

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Competition Appeal (AT) No. 01 of 2020**

(Arising out of Order dated 28<sup>th</sup> November, 2017 passed by the Competition Commission of India in Case Nos. 47, 48 & 49 of 2017)

**IN THE MATTER OF:**

**Maj. Pankaj Rai**

**....Appellant**

**Versus**

**Secretary, Competition Commission of India & Ors. ..Respondents**

**Present:**

**For Appellant: Maj. Pankaj Rai, Appellant in person.**

**For Respondents: Mr. Ramji Srinivasan, Senior Advocate with  
Mr. Rishub Kapoor, Advocate.  
Ms. Bulbuli Richong, Deputy Director, CCI.**

**J U D G M E N T**

**BANSI LAL BHAT, J.**

The sole issue for consideration is whether period of 730 days including 693 days spent by the Appellant- Informant in seeking remedy before the Hon'ble High Court qua the order impugned dated 28<sup>th</sup> November, 2017 passed by the Competition Commission of India ("Commission" for short) under Section 26(2) of the Competition Act, 2002 ("Act" for short) can be condoned.

2. A flash back of the events culminating in preferring of instant appeal by the Informant may be reproduced briefly. Informations encompassing Case No. 47 of 2017 filed by the Appellant- Informant Maj. Pankaj Rai, Case No. 48 of 2017 filed by Mr. Pankaj Gupta and Case No.49 of 2017 filed by Sh. Lakshmi Reddy Eddula raised competition concerns against 'NIIT Limited', New Delhi (Opposite Party/ OP) common to all the three Informations alleging contravention of provisions of Sections 3 and 4 of the Act. Briefly put, the Informants were aggrieved by the conduct of OP in allegedly abusing its dominant position through its franchise agreements and indulging in anti-competitive practices. The Informants claimed to be the franchisees of the OP in the city of Hyderabad engaged in the business of provision of computer education/ training services. OP was stated to be a well-known brand engaged in the business of computer education having attained the status of global leader in skill and talent development. It was stated that the OP had been offering multi-disciplinary courses in management and training delivery solutions to various institutions spanning across forty Countries. It was alleged that while the Informants, as franchisees of OP were initially granted rights to offer Post Graduate Diploma in Banking Operations (PGDBO) course conducted by the OP in collaboration with ICICI Bank, subsequently the OP revoked the rights of Informants though itself continued to offer the same course at its own centre at Basheerbagh, Hyderabad. Allegedly OP had been making forays into the territories of Informants depriving the

Informants of their legitimate share of revenue from that territory. It was also alleged that the OP was offering courses at highly discounted prices by entering into an agreement with 'Accenture' and followed a differential pricing pattern for its consumers in metros jeopardising the rights of students and franchisees and thereby rendering the courses offered by the franchisees uncompetitive; besides alleged to be indulging in predatory pricing as the prospective customers in a franchisee's territory could register online thereby ruining the business of franchisees. It was further alleged that the OP has arbitrarily reduced the Informants share from 20% to 10% in Imperia courses amounting to abuse of dominant position. The Informant also alleged poaching of customers by the OP through its online training portal which are similar to the ones available with the franchisees, thereby appropriating the entire benefits. The Informants sought an inquiry into abuse of dominant position by the OP and passing of appropriate directions.

3. On consideration of the informations and the material substantiating the allegations therein, the commission found that apart from OP there were many other players operating in the relevant market and offering similar courses. The Commission, banking upon the information in public domain, noticed that the OP has around 400 Centres in the relevant market whereas its competitors like CSC Computer Education Private Ltd. and Aptech were having comparable number of centres in the relevant market. Appellant admitted before the

Commission that Jetking had a comparable number of Computer/ IT training centres in the city of Hyderabad. The commission came to this conclusion that OP was operating in a competitive environment and faced rivalry from a number of similarly placed players in the field. Thus, OP could not operate independently of the market forces in the relevant market while providing multiple options to its consumers for availing various services. It noticed that even in the limited geographical market of Hyderabad it faced competition from large players like Jetking, Aptech etc. Thus, the Commission arrived at a conclusion that the OP was not holding a dominant position in the relevant market. It also found no substance in the allegation under Section 3 of the Act as it noted that OP had resorted to the online mode of delivery through its learning portals to meet the growing requirements of consumers. It also found that OP had been supplying all the necessary course materials and imparting training to the faculty members of the franchisees without discrimination. The differential pricing of courses and revenue sharing agreement by the OP were not found arbitrary taking into consideration the lack of affordability and awareness in non-metros besides other relevant factors. Thus, the Commission found that no *prima facie* case of contravention of provisions of Sections 3 and 4 was made out against the OP in all three informations. It accordingly directed closing of the matter in terms of Section 26(2) of the Act.

