NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
NEW DELHI

Compensation Application (AT) No.01 of 2019
IN
Competition Appeal (AT) No.79-81 of 2012

IN THE MATTER OF:

Food Corporation of India
Through its Executive Director (Purchase)
16-20, Barakhamba Lane,
New Delhi, Delhi 110001. ....Applicant

Vs.

1. Excel Corp Care Limited
   13/14 Aradhana Industrial Development
   Corporation Near Virwani Industrial Estate,
   Goregaon East, Mumbai – 400063.

2. UPL Limited (formerly United Phosphorous Limited)
   UPL House, 610 B/2
   Bandra Village,
   Off Western Express Highway,
   Bandra (East), Mumbai-400 051.

3. Sandhya Organic Chemicals (P) Limited
   101, Sangam CHS Ltd., First Floor,
   Wing, S.V. Road, Opp Vijay Sales,
   Santacruz West, Mumbai, Maharashtra-400054. ....Respondents

Present:

For Appellant: **Mr. G.R. Bhatia, Mr. Rudresh Singh and Mr. Ankit Ghosh, Advocates.**

For Respondents: **Mr. Krishnan Venugopal, Senior Advocate with Mr. Rahul Goel, Ms. Anu Monga, Mr. Ankush Walia and Ms. Parunita, Advocates for Respondent No.1.**

Mr. Balbir Singh, Senior Advocate with Mr. Manas Kumar Chaudhury and Mr. Ebaad Nawaz Khan, Advocates for Respondent No.2.

Mr. Krishnan Venugopal, Senior Advocate with Mr. Rahul Goel and Ms. Anu Monga, Advocates for Respondent No.3.

J U D G M E N T

Venugopal M., J:

The Learned Counsel for the Applicant/ Food Corporation of India (FCI) submits that the instant Compensation Application (AT) No.01 of 2019 in Competition Appeal (AT) No.79-81 of 2012 has been filed against three Respondents by the Applicant/ FCI claiming compensation under Section 53N(1) of the Competition Act, 2002 (for short the 'Act').

2. The Learned Counsel for the Applicant submits that an 'aggrieved entity' can file a compensation claim for the losses suffered due to the anticompetitive behaviour of an entity and that in the present case, the Respondents were found to have violated Section 3(3) of the Act by the Hon'ble Competition Commission of India (for short the 'CCI'), as per order dated 23.04.2012. The said finding became final, as per order of Hon'ble Supreme Court of India dated 08.05.2017.

3. The Learned Counsel for the Applicant brings it to the notice of this Tribunal that as against the 1st Respondent, the quantifiable loss suffered by the Applicant is as under: -

Quantity Purchased kg.	Actual purchase Price for FCI per unit INR/kg	Actual Cost of Procurement for FCI INR	Cost of Production as per CCI Order INR/ kg	Competitive Selling Price per unit assuming 10% Profit margin INR/kg	Total Cost to FCI at Competitive Prices INR	Difference in Actual Cost & Competitive Cost in FCI INR
EXCEL CROP LTD. (2009)						
2,20,000	386	8,49,20,000	260.16	286.17	6,29,57,400	2,19,62,600
EXCEL CROP LTD. (2011)						
80,359	415	3,33,48,985	260.16	286.17	2,29,96,335	1,03,52,650
Quantifiable Loss suffered by Applicant: Rs.3,23,15,250/-						

4. In respect of 2nd Respondent, the quantifiable loss suffered by the Applicant is as under: -

Quantity Purchased kg.	Actual purchase Price for FCI per unit INR/kg	Actual Cost of Procurement for FCI INR	Cost of Production as per CCI Order INR/ kg	Competitive Selling Price per unit assuming 10% Profit margin INR/kg	Total Cost to FCI at Competitive Prices INR	Difference in Actual Cost & Competitive Cost in FCI INR
UNITED PHOSPHORUS (2009)						
2,20,000	386	8,49,20,000	267.81	294.6	6,48,12,000	2,01,08,000
UNITED PHOSPHORUS (2011)						
87,500	415	3,63,12,500	267.81	294.6	2,57,77,500	1,05,35,000
Quantifiable Loss suffered by Applicant: Rs.3,06,43,000/-						

5. As regards the 3rd Respondent, the quantifiable loss suffered by the Applicant is mentioned as follows: -

Quantity Purchased kg.	Actual purchase Price for FCI per unit INR/kg	Actual Cost of Procurement for FCI INR	Cost of Production as per CCI Order INR/ kg	Competitive Selling Price per unit assuming 10% Profit margin INR/kg	Total Cost to FCI at Competitive Prices INR	Difference in Actual Cost & Competitive Cost in FCI INR
SANDHYA ORGANICS (2009)						

2,20,000	386	8,49,20,000	342.15	376.4	8,28,08,000	21,12,000
SANDHYA ORGANICS (2011)						
95,000	415	3,94,25,000	342.15	376.4	3,57,58,000	36,67,000
Quantifiable Loss suffered by Applicant: Rs.57,79,000/-						

6. It is averred in the Compensation Application by the Applicant at paragraph 9.20 that taken cumulatively Rs.6,87,37,250/- is the loss caused by the three ALP manufacturers. The Applicant at paragraph 9.21 of the Application claims 18% interest annually on the sum of Rs.6,87,37,250/- commencing from the period 2009-2010, i.e., from 31.03.2010 to till 31.03.2018, which comes to Rs.25,86,08,078/-. A sum of Rs.22,92,063/- towards 'litigation cost and legal fees' is claimed by the Applicant. The cost of filing fee is claimed at Rs.3,00,000/-.

7. The breakup total sum claimed by the Applicant in the Compensation Application is as follows: -

Serial No.	Particulars	Amount (INR)
1.	Quantified loss suffered by the Applicant	6,87,32,250
2.	Compound Interest at the rate of 18% p.a. from 31.03.2010 to 31.03.2018	18,98,70,828
3.	Total Amount after Compound Interest	25,86,08,078
4.	Litigation Cost	22,92,063
5.	Filing Cost of present Application	3,00,000

	Total Amount of Quantified Compensation Claimed against the Respondents	26,12,00,141

8. The Learned Counsel for the Applicant points out that the total compensation claimed against the Respondents is Rs.26,12,00,141/- and that the Applicant has paid a sum of Rupees three lakhs towards the fees payable in terms of Rule 4 of the Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications) Rules, 2009.

9. The Learned Counsel for the Applicant contends that the Respondent Nos.1 to 3 take a plea that the Compensation Application filed by the Applicant centers around the assumption that Section 53N of the Act requires the existence of either the former Competition Appellate Tribunal (COMPAT)/ National Company Law Appellate Tribunal or the Competition Commission of India's order. Further, the stand of the Respondents is that since the orders of CCI dated 12.04.2012 and the order of COMPAT dated 29.10.2013 had merged into the judgment of the Hon'ble Supreme Court dated 08.05.2017 (by virtue of 'Doctrine of Merger'), the Applicant's Compensation Application is not maintainable.

