it was not exempted from meeting the 'Past Performance' (30,000 SJCs) requirement. As per the portal report dated 03.03.2025, the reason for disqualification by the tendering authority was that documents relating to "past experience of 30,000 SJCs have not been submitted by the bidder". Therefore, it is noted that the Informant was disqualified on the ground of non-fulfilment of the 'Past Performance Criteria' and not on the grounds of not meeting the 'Bidder Turnover Criteria' and 'Experience Criteria'.

The Commission notes from the Tender Document that in case the seller had any objection/grievance against any additional clauses or on any other aspect of the bid, then it could have approached the representation window of Government e Marketplace ('GeM') within 4 days of bid publication. It is noted that the Informant had not given

any representation on GeM. Had this been done, the buyer may not have been allowed to open the bids as it was duty bound to reply to all such representations before opening the bids. Mere dissatisfaction with tender terms or with the rejection of bid cannot lead to a presumption of imposition of unfair or discriminatory conditions and abuse of dominance by the OP. It is opined that this matter essentially relates to the OP's procurement policy and practices and is not a competition issue under provisions of the Act.

The Commission observes that the Informant has made some other allegations against the OP such as removal of supplies to 'Public Listed Companies' from the 'Experience Criteria' in the Tender Document for 2024-25, and reduction in technical specification for past supply from 30% to 15%. In this regard, the Commission notes that these also relate to tender terms and conditions which are within the purview of the tendering authority.

The Commission also notes that the Informant has not provided any evidence to establish that the OP had imposed contradictory conditions with the intention of favoring certain bidders or to exclude competitors in a manner that amounts to abuse of dominant position under the provisions of Section 4 of the Act. The Informant has also not placed on record any evidence which shows any agreement, concerted practice, or conduct on the part of the OP in collusion with other bidders, that may indicate any appreciable adverse effect on competition.

In light of the above, the Commission is of the view that no prima facie case of contravention of Section 4 of the Act is made out in the present matter. The Commission directs that the matter be closed forthwith.

LW 85:11:2025

LIBERTY INFOSPACE PVT. LTD. v ALPHABET INC & ORS. [CCI]

Case No. 07 of 2025

Ravneet Kaur, Anil Agrawal, Sweta Kakkad & Deepak Anurag.

[Decided on 06/10/2025]

Competition Act, 2002 – Section 4- abuse of dominance- removal of the app of the Informant – whether abuse of dominance– Held, No.

Brief facts:

The informant, inter alia, is engaged in the business of developing and maintaining a digital app named and styled as 'Easy Do Tasks-HRMS Payroll AI' ('the HRMS App'). It is noted that the allegations in the present matter pertain to alleged removal of the app of the Informant from 'Google Play Store' which is the official app store for devices running on, inter alia, Android operating system, allowing users to browse and download applications developed with the Android software development kit and published through Google.

The Informant had alleged that unilateral termination of its developer account by Google, without assigning any reasons for the same, and expecting the developers like the Informant, to find out the reason for termination, amounts to abusive conduct on the part of Google. As per the Informant, in order to get apps listed on Google Play Store, app developers like the Informant have no choice, but to enter into standard and one-sided GPDDA and adhere to one-sided GPDPP of Google, which allows Google to indulge in such abuse of dominant position.

Decision: Dismissed.

Reason:

The Commission is of the view that since, in the present matter also, the allegations pertain to abuse of dominant position by Google vis-à-vis app developers, the relevant market in the present case be delineated as the "market for app stores for Android OS in India".

The Commission had, based on factors like market share analysis, barriers to entry in the delineated market, and side-loading being a cumbersome process, observed in the case of Alphabet Case (supra) that Google via its Google Play Store, enjoys a dominant position. The Commission is of the view that, the above analysis holds good in light of the facts and allegations averred in the present matter also. Therefore, prima facie, Google holds a dominant position vis-à-vis app developers, in the "market for app stores for Android OS in India".

The Commission observes that the termination of the Informant's account by Google was based on Google's policy as laid out in the GPDDP. It further noted that the Informant's submission that it has no material link with Shri Dakshay Sanghvi appears to be factually incorrect. Further, Shri Sanghvi has filed an appeal on behalf of the Informant through his personal email id. A copy of the said appeal was provided by the Informant as part of its additional information as per direction of the Commission and was not provided as part of the Information itself, although it had provided all further communications to and from Google in regard to its account termination.