4. The instant appeal has been preferred by the Informant Maj. Pankaj Raj in Case No. 47 of 2017 on 6<sup>th</sup> January, 2020 i.e. after 768 days. Section 53B of the Act providing for appeal, *inter alia* against any order falling within clause (a) of Section 53A of the Act which includes order passed by the Commission under sub-section (2) of Section 26 provides that the appeal shall be filed within 60 days from the date of such order being received by the aggrieved person. Proviso to sub-section (2) of Section 53B permits this Appellate Tribunal to entertain an appeal after the expiry of the said period of 60 days on being satisfied that there is sufficient cause for not filing appeal within the prescribed period. On a plain reading of these relevant provisions, it emerges that the prescribed period of limitation of 60 days is extendable without any further limitation as regards period but subject to the Appellate Tribunal being satisfied about sufficiency of cause assigned for non-filing of the appeal within the prescribed period of limitation. The instant appeal has been filed after 768 days of the passing of the impugned order and since the Appellant was the Informant in one of the informations i.e. Case No. 47 of 2017 presumed to have knowledge of the impugned order being party to the proceeding before the Commission, the appeal appears to have been preferred after a delay of 708 days. The question for consideration is whether the Appellant has been able to demonstrate a sufficient cause preventing him from preferring the appeal within the statutory period of 60 days.

5. Heard learned counsel for the parties and perused the record.

6. At the very outset, we may say that the Appellant made a desperate bid to persuade us to enter the merits of the case to demonstrate the alleged arbitrary and unfair conduct of the OP raising competition concerns and occasioning heavy pecuniary loss to the informants. The Appellant did not spare the Commission either and a close reading of the memo of appeal would lay bare that the Appellant has virtually indicted the Commission. This appears to have been done with a design i.e. to demonstrate that the impugned order assailed in appeal is *non est*. Condonation of delay is sought by exclusion of period of 693 days consumed in litigation before the Hon'ble High Court for the State of Telengana, Hyderabad, contending that the matter was prosecuted in good faith before the Hon'ble High Court as the impugned order was *non est* and obtained by fraud.

7. It emerges from the record that the Appellant and other Informants initially filed W.P. Nos. 42223 and 43744 of 2017 before the Hon'ble High Court impugning the impugned order passed by the Commission under Section 26(2) of the Act. Learned Single Judge held that the impugned order could be challenged in appeal before this Appellate Tribunal under the Act which provided alternative remedy. The Writ Petitions thus came to be rejected. The Appellant and other Informants, being dissatisfied with the common order passed in the Writ Petitions rejecting the same, preferred Writ Appeal Nos. 456 & 457

of 2018 before the Division Bench of the Hon'ble High Court which came to be dismissed in terms of order dated 31<sup>st</sup> December, 2018 with the observations that the discretion exercised by the Id. Single Judge by relegating the Appellants to the statutory Appellate Jurisdiction was not unfounded on fundamental principles of law. Thus, the Hon'ble High Court declined to interfere with the order passed in Writ Jurisdiction by the Hon'ble High Court.

8. As stated hereinabove, the Appellant made strenuous efforts to demonstrate that the Commission dealt with the Informations in gross violation of the principles of fairness and fair play. Reference was made to involvement of Mr. Vinod Dhall in the affairs of the firm 'Advocates & Solicitors' appearing for one of the Respondents before the Commission to show that the decision of the Commission was engineered through the intervention of Mr. Vinod Dhall who earlier served as the Chairperson of the Commission. Obviously, this is done to demonstrate that decision making process of the Commission was obliquely influenced.

9. It is indisputable that this Appellate Tribunal, while sitting in appeal over the appealable orders passed by the Commission, is vested with ample powers to consider all issues having a bearing on the sustainability of such orders. An efficacious remedy in the form of statutory appeal under Section 53B to the extent of appealable orders passed by the Commission is available and the Hon'ble High Court of

Telengana has disposed of the Writ Petitions and Writ Appeals refusing to exercise writ jurisdiction in view of the efficacious remedy of appeal being available under the statute. Though the questions raised before the Hon'ble High Court in regard to contentious issues have been left open for consideration of this Appellate Tribunal, the fact remains that in exercise of its writ jurisdiction the Hon'ble High Court has declined to interfere and exercise writ jurisdiction on the basis of allegations forming sheet anchor of the arguments canvassed by the Appellant in person.