10. The Learned Counsel for the Applicant contends that the Compensation Application filed by the Applicant is maintainable under Section 53N of the Competition Act, 2002 and that apart, the Section 53N(1) of the Act requires that a compensation claim must 'arise from the

findings of the 'Competition Commission of India' or the 'Appellate Tribunal', which means that the 'cause of action' for the compensation claim must come into being due to/ because of an order either of the 'Competition Commission of India' or the 'Appellate Tribunal'. Added further, it is the contention of the Applicant that it does not require that the said CCI's order or the COMPAT's order must necessarily subsist in Law.

11. The Learned Counsel for the Applicant takes an emphatic plea that Section 53N of the Act must be read with Explanation (b) to Section 53N, which provides that when an application under Section 53N of the Act is received by the Hon'ble Tribunal, it is required to make an enquiry into the allegations as per Section 53N(3) of the Act and then pass its orders. In fact, contention of the Applicant is that the ingredients of Section 53N of the Act do not mandate the existence of an order of the 'Competition Commission of India' or the 'Competition Appellate Tribunal' and all it requires is that a Claimant's cause of action should come into being on account of an earlier 'CCI' or 'COMPAT' order.

12. The Learned Counsel for the Applicant refers to Section 53N(2) of the Act and submits that the phrase 'if any', which specifies that 'Compensation Application' can be filed even if the CCI does not find a violation but the COMPAT/ the Hon'ble Tribunal finds a breach. Therefore, it is the submission of the Applicant's side that the contention of the Respondents that an order of CCI or COMPAT must legally be in

existence, is an unfounded one. The Learned Counsel for the Applicant to lend support to his view point refers to paragraph 11.2 of the Competition Law Review Committee Report 2019, which is as under: -

> *"11.2 The Committee noted that Section 53N currently does not allow application for compensation claims to be filed post determination of appeal by the Supreme Court. This may prejudice parties as they will be deprived from claiming any compensation, especially in cases where the CCI and the Appellate Tribunal do not find a contravention, but the Supreme Court finds a contravention."*

13. The Learned Counsel for the Applicant contends that the Act does not prescribe a Limitation period for projecting an application under Section 53N of the Act and that under the earlier Monopolies and Restrictive Trade Practices Act, 1969, three years was considered to be a reasonable period of limitation. Indeed, it is the Applicant's submission that the period of Limitation is to be counted from the date of receipt of Hon'ble Supreme Court judgment dated 08.05.2017 and in this regard the Applicant places reliance on the judgment of the Hon'ble Supreme Court ***'Union of India v. West Coast Paper Mills Limited – (2004) 2 SCC 747'***, (special page 754), wherein at paragraphs 15 and 16 it is observed as under :-

> *"15. Even in relation to a civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the court of appeal.*

16. The starting point of limitation for filing a suit for the purpose of recovery of the excess amount of freight illegally realised would, thus, begin from the date of the order passed by this Court. It is also not in dispute that the respondent herein filed a writ petition which was not entertained on the ground stated hereinbefore. The respondents were, thus, also entitled to get the period during which the writ petition was pending, excluded for computing the period of limitation. In that view of the matter, the civil suit was filed within the prescribed period of limitation."

14. The Learned Counsel for the Applicant submits that the limitation will begin to run only after final determination of dispute by the final Court in related proceedings and when an Appeal is filed before a higher Forum and the same is entertained, the judgment of the concerned Tribunal or Hon'ble High Court is in jeopardy.

15. The Learned Counsel for the Applicant refers to the decision of this Appellate Tribunal in ***'Reliance Asset Reconstruction Company Ltd. v. Hotel Poonja International Private Limited in Company Appeal (AT) (Ins.) No.1011 of 2019'*** dated 05.02.2020, wherein at paragraph 40 it is observed as under: -

"40. It is to be borne in mind Article 137 of the Limitation Act, 1963 not only applies to the Civil Procedure Code but also to the Special Acts. As a matter of fact, Article 137 constitutes a Residuary Article pertaining to 'Applications'. As such it can be safely and securely be said that Article 137 will apply

to the Civil Procedure Code or in respect of any other special statute. What Article 113 of the Limitation Act, 1963 relates to suit, the Article 137 of the Limitation Act, pertains to 'Application'."

16. The Learned Counsel for the Applicant cites the decision of Hon'ble Supreme Court in ***'Sonic Surgical v. National Insurance Company Ltd. – (2010) 1 SCC 135'*** and contends that it is a settled principle of Law that Courts must avoid absurd interpretations.

17. The Learned Counsel for the Applicant submits that the instant Compensation Application (AT) No.01 of 2019 filed by the Applicant/ FCI relates to common orders passed by the CCI and erstwhile COMPAT and the Hon'ble Supreme Court and the '*lis*' concerned in those orders was common and interlinked and on that basis only a single Application was filed. In this connection, the Learned Counsel for the Applicant informs this Tribunal that the Applicant/ FCI is willing to amend its present Application and file separate Applications with necessary filing fees and in the alternative it is willing to pay the differential filing fees also, if the same is permitted by this Tribunal.

18. According to the Learned Counsel for the Applicant, it being a public Body, operates entirely on public funds and the compensation it claims is also for the 'public purpose'. Also, the stand of the Applicant is that the foundation of the compensation claim under Section 53N of the Act is the findings of contravention by delinquent enterprise and when the delinquent enterprise assails the decision of the Hon'ble Tribunal in an

Appeal under Section 53T of the Act, there is a chance that the Hon'ble Supreme Court may allow the Appeal, set aside the findings of violation and exonerate the delinquent enterprise. Moreover, in the event of this Tribunal adjudicating a compensation claim and awards damages to the claimant, before the disposal of main Appeal by the Hon'ble Supreme Court, there is a possibility/ chance that the entire foundation of the compensation claim may become an infructuous one and *non-est* in Law. Therefore, it is the forceful plea of the Appellant that every time a delinquent enterprise challenges the order of the Tribunal to the Hon'ble Supreme Court under Section 53T of the Act, this Tribunal have to wait for the 'cause of action' to attain finality before proceeding and adjudicating a 'compensation claim' under Section 53N of the Act.

19. The Learned Counsel for the Applicant refers to the order of this Tribunal in ***'CA (AT) (COMPT.) No. 01 of 2017 dated 03.01.2018 in Crown Theatre v. Kerala Film Exhibition Federation'*** and ***'Metropolitan Stock Exchange of India Ltd. v. National Stock Exchange of India Ltd.'*** order dated 08.03.2018, wherein this Tribunal had decided to wait for the decision of Hon'ble Supreme Court in respect of an Applicant's compensation claim attaining finality. The Learned Counsel for the Applicant contends that Section 424 of the Companies Act, 2013 is *pari-materia* with Section 53-O of the Act and that the National Company Law Tribunal and National Company Law Appellate Tribunal ought to follow the 'principles of natural justice', although both the Tribunals do have the powers to regulate their own procedure etc.