The Commission further notes that Shri Dakshay Sanghvi also describes himself as the Chief Technology Officer of the Informant on his LinkedIn profile and on the said profile, he has mentioned 'spearheaded launch of multiple products under tight deadlines and high scalability

and uptime' which clearly reflects Shri Sanghvi's deep involvement in the development of the Informant's products. Further, his name appears on the 'People' tab on the Informant's Company LinkedIn page, and the Informant does not appear to have taken any action to get it removed.

It is further observed by the Commission that GPDDA and GPDDP are standard form contracts that have to be entered into by all developers wanting to list their apps on Google Play Store, which appears to be a standard industry practice.

Further, the Commission had previously, in its order dated 20.10.2022 passed in the Google Play Case, examined the terms of the GPDDA and GPDDP, in the context of suspension of app developer accounts by Google, and not found any contravention of the Act.

It is further observed by the Commission that, in terms of the facts of the present case, Google's explanation in respect of its 'relational ban policy', reasons behind not giving detailed disclosures, rationale for termination, lacking incentive to terminate authentic apps appear to be reasonable.

It is noted by the Commission that Google's explanation of its appeals process and the fact that the same redressal process is available across all jurisdictions (with the exception of EU) also appears to meet the test of reasonability. Further, it is noted that combination of automation and human effort in decision of such appeals cannot be said to be unfair or discriminatory per se. Nonetheless, in the case of the Informant, Google has detailed the human intervention undertaken at the appellate stage. Therefore, in the case of termination of the Informant's developer account and in the disposal of appeals by Google against the same, there appears to be no abusive or discriminatory conduct indulged into by Google.

In view of the facts and circumstances of the present case, the Commission finds that no prima facie case of contravention of the provisions of Section 4 of the Act is made out against Google in the instant matter. Accordingly, the Information is ordered to be closed forthwith.

LW 86:11:2025

SWAPAN DEY v COMPETITION COMMISSION OF INDIA & ANR [NCLAT]

Competition Appeal (AT) No. 5 of 2023

Yogesh Khanna & Ajai Das Mehrotra. [Decided on 30/10/2025]

Competition Act, 2002 – Section 4- abuse of dominance - patented medicine– CCI refusing to admit complaint – whether correct– Held, Yes.

Brief facts:

The appellant filed a complaint before the CCI against Vifor International (AG), Switzerland who is the Respondent No. 2 herein alleging violations of the provisions of sections 3 and 4 of the Competition Act. The CCI dismissed the complaint. Hence the resent appeal before the NCLT. It is the submission of the appellant that CCI has failed to deal with the issue of 'relevant market' and has failed to assess the 'dominant position' of Respondent No. 2 and that CCI committed an error in conducting ex-ante analysis instead of ex-post analysis for examining violation of Section 3(4) of the Competition Act.

Decision: Dismissed.

Reason:

Heard. We note that the CCI has examined the complaint of the appellant on merits and has held that prima facie there is no case and has closed the matter vide impugned order dated 25.10.2022. We also note that the Patent on drug FCM has expired and it is now available in public domain for manufacturing. We now examine whether the CCI has power to examine the case, where the subject matter, being drug FCM was protected by the Patent Act. The Competition Act, in Section 3(5) has laid down that the Competition Act will not restrict the right of any person in protecting his rights under the Patent Act.

In any case, the Division Bench of the Hon'ble Delhi High Court in the case of Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India, reported in (2023 SCC Online Del 4078-LPA 247/2016) has held that the Patent Act will prevail over the Competition Act.

Considering the judgment of the Hon'ble Delhi High Court in the case of Telefonaktiebolaget LM Ericsson (PUBL) and the Hon'ble Supreme Court in the SLP No. 25026/2023, it is apparent that the CCI lacks the power to examine the allegations made against Vifor International (AG). The Patent Act will prevail over the Competition Act in the facts of this case, as the subject matter of contention is FCM, which was developed and patented by Respondent No. 2. There is no dispute that Respondent No. 2 held the said patent at the relevant time. Further, we have noted that Section 3(5) of the Competition Act provides protection to a person holding patent to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting its rights.

Following the judicial guidance as noted above, we hold that there is no merit in this appeal. Accordingly, the appeal is dismissed.