10. While the Appellant seeks condonation of delay on grounds which are not severable from the merits of the case, it is apt to notice that no reason much less a cogent lawful reason/ excuse has been assigned for a delay of around two years in preferring the statutory appeal under Section 53B of the Act. The Appellant appearing in person filed written submission in support of his oral arguments reiterating the same grounds as were urged in Writ Petitions and Writ Appeals before the Hon'ble High Court. It is canvassed that the Appellant spent 693 days in proceedings before the Hon'ble High Court since there was denial of natural justice by Commission. He continued to lay stress on the proposition that Writ Jurisdiction can be invoked even when alternate remedy is available if there was denial of natural justice and the impugned order was obtained by fraud. In this regard, he relied upon the judgment of the Hon'ble Apex Court rendered in ***"A.V. Papayya***

**Sastry & Ors. vs. Govt. of A.P & Ors.**” being Appeal (Civil) Nos. 5097-5099 of 2004 decided on 7<sup>th</sup> March, 2007 which echoes the settled proposition of law that a Judgment, decree or order obtained by playing fraud on the Court is a nullity and *non est* in the eye of law which can be challenged in any Court at any time, in appeal, revision or writ proceedings etc. It is queer that in the face of the Judgment of the Writ Court confirmed in appeal by the Hon’ble High Court of Telengagna, Hyderabad coupled with subsequent conduct of Appellant in withdrawing the review petition, the Appellant continues to harp on the same tune. It is sad to note that the Appellant has stooped so low as to go even to the extent of maligning the judicial institution by adopting stubborn attitude in regard to its plea which the Hon’ble High Court declined to entertain to exercise its discretion in Writ Jurisdiction. This is writ large on the face of the written submissions made in Para 3(b) which reads as under:

*“b. Approaching this Hon’ble Appellate Tribunal at New Delhi is difficult for the Appellant fighting NIIT which has deep pockets. Hence, approaching this Hon’ble Appellate Tribunal was only to seek justice when repeated attempts at the High Court failed to impress HC to adjudicate even though the Appellant has a strong case on merits. At para 15 and 16 in Swiss Ribbons Pvt. Ltd. Vs. Union of India, the Apex*

*Court held that this Hon'ble Appellate Tribunal, is not an efficacious remedy for a common man of modest means. This may not be considered as an affront to this Hon'ble Appellate Tribunal but the practical difficulty of the Appellant. The Appellant tried unsuccessfully to approach the Apex Court to seek direction for early disposal of review petition and when unsuccessful has approached this Hon'ble Tribunal (pages 133-134 of counter affidavit of NIIT). In case this Hon'ble Appellate Tribunal had a Circuit Bench at Hyderabad, the Appellant would have approached this Hon'ble Tribunal at Hyderabad instead of approaching High Court unhesitatingly."*

11. Apart from the offensive and intemperate language employed in the aforesaid para by the Appellant, be it seen that the observations of the Hon'ble Apex Court in **"Swiss Ribbons Pvt. Ltd. v. Union of India- (2019) 4 SCC 17"** are in the context of establishment of Circuit Bench of this Appellate Tribunal so as to bring justice to the door step of those seeking justice. When statutory remedy in the form of an appeal is available, the aggrieved person cannot be permitted to bypass the said remedy and invoke writ jurisdiction of the Hon'ble High Court. It is indisputable that competition concerns raised with regard to all anti-competitive activities in whatever form or manifestation are effectively

dealt with under the Act which provides an efficacious remedy in the form of statutory appeal under Section 53B of the Act. It being the admitted position that efficacious legal remedy in the form of appeal is available within the adjudicatory mechanism under the Act, an unscrupulous litigant aggrieved of any order, direction and decision of the Commission under the Act cannot be allowed to choose the remedies under law and invoke writ jurisdiction of the Hon'ble High Court under the pretext of the impugned order being *non est* and emanating out of an inquiry, investigation or trial held in breach of the principles of natural justice. Such course, if permitted, would provide leverage to unscrupulous litigants to go for forum shopping. Such practice has to be deprecated.