20. The Learned Counsel for the Applicant cites the decision of Hon'ble Supreme Court in ***'Corporation Bank v. Navin J. Shah – (2000) 2 SCC 628'*** (at special page 635), wherein at paragraph 12 among other things, it is observed as under: -

> *"….The difficulties in realisation of the amounts due from the consignee also became clear at the time when the claim was made before the Corporation and the claim had been made as early as on 19-12-1982. The petition before the Commission was filed on 25-9-1992 that is clearly a decade after a claim had been made before the Corporation. A claim could not have been filed by the respondent at this distance of time. Indeed at the relevant time there was no period of limitation under the Consumer Protection Act to prefer a claim before the Commission but that does not mean that the claim could be made even after an unreasonably long delay. The Commission has rejected this contention by a wholly wrong approach in taking into consideration that the foreign exchange payable to Reserve Bank of India was still due and, therefore, the claim is alive. The claim of the respondent is from the Bank. At any rate, as stated earlier, when the claim was made for indemnifying the losses suffered from the Corporation, it was clear to the parties about the futility of awaiting any longer for collecting such amounts from the foreign bank. In those circumstances, the claim, if at all was to be made, ought to have been made within a reasonable time thereafter. What is reasonable time to lay a claim depends upon the facts of each case. In the legislative*

wisdom, three years' period has been prescribed as the reasonable time under the Limitation Act to lay a claim for money. We think that period should be the appropriate standard adopted for computing reasonable time to raise a claim in a matter of this nature. For this reason also we find that the claim made by the respondent ought to have been rejected by the Commission."

21. The Learned Counsel for the Applicant cites the decision of Hon'ble Supreme Court in ***'G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore – (1988) 2 SCC 142'*** (at special page 143), wherein it is observed as under: -

"The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5, it might, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, those factors which are peculiar to and characteristic of the functioning of the government. Implicit in the very nature of government functioning is procedural delay incidental to the decision-making process. Due

recognition of these limitations on governmental functioning — of course, within a reasonable limit — is necessary. It would be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters."

22. The Learned Counsel for the Applicant refers the decision of Hon'ble Supreme Court in ***'S.S. Rathore v. State of Madhya Pradesh – (1989) 4 SCC 582'***, wherein it is observed as under: -

"The question, therefore, is as to when the right to sue first accrued within the meaning of Article 58. The order of dismissal made by the Collector did merge into the order of the Divisional Commissioner when the appellant's appeal was dismissed on August 31, 1966. The 60 days' time spent for complying with the requirement of notice under Section 80 of the Code was available to the plaintiff in addition to the period of three years. Counting the date from the date of the appellate order, the suit would be within time.

There is no justification for the distinction between courts and tribunals being appellate or revisional authorities in regard to the principle of merger as was done as in Mohammad Nooh case. Powers of adjudication ordinarily vested in courts are being exercised under the law by tribunals and other constituted authorities."

23. Apart from the above, the Learned Counsel for the Applicant relies on the decision of Hon'ble Delhi High Court in ***'M.S. Shoes East Ltd. v.***

M.R.T.P. Commission and Ors. – (2003) SCC OnLine Del 988' wherein at paragraph 29 it is observed: -

> *"29. Their Lordships of the Supreme Court aptly observed in the Corporation Bank (supra) that even when the Legislature has not specified any statutory time limit, the claim has to be filed within reasonable time. The Court further held what is reasonable time to lay claim depends upon the facts of each case. In the Legislative wisdom three years period has been prescribed to lay a claim for money. The Court observed that the period of three years is reasonable time to raise a claim in a matter of this nature. The claim which has been sought by the petitioner is in the nature of a money claim and on the analogy of Corporation Bank's case (supra), the claim ought to have been filed within statutory period of three years. The Commission has correctly appreciated the ratio of the Corporation Bank. It was also submitted by the Counsel for the respondent that the Commission has been consistently following the ratio of Corporation Bank in similar cases for several years."*

24. The Learned Counsel for the Applicant contends that in a case where the CCI does not find a contravention after the completion of the investigation by the Director General (DG), it passes an order exonerating an enterprise under Section 26(6) of the Act. Later, in an 'Appeal' under Section 53B of the Act, this Tribunal has powers to consider the investigation report of the DG and come to a different conclusion from that of the CCI and levy penalty under an order passed under Section 56B (3)

of the Act. As a matter of fact, Section 56B (3) enjoins upon this Tribunal to pass any such order as it deems fit, confirming, modifying or setting aside the order of CCI and if the Hon'ble Tribunal can impose penalty while confirming/ modifying the order of CCI when it found a breach, there is no reason why the said power does not extend to a situation when the CCI did not find a contravention.

25. The Learned Counsel for the Applicant submits that if all the parties are involved in the same cause of action, a judicial proceeding may be commenced by a party against plurality of parties and in fact, Order I Rule 3 of the Code of Civil Procedure, 2002 (CPC) permits the filing of a single suit before a Civil Court against multiple defendants/parties. Provided, if the 'cause of action' centers around multiple Respondents. On the side of Applicant a reference was made to the decision ***"Shree Metaliks Ltd. v. Union of India - (2017) 203 Comp Cas Page 442 (Cal.)***" wherein, it is among other things observed that NCLT and NCLAT as per Section 424 of the Companies Act do have powers to regulate their own procedure etc.

26. The Learned Counsel for the Applicant submits that just because an Applicant has filed the present single Compensation Application, the same cannot be dismissed and he refers to a decision ***"Bachhaj Nahar V. Nilima Mandal – (2008) 17 SCC 491"*** and puts forward a plea that 'issues' not raised in the pleadings cannot be ushered in at an argument stage.

27. Lastly, it is the submission of Learned Counsel for the Applicant that the Applicant/ public Body claims compensation because it was

overcharged by the Respondents and only for a public purpose, the compensation is sought for.

28. The Learned Counsel for the 1st Respondent submits that Section 53N of the Act does not mention about the possibility of filing of a Compensation Application 'arising from' an order of Hon'ble Supreme Court in an Appeal against order of the Appellate Tribunal. Moreover, it is the plea of the 1st Respondent that the 'Competition Law Review Committee Report' dated 26.07.2019 submitted to the 'Ministry of Corporate Affairs' also clearly mentions that Section 53N of the Act, as currently framed, does not contemplate the filing of a 'Compensation Application' after the order of the Hon'ble Supreme Court and has proposed an amendment to permit a 'Compensation Application' arising from the Hon'ble Supreme Court's order.

29. The Learned Counsel for the 1st Respondent contends that a Compensation Application under Section 53N of the Act cannot be filed after an order of the Appellate Tribunal merges into an order of Hon'ble Supreme Court. In this connection, the Learned Counsel for the 1st Respondent brings it to the notice of this Tribunal that when the present Compensation Application was filed on 11.07.2019 before this Tribunal, neither the findings of the Commission, nor the order of the Appellate Tribunal were in existence because of the fact that the order of the CCI dated 23.04.2012 had merged with the order dated 29.10.2013 of the earlier COMPAT. Further, the order dated 29.10.2013 of the COMPAT, in

turn had merged into the final judgment dated 08.05.2017 of the Hon'ble Supreme Court.

30. The Learned Counsel for the 1st Respondent refers to the decision of Hon'ble Supreme Court in ***'Sangeeta Singh v. Union of India – (2005) 7 SCC 484'*** to contend that failure to mention orders of the Hon'ble Supreme Court is an 'error' or 'omission' on the part of Parliament and the same can be remedied only by the Parliament through necessary amendments and not for the Courts to do so.