General Laws

LW 87:11:2025

L&T INFRA INVESTMENT PARTNERS ADVISORY PVT. LTD. v. BHORUKA POWER CORPORATION LIMITED [KANT]

COMAP No. 261 of 2025 C/W COMAP No.279 of 2025

Vibhu Bakhru & C M Joshi, JJ. [Decided on 26/09/2025]

Arbitration and Conciliation Act, 1996 - agreement between parties provided for arbitration in London under the rules of LICA – dispute arose- defendant invoked arbitration- anti arbitration suit filed by plaintiff- arbitration stayed- whether correct - Held, No.

Brief facts:

The Appellant-Defendant and the Respondent-Plaintiff had entered into a CCD subscription and Securities Holders Agreement, whereunder the disputes are to be resolved through arbitration under Rules of the London Court of International Arbitration [hereafter the LCIA] at London. As disputes arose between the parties the appellant had filed arbitration request with LICA. Against this the Respondent-plaintiff had filed the resent commercial suit in which it filed interim applications also seeking restraint against the Appellant to continue with the arbitration proceedings.

The commercial court passed two identically worded interim orders (impugned orders) in terms of which, the appellant-defendant was restrained from continuing with the arbitration request filed with the London Court of International Arbitration [hereafter the LCIA] and instituting or continuing any arbitration proceedings against the Respondent-plaintiff under the LCIA Rules in respect of disputes arising from or in connection with the CCD subscription and Securities Holders Agreement. Aggrieved the appellant had challenged the impugned stay orders.

Decision: Allowed.

Reason:

The appellant's challenge to the impugned order is essentially on three fronts. First, that interference with the arbitral proceedings are not permissible and barred by Section 5 of the A&C Act. Second that LCIA Rules 2020 are applicable by virtue of the Rules incorporated by reference in the arbitration agreement (Article 16 of the CCD Agreement) being amended. And, third that the arbitration proceedings are neither vexatious nor oppressive. Thus, the grounds on which the impugned interim order has been passed are unsustainable.

The decisions in *McDonald's India Private Ltd. v. Vikram Bakshi & Ors.: 2016 SCC Online Del 3949* and *Union of India v. Dabhol Power Company, 2004 SCC Online Del 1298*, are also equally inapplicable. In McDonald India Private Limited (supra), the anti-arbitration injunction was sought in respect of arbitration proceedings seated at London. The arbitration agreement was one that was covered under Section 44 of the A&C Act. In Dabhol Power Company›s case as well, the arbitration was not governed by Part-I of the A&C.

In none of the said cases the express bar of Section 5 of the A&C Act was applicable. It is also relevant to note a vital difference between the provisions of Section 45, which falls in Part-II of the A&C Act; and Section 8 of the A&C Act. In terms of Section 45 of the A&C Act, the Judicial Authority (Court), is required to refer the parties to arbitration unless the Court prima facie finds the agreement to be "null and void, inoperative or incapable of being performed". Thus, an action in respect of the subject matter of disputes that are covered by arbitration agreement under Section 44 of the A&C Act may be maintainable, if the Court prima facie finds that the arbitration agreement is null and void, inoperative and incapable of performance. It is also important to note that there is no provision under Section 45 of the Act, which expressly provides that notwithstanding that an application has been made under Section 45 of the Act for referring the parties to arbitration, the arbitral proceedings would continue. However, sub-section (3) of Section 8 of the A&C Act expressly provides notwithstanding that an application under Section 8(1) of the A&C Act is pending, "the arbitration may commence or continue and an arbitral award made". This also clearly indicates that in so far as arbitrations, which are governed by Part-I of the A&C Act, the Courts cannot interfere in the arbitration proceedings notwithstanding that an application to refer the parties to arbitration is pending before a Judicial Authority before which an action has been instituted.

In view of the above, the learned Commercial Court could not have proceeded to issue the impugned order restraining the parties from proceeding with arbitration, notwithstanding the merits or demerits of the respondent's contention that it had not agreed for an arbitration to be administered by the LCIA London. The commercial court's jurisdiction to try a suit questioning the arbitration proceedings governed by Part-I of the A&C Act is barred by virtue of Section 5 of the A&C Act. The impugned orders are, accordingly, set aside.