12. The Act is intended to prevent practices having adverse effect on competition, to promote and sustain competition in markets and to protect the interest of consumers besides ensuring freedom of trade carried on by other participants in markets in India. It seeks to ensure fair competition by prohibiting trade practices which cause appreciable adverse effect on competition in markets within India. A statutory mechanism is provided in the form of establishment of a Commission which is a quasi-judicial body with powers to pass orders, render decisions and give directions envisaged by the legal framework. The Act provides for investigation by the Director General for the Commission. The Commission is empowered to levy penalty upon enterprises guilty of

anti-competitive practices as also for contraventions of its orders or for failure to comply with its directions etc. A cursory look at the preamble of the Act, statement of objects and reasons and the provisions of the Act would reveal that the Act is a complete Code with a self contained procedure dealing with inquiry by the Commission including investigation by the Director General, a fair adjudicatory mechanism and a robust appellate mechanism. It provides for expeditious disposal of cases and also prescribes a period of limitation for preferring appeals against the orders, decisions or directions given by the Commission in regard to matters covered under Section 53A. Admittedly, application of provisions of the Limitation Act, 1963 is not specifically excluded under the Act which prescribes a period of 60 days for preferring an appeal against the appealable orders of the Commission under Section 53B of the Act. It also provides for similar period of limitation for preferring appeals to Hon'ble Apex Court from orders of Appellate Tribunal under Section 53T of the Act. Both provisions dealing with the appeals, however, empower the Appellate Courts to entertain appeal beyond the prescribed period of limitation under the Act if satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the prescribed period. It is significant to take note of sub-section (5) of Section 53B which provides that the Appellate Tribunal shall deal with the appeal as expeditiously as possible and make endeavour to dispose it off within six months. Given the objective to be achieved by this special statute and the mechanism provided for speedy disposal of

the matters dealing with competition concerns or anti-competitive practices, there can be no hesitation in holding that the Limitation Act, 1963 was never intended to apply to matters covered under the Act for which special limitation is prescribed. This conclusion derives support from the observations of Hon'ble Competition Appellate Tribunal (for short "COMPAT"-which was the Appellate Tribunal prior to commencement of Part-XIV of Chapter VI of the Finance Act, 2017) in **"Geeta Kapoor v. Competition Commission of India & Ors- Appeal No. 41 of 2016"**. It observed that the legislative intendment of prescribing a shorter period of limitation is in consonance with the object of expeditious disposal of the matters relating to prevention of practices having adverse effect on competition, promotion and sustenance of competition in markets, protection of interests of consumers and ensuring of freedom of trade carried on by other participants in markets in India. It further observed that the purpose of prescribing a different period of limitation under the Act would be frustrated if the ratio of judgments involving the interpretation of the term 'sufficient cause' appearing in Section 5 of the Limitation Act, 1963 is applied for interpreting proviso to Section 53B (2) of the Act.

13. We are, therefore, of the considered view that having regard to the legislative intent behind the enactment of Act, the provisions of Limitation Act, 1963 stand excluded by necessary implication. Thus, in our considered opinion, it is not open to Appellant to take recourse to

Section 5 of the Limitation Act, 1963 providing for extension of period of limitation prescribed under the Limitation Act, 1963 which has no application to appeal in hand.

14. On consideration of the ground projected by the Appellant, which is necessarily linked with and not divorced from the merits of the case, we find that no sufficient cause for not filing appeal within prescribed period of 60 days has been advanced and established by the Appellant. It is flabbergasting to note that the Appellant, despite dismissal of his Writ Petition on the ground of efficacious remedy in the form of appeal being available under the Act, remained unfazed and adamant at pursuing remedy before the Hon'ble High Court by filing Writ Appeal and upon its dismissal sought further judicial intervention in the form of approaching the Hon'ble Apex Court and finally withdrawing the review petition. The Appellant persisted with his stubborn attitude in pursuing remedy before the Constitutional Courts and not filing appeal before this Appellate Tribunal though advised to do so by the Writ Court. Such conduct cannot constitute a "sufficient cause" for not exercising the statutory right of appeal. In view of the Appellant's conduct he cannot be heard to say that he was prevented by a "sufficient cause" from filing an appeal within the statutory period of limitation. The Appellant, howsoever hoarse he may cry that miscarriage of justice has been done, has to blame himself. Keeping

these factors in view, no substantial ground to admit appeal beyond prescribed period of limitation can be said to exist.

The appeal is accordingly dismissed as being barred by limitation. Any observations made in this Order shall not be construed as an expression on the merits of the appeal.

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Justice Venugopal M.]  
Member (Judicial)

[Shreesha Merla]  
Member (Technical)

NEW DELHI  
29<sup>th</sup> May, 2020

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