31. The Learned Counsel for the 1st Respondent cites the decision of the Hon'ble Supreme Court in ***'Khoday Distilleries Limited v. Shri Mahadeshwara – (2019) 4 SCC 376'***, wherein the correctness of the decision of another Bench of the Hon'ble Supreme Court of India was upheld in ***'Kunhayammed v. State of Kerala – (2000) 6 SCC 359'***.

32. According to the Learned Counsel for the 1st Respondent, some of the key findings affirmed in ***Khoday Distilleries Limited*** from ***Kunhayammed*** case include the following: -

> *"12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either*

way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

"42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol. LVII, pp. 1067-68.)"

"44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law."

33. The Learned Counsel for the 1st Respondent refers to the decision of Hon'ble Supreme Court ***'S.S. Rathore vs. State of MP – (1989) 4 SCC 582'*** (at special page 589), wherein at paragraph 14 it is observed as under: -

> *"14. The distinction adopted in Mohammad Nooh case [AIR 1958 SC 86 : 1958 SCR 595] between a court and a tribunal being the appellate or the revisional authority is one without any legal justification. Powers of adjudication ordinarily vested in courts are being exercised under the law by tribunals and other constituted authorities. In fact, in respect of many disputes the jurisdiction of the court is now barred and there is a vesting of jurisdiction in tribunals and authorities. That being the position, we see no justification for the distinction between courts and tribunals in regard to the principle of merger. On the authority of the precedents indicated, it must be held that the order of dismissal made by the Collector did merge into the order of the Divisional Commissioner when the appellant's appeal was dismissed on August 31, 1966."*

34. Therefore, it is the plea of the 1st Respondent that the orders of 'Statutory Tribunal' are also subject to the 'principle of merger' and as such, the present Compensation Application is not maintainable because of the fact that the CCI's order dated 23.04.2012 and COMPAT's order dated 29.10.2013 do not exist in the eye of Law.

35. The Learned Counsel for the 1st Respondent cites the following decisions: -

(a) The decision of the Hon'ble Supreme Court in ***'Jagmittar Sain Bhagat & Ors. v. Director Health Services – (2013) 10 SCC 136'*** (at special page 137, it is observed as under:-

"Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Furthermore, an issue as to lack of subject-matter jurisdiction can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of a party equally should not equally be permitted to perpetrate and perpetuate defeating of the legislative animation. The court cannot derive jurisdiction apart from the statute. A decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication or rights, the remedy has to be sought only under the provisions of that Act and the common law court has no jurisdiction. The law does not permit any court/tribunal/ authority/ forum to usurp jurisdiction on any ground whatsoever in case such an authority dos not have jurisdiction on the subject-matter."

(b) In the decision of Hon'ble Supreme Court ***'P. Malaichami v. M. Andi Ambalam and Ors. – (1973) 2 SCC 170'*** at page 170, it is held that even in the case of constitutional Court like the High Court, when it causes a Statutory Tribunal to hear election petitions under the Representation of the People Act, 1951, its jurisdiction is limited and further its powers are wholly the creature of the statute under which it is conferred with the power to hear election pettions.

(c) In the decision ***'Khoday Distilleries Ltd. & Ors. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal – (2019) 4 SCC 376'*** (at special page 378 and 379) wherein it is observed and held as under:-

> *"The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution of the Supreme Court may reverse, modify or affirm the judgment, decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of the*

petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation."

(d) The Learned Counsel for the 1st Respondent refers to the decision of Hon'ble Supreme Court in ***'Uper Doab Sugar Mills v. Shahdara (Delhi) Saharanpur Light Railway Co. – (1963) 2 SCR 333'*** (at special page 347) wherein it is held that '*neither expressly nor by necessary implication has the Railway Rates Tribunal been given any jurisdiction to make any order for refund*'.

(e) In the decision of ***'Competition Commission of India v. Steel Authority of India – (2010) 10 SCC 744'*** (at special page 745), wherein it is observed as under: -

"The respondent contends that word "or" may some times be read as disjunctive and therefore, the expression "any direction issued" occurring in Section 53-A(1)(a) should be read as disjunctive and that would give a complete right to a party to prefer an appeal under Section 53-A, against a direction for investigation. However, there is no occasion to

read and interpret the word "or" in any different form as that would completely defeat the intention of the legislature.

The language of Section 53-A(1)(a) is clear and the statute does not demand that one should substitute "or" or read that word interchangeably for achieving the object of the Act. On the contrary, the objective of the Act is more than clear that the legislature intended to provide a very limited right to appeal. It is always expected of the court to apply plain rule of constitution rather than trying to read the words into the statute which have been specifically omitted by the legislature.

Right to appeal is a creation of statute and it does require application of rule of plain construction. Such provision should neither be construed too strictly nor too liberally.

The principle of "appeal being a statutory right and no party having a right to file appeal except in accordance with the prescribed procedure" is now well settled."

(f) In ***'M/s Jindal Steel & Power Limited vs. Competition Commission of India & Ors. and M/s. Prints India v. Springer (India) Pvt. Ltd.'***, the Competition Appellate Tribunal in Appeal No.45 of 2012 with I.A. No.210 of 2012 on 03.04.2013 at paragraph No.26 observed as under: -

"26. Shri Billimoria argued in terms of the doctrine of casus omissus. According to him,

there was a need for supplying the casus omissus particularly in Section 53A(1)(a). We do not agree. It is a time tested law that the courts are reluctant to supply the words to the legal provisions. That can be done only in few exceptional circumstances like the legal provision being rendered absurd or being rendered meaningless in the absence of the words which is sought to be added. We do not think that there is such a situation in the present appeals. We have pointed out that the Apex Court has closed the issue on that count and we cannot therefore venture to supply some different interpretation or supply any word to the aforementioned provision."

(g) In the decision of ***'M.P. Steel Corporation v. Commissioner of Central Excise – (2015) 7 SCC 58'*** (at page 58) it is held that even though provisions of Section 14 of the Limitation Act, 1963 apply only to Courts proper i.e. courts as understood in the strict sense of being part of the Judicial Branch of the State, but principles underlying Section 14, which advance cause of justice, will apply to appeals filed before quasi-judicial tribunal such as that under Section 128 of Customs Act.

(h) In the decision of ***'Andhra Pradesh Power Coordination Committee and others vs. Lanco Kondapalli Power***

Limited and others – (2016) 3 SCC 468' (at special page 470) it is held as under: -

> *"By itself the Limitation Act, 1963 is inapplicable to a proceeding or action brought before the State Commission under the Electricity Act, 2003 as the Commission is not a court stricto sensu. However, the principles underlying Section 14 of the Limitation Act will be applicable even in matters filed before a quasi-judicial tribunal such as the Commission. The Commission being a statutory tribunal, cannot act beyond the four walls of the Electricity Act, 2003. Further, a plain reading of Section 175 of the Electricity Act, 2003 leads to a conclusion that unless the provisions of the Electricity Act are in conflict with any other law when this Act will have overriding effect as per Section 174, the provisions of the Electricity Act will not adversely affect any other law for the time being in force. In other words, as stated in Section 175 of the Electricity Act, 2003 the provisions of the Electricity Act will be additional provisions without adversely affecting or subtracting anything from any other law which may be in force. Such provision cannot be stretched to infer adoption of the Limitation Act for the purpose of regulating the varied and numerous powers and functions of the authorities under the Electricity Act, 2003. In this context it is relevant to keep in view that the State Commission or the Central*

Commission have been entrusted with large number of diverse functions, many being administrative or regulatory and such powers do not invite the rigours of the Limitation Act."

