

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Competition App. (AT) No. 07 of 2017

IN THE MATTER OF:

D. V. Rajasekhar

...Appellant

Versus

Competition Commission of India

...Respondent

Present:

For Appellant : **Shri Sandeep Khatri, Advocate**

For Respondent : **Shri Balaji Subramanian, Advocate**

ORDER

29.01.2018 The appellant, Managing Director of Shri Shakti Cylinders Pvt. Limited has challenged the order dated 21st March, 2017 passed by the Competition Commission of India (hereinafter referred to as the 'Commission') wherein while passing order in Suo Moto Case No. 01 of 2014 the Commission imposed cost on the appellant – Mr. Rajasekhar with the following observations:

“4 Mr. Rajasekhar, vide email dated 26th July, 2016, requested the DG to adjourn the hearing. Accordingly, DG, vide summons dated 26th July, 2016, granted him a last opportunity to appear on 1st August, 2016. However, he did not appear on said date as well but rather telephonically requested the DG to schedule his appearance on 3rd August, 2016. Thereafter, instead of appearing on 3rd August, 2016, Mr. Rajasekhar appeared on 4th August, 2016. While recording of his statement on 4th August, 2016 before the DG,

it has been alleged by the DG that the behaviour of Mr. Rajasekhar was non-cooperative and aggressive. When the DG asked him about the management of the company (Question. 1), to explain the reasons for non-compliance with the earlier notices (Question. 2) and to file an Affidavit (Question. 3), Mr. Rajasekhar undertook to furnish these documents/ information by 11th August, 2016. Further, Mr. Rajasekhar agreed to provide a copy of the email and courier receipt regarding withdrawal letter sent to Hindustan Petroleum Corporation Limited (HPCL) by 20th August, 2016 (Question. 27). However, no such information/ documents have been filed by Mr. Rajasekhar. During the course of deposition, Mr. Rajasekhar was also requested to open his email account. He refused to do the same (Question No.20) and therefore, a separate notice dated 4th August, 2016 was issued to him for filing his email dumps by 12th August, 2016. However, the said information has also not been filed by Mr. Rajasekhar.

5. *In view of the above discussed conduct of Mr. Rajasekhar, the DG, vide communication dated 26th September, 2016, requested the Commission to initiate proceedings under Section 43 of the Act against Mr. Rajasekhar for not complying with the directions of the DG.*
6. *On 13 October, 2016, the Commission considered the request of the DG and prima facie observed that there was a deliberate non-compliance with the directions of the DG by Mr. Rajasekhar. Therefore, the Commission decided to initiate proceedings under Section 43 of the Act against Mr. Rajasekhar. Accordingly, the Secretary was directed to issue*

a notice to Mr. Rajasekhar under Regulation 48 of the Competition Commission of India (General) Regulations, 2009, directing him to show-cause, within three weeks of the receipt of the notice, as to why the Commission should not consider his conduct as non-compliance of the directions of the DG and impose penalty on him under Section 43 of the Act. He was further directed to appear for oral hearing before the Commission on 9th February, 2017, if he so desires. In compliance of aforesaid directions, the Secretary issued a show cause notice dated 1st December, 2016 to Mr. Rajasekher.

- 7. In response to said show cause notice of Secretary, Mr. Rajasekhar, vide letter dated 7th January, 2017, submitted his written submissions. Mr. Rajasekhar had cast aspersions on the DG and alleged bias in the investigation. Thereafter, Shri Rajasekhar, vide letter dated 8th February, 2017, requested the Commission to adjourn the hearing for one week. On 9th February, 2017, the Commission considered the request of Shri Rajasekhar and allowed him to appear before the Commission on 14th March, 2017.*
- 8. On 14th March, 2017, learned counsel, Mr. Sandeep Khatri and Ms. Prabhkeen Kaur, appeared on behalf of Mr. Rajasekhar and reiterated the written submissions. After considering the material on record, the Commission observed that the allegation of Mr. Rajasekhar are baseless and are being used as a ploy to deny access to the aforesaid email dumps. Further, despite undertakings given by Mr. Rajasekhar mentioned in para 4 above, he has failed to provide demanded documents/ information. Accordingly, the*

Commission deems it appropriate to impose a penalty of Rs.5,00,000/- (Rupees five lakhs) under Section 43 of the Act upon Mr. Rajasekhar. The Commission directs Mr. Rajasekhar to deposit the penalty amount within 60 days of the receipt of this order.

9. *The Secretary is directed to inform Mr. Rajasekhar accordingly.”*

2. On 22nd November, 2017, this Appellate Tribunal having noticed the submissions made by the appellant, passed the following order:

“Learned Counsel appearing on behalf of the Appellant submitted that the documents sought for by DG during investigation has already been handed over by another person to DG. However, such submission made on behalf of the Appellant has been disputed by learned Counsel for Respondent-Commission.

Having heard Counsels for the Appellant and Respondent-Commission and without going into the disputed question as to whether third party has handed over the relevant documents to the DG or not, we give an opportunity to the Appellant to file an affidavit and state whether he will cooperate with DG and hand over the requisite documents to the DG or not. If the Appellant files such affidavit, agrees to hand over the documents to the DG and to cooperate with the DG, this Appellate Tribunal may consider whether in such case, the Appellate Tribunal will interfere with part of the order whereby penalty has been imposed. Affidavit be filed within ten days.”

3. In the light of the order dated 22nd November, 2017, an affidavit has been filed on behalf of the appellant wherein the following statement has been made:

“2. That in Compliance with the order dated November 22nd 2017 and as per the directions given by this Hon’ble Tribunal in the above-said matter, I state that I shall cooperate and provide documents which are required by the DG in relation to Suo-moto case number 01 of 2014 and also swear by way of this affidavit that I will cooperate with DG in the investigation conducted by it in relation to the Suo-moto case number 01 of 2014.

3. Without prejudice to the above I hereby state that the investigation in Suo-moto case number 01 of 2014 has already been conducted and prepared by the Director General and copies of the investigation report have already been supplied to the accused parties including the Appellant herein. I state that the investigation report prepared by the Director General also contains the documents as disputed by the Respondent Commission before this Hon’ble Tribunal. However, I undertake to supply all documents as required by the Director General in connection with Suo-moto case number 01 of 2014.”

4. Learned counsel appearing on behalf of the Commission submitted that the DG has already filed the report and now in view of the affidavit submitted by the appellant, the DG may be allowed to make further investigation and submit a supplementary investigation report, if so required.

5. Having heard the learned counsel for the parties while we accept the statement made by the appellant with regard to co-operation with the DG, taking

into consideration the fact that the appellant has given specific understanding that he will hand over the additional documents to the DG, we allow the DG to hold further investigation, if so required, on the basis of the documents as will be made available by the appellant, which should be handed over within ten days. The DG is also allowed to submit supplementary investigation report, if so required. In view of the fact that the appellant has given undertaking that he will co-operate with the investigation and to hand over the additional documents to the DG, we set aside the part of the impugned order dated 21st March, 2018 whereby cost of Rupees Five Lakhs has been imposed. If the appellant has already been deposited 50% of the cost imposed on him, the Commission will return the amount to the appellant subject to compliance of the undertaking as recorded above. The appeal stands disposed of the aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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