(i) In the order dated 04.01.2013 in ***'M/s. Rangi International v. The Bank of India and Ors. – Compensation Application No.86 of 2007 (UTPE No.160 of 2007)'*** wherein at paragraph 13, it is observed as under: -

"13. The learned counsel for complainant has not brought to our notice any pronouncement by any Court, including the Hon'ble Supreme Court of India, whereby the complainant was absolved from the responsibility of explaining the delay except in saying that the act is silent about the limitation. The learned counsel has not been able to show us any authority on the question. It is then tried to be argued that the period of limitation will start not from the first date of commission of default, but will start from the last date of the commission of default if the nature of the default committed by the respondents is continuous in nature. We have deliberately stated the facts above along with the dates of the correspondence which went on between the parties stretching maximum in favour of the complainant. We do not find any justification as to how the non-return of collaterals could be complained of only in 2007 when admittedly the collateral securities were

refused for the first time in somewhere in the year 1993 and when the bank ultimately returned the collaterals in March 2001. As regards the nonrefund of XOS charges, we have already found that the complainant has not shown any rule under which he was entitled to the refund, thus there is a complete justification on the part of the respondent bank not to return collaterals. There is no question of limitation as any action in that behalf could not be possible. In the result, we come to the conclusion that the complaint as well Compensation Application under Section 12-B are not maintainable. They are dismissed."

(j) In the decision ***'A.V. Papayya Sastry and others v. Govt. of A.P. and others – (2007) 4 SCC 221'*** it is held that 'fraud' vitiates all judicial acts whether in rem or in personam and under the judgment, decree or order obtained by fraud has to be treated as non est and nullity, whether by court of first instance or by the final court. Further, it can be challenged in any court, at any time in appeal, revision, writ or even in collateral proceedings and that this is an exception to Article 141 of the Constitution of doctrine of merger.

36. The Learned Counsel for the 1st Respondent submits that creation of the right to seek compensation is a 'statute created right' and hence, to be read in the light of limitations imbedded therein.

37. The Learned Counsel for the 1st Respondent contends that the explanation to Section 53N of the Competition Act provides that an application for compensation may be made only after a finding rendered by the 'Competition Commission of India' or the 'COMPAT'.

38. The Learned Counsel for the 1st Respondent contends that in the instant case, the Applicant/ FCI has filed its Compensation Application on 11.07.2019, more than five years and seven months after the COMPAT's order on 29.10.2013, and seven years and three months of the 'Competition Commission of India's' order on 23.04.2012. Moreover, it is the stand of the 1st Respondent that a Compensation Application cannot be filed after the expiration of a reasonable period of three years from the date of Appellate Tribunal's order.

39. The Learned Counsel for the 1st Respondent comes out with an argument that the ***'West Coast'*** Case cited by the Applicant has no application to the facts of the present case because of the fact that the provision of the Railway Act, 1890 (as amended by the Amendment Act of 1948) are not in *pari materia*.

40. The Learned Counsel for the 1st Respondent vehemently submits that the scheme of Section 53N of the Act does not permit the filing of a single Compensation Application against more than one 'enterprise' because it uses the term 'enterprise' and not 'enterprises', which unambiguously reveal the intention of Parliament that separate applications are to be filed against each 'enterprise' when claiming compensation under Section 53N of the Act.

41. The Learned Counsel for the 1st Respondent submits that a Compensation Application under Section 53N of the Act is not an 'Independent proceeding' and that a Compensation Application may be filed only after the order of CCI or the Appellate Tribunal determines that a violation of the Act had taken place.

42. The Learned Counsel for the 1st Respondent urges before this Tribunal that the instant Compensation Application is to be dismissed because of the fact that the Applicant has come before this Tribunal with 'unclean hands'.

43. The Learned Counsel for the 2nd Respondent contends that the Competition Commission of India passed an order (under Section 27 of the Act) against the Respondents on 23.04.2012, which was partially upheld by the former COMPAT on 29.10.2013. In fact, the COMPAT while confirming the violation of Section 3(3)(d) of the Act against the Respondents, distinguished the quantum of penalty on the basis of 'relevant turnover' and thus, the Limitation period to file Compensation Application by the Applicant commenced from 29.10.2013. Apart from that the Hon'ble Supreme Court on 08.05.2017 upheld the COMPAT's decision, which is beyond 28.10.2016, i.e., limitation period to file the Compensation Application.

44. It is the version of the 2nd Respondent that Schedule 1 of Art. 137 of the Limitation Act, 1963 specifies three years Limitation period and that the three years period is to be reckoned when the right to apply accrues

and in the case on hand, six years had passed by, from the date of judgment of the COMPAT dated 29.10.2013.

45. The Learned Counsel for the 2nd Respondent contends that if a statue does not prescribe a limitation period in regard to money claims, the reasonable time period within which the Applicant must file its claim is three years. In fact, the clear cut stand of the 2nd Respondent is that the Compensation Application filed by the Applicant is hopelessly time barred and is in violation of the Limitation Act.

46. The Learned Counsel for the 2nd Respondent by referring to the proposed Competition Amendment Bill, 2020 to 'insert in Section 53N of the Act' points out that the Application of the Applicant is on the date of filing of the same by the public Body was not maintainable being time barred, based on the reason that 'the Amendment Bill' is an intent of the Union of India to make a prospective amendment to Section 53N of the Act, which cannot be any stretch of imagination will have retrospective effect.

47. The Learned Counsel for the 2nd Respondent points out that the Metropolitan Stock Exchange of India (MSEI), had filed a Compensation Application (under Section 53N of the Competition Act) before the former COMPAT, while an Appeal was pending before the Hon'ble Supreme Court and later transferred to this Tribunal.

48. The Learned Counsel for the 2nd Respondent submits that the Hon'ble Supreme Court in ***"National Stock Exchange of India Ltd. vs.***

Competition Commission of India and Anr. (Civil Appeal No.8974 of 2014)" on 12.02.2018 had stayed the damages proceedings and this Tribunal adjourned the damages proceedings sine-die as per order dated 08.03.2018. Therefore, it is the clear cut stand of the 2nd Respondent that the present Applicant is well within its rights to apply for compensation before the Appellate Tribunal even when the matter was appealable and is pending before the Hon'ble Apex Court.

49. The Learned Counsel for the 3rd Respondent submits that the Compensation Application (AT) No.01 of 2019 filed by the Applicant is not maintainable and is to be dismissed because of the reason that Section 53N of the Act does not permit filing of a single Application claiming compensation against multiple parties. At this stage, the Learned Counsel for the 3rd Respondent projects an argument that the language used in Section 53N of the Act makes it clear that an application can only be filed against 'single enterprise' and not against 'three enterprises', as has been done by the Applicant in the instant case.

50. The Learned Counsel for the 3rd Respondent contends that the Applicant had misled this Tribunal by making payment of Rupees thee lakhs lakhs in terms of Rule 4 of the Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications) Rules, 2009, as against the payment of Rupees three lakhs per application per Respondent. In this connection, the Learned Counsel for the 3rd Respondent submits that the Applicant during the argument had accepted

the lapse on its part and offered to make an additional payment of Rupees six lakhs, so as to ensure that its application is not dismissed on this ground alone. Furthermore, the Act and the Rule 4 of the Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications) Rules, 2009 do not permit acceptance of any additional filing fee of Rupees six lakhs for Compensation Application (AT) No.01 of 2019.

51. The Learned Counsel for the 3rd Respondent points out that the Applicant had failed to satisfy this Tribunal on the condition specified under Rule 4(3) of the Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications) Rules, 2009 covering waiver of application fee.

52. The Learned Counsel for the 3rd Respondent contends that a Court of Law while interpreting a provision only interprets the Law and cannot legislate it. Further, if a provision of Law is misused and subjected to the abuse of process of Law, it is for the legislature to amend, modify or repeal it, if deemed necessary as per decision of Hon'ble Supreme Court in ***'Padma Sundara Rao v. State of Tamil Nadu'*** reported in ***(2002) 3 SCC 533 (vide para nos. 14 & 15)'***.

53. Continuing further, it is the stand of the 3rd Respondent that the powers of the Tribunal are unambiguously and unequivocally covered in terms of Section 53A and 53B of the Act and therefore, this Tribunal can entertain a Compensation Application only in terms of Section 53N of the Act, as per decision of the Hon'ble Supreme Court ***'Competition***

Commission of India v. Steel Authority of India – (2010) 10 SCC Page 744'.

54. The Learned Counsel for the 3rd Respondent refers to the Applicant's placing on reliance upon the interim orders passed by this Tribunal in – (i) *Crown Theatre vs. Kerala Film Exhibitors Federation; (ii) Metropolitan Stock Exchange of India vs. National Stock Exchange of India Ltd.; and (iii) Maharashtra State Generation Power Co. Ltd. vs. Nair Coal Services Ltd. & Ors.* and submits that it has been done by the Applicant with a view to invoke the jurisdiction of this Tribunal and further that all the three interim orders referred to by the Applicant were in an application filed prior to the determination of an Appeal by the Hon'ble Supreme Court, which is in accordance with Law enumerated under the Act. Furthermore, it is the stand of the 3rd Respondent that 'interim orders' cannot be read as laying down any proposition of law and they do not have any precedent value as per decision in ***'State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha – (2009) 5 SCC 694*** *(paras 21 and 22)'* and ***'Ram Parshotam Mittal and Others v. Hotel Queen Road Pvt. Ltd. and Others – (2019) SCC OnLine SC 699*** *(para 64)'*.

55. Yet another argument advanced on behalf of the 3rd Respondent is that it is a settled Law that a jurisdiction can be conferred only by a statute or legislative function and a Court/ Tribunal cannot derive jurisdiction apart from the statute.

56. The Learned Counsel for the 3rd Respondent cites the decision in ***'Uber India Systems Pvt. Ltd. v. CCI & Ors. – (2019) 8 SCC 697'*** (at special page 700) wherein at paragraph 5 and 6 it is observed as under: -

> *"5. There are two important ingredients which Section 4(1) itself refers to if there is to be an abuse of dominant position:*
>
> *(1) the dominant position itself.*
> *(2) its abuse.*
>
> *"Dominant position" as defined in Explanation (a) refers to a position of strength, enjoyed by an enterprise, in the relevant market, which, in this case is the National Capital Region (NCR), which: (1) enables it to operate independently of the competitive forces prevailing; or (2) is something that would affect its competitors or the relevant market in its favour.*
>
> *6. Given the allegation made, as extracted above, it is clear that if, in fact, a loss is made for trips made, Explanation (a)(ii) would prima facie be attracted inasmuch as this would certainly affect the appellant's competitors in the appellant's favour or the relevant market in its favour. Insofar as "abuse" of dominant position is concerned, under Section 4(2)(a), so long as this dominant position, whether directly or indirectly, imposes an unfair price in purchase or sale including predatory price of services, abuse of dominant position also gets attracted. Explanation (b) which defines "predatory price" means sale of services at a price which is below cost."*

57. The Learned Counsel for the 3rd Respondent refers to the order of COMPAT in ***'Appeal No.43 of 2014 – Shri Surendra Prasad v. Competition Commission of India & Ors.'*** wherein while allowing the Appeal and setting aside the majority order of the Commission, the Director General was directed to conduct an investigation into the allegations contained in the Information filed by the Appellant under Section 19(1)(a) and submit report to the Commission within three months etc.

58. The Learned Counsel for the 3rd Respondent relies on the order passed in COMPAT in ***'Appeal No.51 of 2015 – North East Petroleum Dealers Association v. CCI & Ors. dated 26.11.2015'*** wherein while allowing the Appeal, the impugned order was set aside and the matter was remanded to the Commission for issuance of a direction to the Director General under Section 26(1) for conducting an Investigation.

59. The Learned Counsel for the 3rd Respondent submits what applies to civil suit has no bearing on a statutory Tribunal and the reliance placed by the Applicant on the decision of Hon'ble Supreme Court ***"Union of India v. West Coast Paper Mills – (2004) 2 SCC page 747"*** is a misplaced one.

60. The Learned Counsel for the 3rd Respondent contends that when an Appeal under Section 53T of the Act is pending before the Hon'ble Supreme Court, there was no stay except payment of penalty amount and there is no fetter for this Tribunal to proceed further.

61. This Tribunal has heard the Learned Counsel appearing for the Applicant and the Respondents and noticed their contentions on the issue of maintainability of the Compensation Application (AT) No.01 of 2019.

62. It is to be pertinently pointed out that the Section 53N of the Act speaks of 'Awarding compensation' and a mere perusal of the ingredients of the said Section unerringly point out that the said Section does not contemplate a Limitation period for projecting an 'Application'. It is an axiomatic principle in Law that when no time limit is prescribed, based on the 'Doctrine of Laches' the relevant proceedings ought to have been filed within a reasonable period of time and that failure to do so results in serious prejudice and harm to the concerned party and adversely affects the ability of the said party to defend itself.

63. In fact, the Competition Act, 2002 does not either by reference or in comparison provide for any period of Limitation for the purpose of filing an Application before COMPAT to adjudicate a case for compensation arising from the findings of the CCI or from the orders of COMPAT or under Section 42A or 53Q(2). It is not in dispute that the Applicant had sent the Information through letter dated 04.02.2011 under Section 19(1) of the Act to the Hon'ble Commission alleging 'anti-competitive behavior' on the part of the three Respondents and another. Further, the Applicant had alleged that the Respondents had acted and resorted in a manner in regard to the tenders released by the Applicant for purchasing Aluminum Phosphate Tablet (ALP) for the period 2009-10. The Hon'ble Commission had initiated proceedings against the Respondents and ordered an

Investigation and finally the Commission came to the conclusion that the Respondents had violated Section 3 of the Act and resultantly levied penalties in terms of the Act. As a matter of fact, the Hon'ble Commission found that the Respondents had cartelised in respect of the two tenders for purchase of ALP Tablets released by the Applicant for the period from 2009-10 and 2011-12 and also it was found out that the Respondent had colluded and fixed the prices for the year 2009 tender and collusively boycotted the 2011 tender, thereby contravening Section 3 of the Act.

64. Admittedly, the order of the CCI dated 23.04.2012 was challenged by the Respondents before the COMPAT and the erstwhile COMPAT sustained the findings of the Commission, but reduced the penalty amount that were imposed on the Respondents. In fact, the Respondents and the Commission challenged the COMPAT decision before the Hon'ble Supreme Court under Section 53T of the Act and that the Hon'ble Supreme Court on 08.05.2017 upheld the findings of the Commission and held that the Respondents had violated Section 3(3)(b) and Section 3(3)(d) in regard to the tenders released by the Applicant for the period 2009-10 and 2011-12 and maintained the COMPAT's decision on the aspect of penalty. It is not in dispute that these findings had attained finality.

65. The Applicant has filed the instant Compensation Application (AT) No.01 of 2019 seeking compensation from the Respondents for a sum of Rs.26,12,00,141/- in terms of Section 53N of the Competition Act, 2002.

66. The Compensation Application (AT) No.01 of 2019 was filed by the Applicant on 11.07.2019. In the instant case, earlier the CCI passed the order on 03.04.2012 (under Section 27 of the Competition Act, 2002) and rendered a finding that the Respondents had violated Section 3 of the Act etc. It was also found out that the Respondents had consistently overcharged the Applicant and their conduct had led to the losses being incurred by the Applicant. It is quite evident that the erstwhile COMPAT on 29.10.2013 passed an order affirming the findings of the CCI. In regard to the issue of 'turnover' the COMPAT observed that the penalty would be based solely on the 'turnover' of the relevant business, i.e., business of Aluminum Phosphate Tablet (ALP). When the Respondents and the Hon'ble Commission projected their Appeals before the Hon'ble Supreme Court by assailing the findings of the COMPAT, the Hon'ble Supreme Court upheld the decision of the erstwhile COMPAT in totality.

67. It may not be out of place for this Tribunal to significantly point out that in the decision ***'Uma Shankar Sharma v. The State of Bihar & Anr. – AIR 2005 Patna 94'*** wherein a Decree Holder being aggrieved by the impugned order challenged the same in Second Appeal, which resulted into a Decree passed by the Hon'ble High Court, the Decree of the Court below merges with the judgment and Decree in Second Appeal and it was held that the period of Limitation under Article 136 of the Limitation Act, 1963 is to be counted from the date of judgment in Second Appeal.

68. Further, when a 'Decree' of the Trial Court having merged with the Decree of the 'Appellate Court', it is observed that the starting point of limitation for an Application in regard to an execution of Decree is the date of Appellate Court's Decree and not the date of Trial Court Decree as per decision in ***'Baba Balbir Singh vs Ram Kishan Chela Budh Dass And Ors – AIR 2003 PH 250'***.

69. Undoubtedly, a plea of Limitation cannot be determined as an abstract principle of Law divorced from facts. The question of Limitation is an mixed issue of 'Fact and Law'. In fact, 'Limitation bars remedy and does not destroy a right'.

70. It appears that the Hon'ble Supreme Court had stayed the proceedings in Compensation Application (AT) No.01 of 2014 vide order dated 12.02.2018 in Civil Appeal No.8974 of 2014. As far as the instant Compensation Application (AT) No.01 of 2019 is concerned, the Compensation Application is perfectly maintainable because of the reason that Section 53N(1) of the Act visualises that a compensation claim must 'arise from the findings of the Competition Commission of India or the Appellate Tribunal', which means that 'cause of action' for the compensation claim is to arise because of an order either of the Competition Commission of India or the Appellate Tribunal. In the considered opinion of this Tribunal, the ultimate proceedings ended in Hon'ble Supreme Court on 08.05.2017 and that the Compensation Application was filed by the Applicant on 11.07.2019, within the period of two years two months and the same having been filed within a reasonable

period of time, i.e., less than three years. Therefore, the Applicant cannot be blamed for any laches. In fact, the plea of laches cannot be put against the Applicant by any means. If one is to reckon the period of limitation from the date of Hon'ble Supreme Court judgment of 08.05.2017 in the present case, then the Compensation Application (AT) No.01 of 2019 having been filed by the Applicant on 11.07.2019 is not hit by the plea of limitation.

71. To put it differently, when the order of COMPAT dated 29.10.2013 was under challenge before the Hon'ble Supreme Court in appeal proceedings and when the original order of CCI dated 23.04.2012, which was affirmed by COMPAT on 29.10.2013 and finally the same attained finality with the judgment of Hon'ble Supreme Court in Appeal on 08.05.2017, it is crystal clear that the Compensation Application (AT) No.01 of 2019 (being a money claim) filed on 11.07.2019 (in the absence of any fixed time limit) is well within a reasonable period of three years' time and no laches can be attributed on the part of the Applicant in this regard.

72. Coming to the aspect of the Compensation Application (AT) No.01 of 2019 being filed against the Respondents claiming compensation in a single application, against all the three enterprises, it is to be pointed out that Section 53N, no doubt speaks of filing of an application by Central Government or State Government or a 'Local Authority' or any enterprise or any person to make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of

the Commission or under Section 42-A or under sub-section (2) of Section 53-Q of the Act and to pass order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered etc., inasmuch as the 'cause of action' involved in the present *'lis'* relates to the common orders passed by the Competition Commission of India, COMPAT and the Hon'ble Supreme Court, it can safely and squarely be said that 'litigation' involved in these orders was common and viewed in that perspective, the filing of single application viz, the present Compensation Application (AT) No.01 of 2019 is not fatal and to put it more precisely, the said Application is maintainable in Law.

73. In regard to the plea taken that on the cover page and in the heading of Compensation Application (AT) No.01 of 2019, the Applicant claims that the present Compensation Application has arisen out of the Competition Appeal (AT) Nos.79-81 of 2012, which was finally disposed of by the COMPAT on 29.10.2013 and in the body of the Compensation Application, the Applicant repeatedly mentions that it 'arises out of order dated 08.05.2017 of the Hon'ble Supreme Court' and at other places the Applicant has mentioned that it is relying on the order of the CCI and, therefore, the Applicant has not approached this Tribunal with 'clean hands', this Tribunal on going through the Application is of the considered view that the same is not a serious mistake that goes to the root of the matter. In fact, the term 'cause of action' is a bundle of facts and the Applicant having mentioned in its Compensation Application at paragraph 5 that the compensation claim was filed under Section 53N of the Act

arising out of order dated 08.05.2017 of the Hon'ble Supreme Court of India read with findings of the Hon'ble Commission dated 23.04.2012. In fact, as against the COMPAT order dated 29.10.2013, the three Respondents had filed Civil Appeal Nos.2480, 2874 and 2922 of 2014 before the Hon'ble Supreme Court and that the Hon'ble Commission had also filed appeal before the Hon'ble Apex Court against the order dated 29.10.2013 through Civil Appeal No.53-55 of 2014 praying that penalty was to be imposed on the entire 'turn over' of Respondents. Viewed from any angle, the Applicant being public Body and claiming compensation from the Respondents cannot be said by any stretch of imagination that they have approached this Tribunal with 'unclean hands'.

74. It transpires that the Applicant in Compensation Application (AT) No.01 of 2019 had paid fee of Rupees three lakhs in regard to its claim for compensation from the Respondents. At this juncture, it is useful for this Tribunal to make a relevant mention of Rule 4 of the Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications) Rules, 2009, which reads as under: -

> *"4. Fee. – (1) Every memorandum of appeal and compensation application shall be accompanied with a fee provided in sub-rule(2) and such fee may be remitted in the form of demand draft drawn in favour of Pay and Accounts Officer, Ministry of Corporate Affairs, payable at New Delhi.*
>
> *(2)(i) The amount of fee payable in respect of appeal and compensation application made to the Appellate Tribunal shall be as follows:-*
>
> *APPEAL*

	Amount of penalty imposed		*Amount of fees payable*
1.	*Less than twenty thousand rupees*	*:*	*Rs.1,000*
2.	*Twenty thousand or more rupees but less than one lakh*	*:*	*Rs.2,500*
3.	*One lakh or more rupees*	*:*	*Rs.2,500 plus Rs.1,000 for every additional one lakh of penalty or fraction thereof, subject to a maximum of Rs.3,00,000.*

COMPENSATION APPLICATION

	Amount of compensation claimed		*Amount of fees payable*
1.	*Less than one lakh rupees*	*:*	*Rs.1,000*
2.	*More than one lakh rupees*	*:*	*Rs.1,000 plus Rs.1,000 for every additional one lakh of compensation claimed or fraction thereof, subject to a maximum of Rs.3,00,000.*

(ii) Amount of fee payable in respect of any other appeal against a direction or decision or order of the Commission under the Act shall be rupees ten thousand only.

(3) The Tribunal may, to advance the cause of justice and in suitable cases, waive payment of fee or portion thereof, taking into consideration the economic condition or indigent circumstances of the petitioner or appellant or applicant or such other reason, as the case may be, by an order for reasons to be recorded.

(4) The Central Government may review the fee under rule 4 after every two years and the fee may be amended by a notification."

75. The Applicant being a 'public Body' for it, the payment of fee under

Rule 4(3) of Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications) Rules, 2009 cannot be waived and it has to necessarily pay the requisite fee as per aforesaid Rules 2009. Although, the Applicant has filed a single Application for recovery of compensation against the three Respondents, it appears that the payment of fees of Rupees three lakhs paid by the Applicant/ FCI is to be scrutinised and examined by the 'Office of the Registry of this Tribunal' because of the fact that the Respondents had taken a plea that the said payment of Rupees three lakhs towards fees is not in accordance with Rule 4 of the Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications) Rules, 2009. For 'deficit payment of necessary filing fee' under any Rule or for that matter any deficit Court fees either before a Tribunal or a Court of Law, an Application cannot be rejected or being thrown out at the threshold and an 'opportunity' necessarily has to be provided to the concerned Applicant to rectify/cure the defect pertaining to the said deficit filing fee/Court fee, as the case may be, in the considered opinion of this Tribunal. Hence, if the Office of the Registry finds that the Applicant/ FCI is to make good the deficit filing fee in regard to the Compensation Application (AT) No.01 of 2019, then the Office of the Registry shall issue an Office Memorandum to the Applicant/ FCI, requiring it to pay the said sum within 14 days from the date of receipt of such Memorandum. On such receipt of the said Memorandum, the Applicant/FCI shall pay the necessary fees. Resultantly, if any amendment is to be carried out by the Applicant in the

Compensation Application (AT) No.01 of 2019 at relevant paragraph, the same may be carried out by through Learned Counsel for the Applicant within one week thereafter and the amended copy of the Compensation Application (AT) No.01 of 2019 (if required) may be filed before the Office of the Registry by the Applicant side, by serving advance copy to the Respondents' side.

76. In view of the foregoing qualitative and quantitative upshot of discussions and also this Tribunal taking into account of all the facts and circumstances of the present case in a conspectus fashion, comes to a resultant conclusion that in the present case, the 'cause of action' firstly arose from the decision of the CCI's order dated 23.04.2012, which was later affirmed by the COMPAT on 29.10.2013 and attained finality by means of the Hon'ble Supreme Court judgment dated 08.05.2017 (Civil Appeal No.2480 of 2014, with Civil Appeal Nos. 53-55 of 2004, Civil Appeal No.2874 of 2014 and Civil Appeal No 2922 of 2014) and also this Tribunal taking note of yet another fact that the Compensation Application (AT) No.01 of 2019 was filed on 11.07.2019 (within two years and two months from 08.05.2017) of Hon'ble Supreme Court judgment, the said Application having been filed within less than three years' reasonable period (especially when the Competition Act, 2002 does not speak of limitation period for filing of an application under Section 53N of the Act), the said application is perfectly maintainable in Law, under Section 53N of the Act. As such, the contra plea taken by the Respondents that a Compensation Application is only permissible against a CCI order or

COMPAT's order and not against the Supreme Court judgment is not acceded to.

77. In regard to the plea of the 2nd Respondent that the Limitation period of three years came to an end on 28.10.2016 (after the order of COMPAT on 29.10.2013) as per Sch 1 of Art. 137 of Limitation Act, 1963 is incorrect because of the fact that as against the COMPAT order dated 29.10.2013, the matter was taken to Hon'ble Supreme Court and ultimately the Hon'ble Supreme Court delivered its judgments on 08.05.2017. Till the time the decision was rendered by the Hon'ble Supreme Court probity and propriety require that one has to wait for the final determination of controversies (involving lis) by the Hon'ble Apex Court, relating to the parties. Suffice it for this Tribunal to point out that the Limitation period will commence only after the final decision of the Hon'ble Supreme Court, in so far as the present case is concerned. Moreover, this Tribunal holds that Section 53N of the Competition Act, 2002 entail an Applicant's 'cause of action' to have come into existence because of an order of the Competition Commission of India or the Competition Appellate Tribunal. Further, it cannot be lost sight of that in the instant case, the Competition Commission of India, erstwhile COMPAT and the Hon'ble Supreme Court had found that the Respondents had violated the Competition Act. Viewed from the aforesaid perspectives, this Tribunal, answers the issue of maintainability of Compensation Application (AT) No.01 of 2019.

78. The Registry is directed to list the Compensation Application (AT) No.01 of 2019 for hearing of the matter on merits in respect of other issues in usual course.

79. I.A. 40 of 2019 filed by the Applicant seeking exemption to file original circular dated 13.03.2006 (declaring the Applicant's authorized Signatories) is allowed. However, the Applicant is directed to file the certified copy of the original Circular Dated 13.03.2006 as well as the certified copy of the judgment of the Hon'ble Supreme Court dated 08.05.2017 in Civil Appeal No.2480 of 2014 etc. within 10 days from today.

[Justice Venugopal M.]
Member (Judicial)

[Justice Jarat Kumar Jain]
Member (Judicial)

NEW DELHI

3rd June, 2020

Ash