

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Competition Appeal (AT) No. 51 of 2018

[Arising out of order dated 24th May, 2018 passed by the Competition Commission of India in Case No. 56 of 2013]

IN THE MATTER OF:

K. M. Chakrapani

Proprietor, Coir India (The Cement People),
Palolipalam,
Vatakara – 673105.
Kozhikode District.
Kerala State.

...Appellant

Vs

1. Competition Commission of India,

Through the Secretary,
Hindustan Times House,
18-20, Kasturba Gandhi Marg,
New Delhi – 110001.

2. The Ramco Cements Limited,

Represented by its Managing Director,
Auras Corporate Centre,
5th Floor, 98-A, Dr. Radhakrishnan Road,
Mylapore, Chennai District
Tamilnadu – 600004.

...Respondents

With

Competition Appeal (AT) No. 53 of 2018

[Arising out of order dated 24th May, 2018 passed by the Competition Commission of India in Case No. 75 of 2012]

IN THE MATTER OF:

Saifudheen E.,

Proprietor, Popular Traders,
EP 7/780 J&K,
Edakkara P. O. ,
Malappuram District,
Kerala. Pin – 678 331.

...Appellant

Vs

1. Competition Commission of India,

Through the Secretary,
Hindustan Times House,
18-20, Kasturba Gandhi Marg,
New Delhi – 110001.

2. The Ramco Cements Limited,

Represented by its Managing Director,
Auras Corporate Centre,
5th Floor, 98-A, Dr. Radhakrishnan Road,
Mylapore, Chennai District
Tamilnadu – 600004.

....Respondents

With

Competition Appeal (AT) No. 54 of 2018

[Arising out of order dated 24th May, 2018 passed by the Competition Commission of India in Case No. 106 of 2013]

IN THE MATTER OF:

Muraleedharan K.,

SVS Enterprises,
Kallummoodu, Muttathara,
Vallakadavu Post,
Trivandrum District,
Kerala. Pin – 695008.

...Appellant

Vs

1. Competition Commission of India,

Through the Secretary,
Hindustan Times House,
18-20, Kasturba Gandhi Marg,
New Delhi – 110001.

2. The Ramco Cements Limited,

Represented by its Managing Director,
Auras Corporate Centre,
5th Floor, 98-A, Dr. Radhakrishnan Road,
Mylapore, Chennai District
Tamilnadu – 600004.

....Respondents

Present:

For Appellant: Mr. Lakshmi Narayanan, Mr. Sajith P. Warriar, Mr. Mohd. Monish and Ms. Nazia Hasan, Advocates.

For Respondents: Ms. Rajdipa Behura, Ms. Kritihanda, Ms. Damini K., Advocates for R-1.

Mr. T. Srinivasamurthy and Ms. Shruti Iyer, Advocates for R-2.

J U D G M E N T

BANSI LAL BHAT, J.

The aforesaid three appeals arise out of a common order dated 24th May, 2018 passed by the Competition Commission of India (hereinafter referred to as 'CCI') closing the matter as in its opinion no case of contravention of Section 3(3) r/w Section 3(1) of the Competition Act, 2002 (hereinafter referred to as 'Act') was made out. These appeals were heard together and are proposed to be disposed of by a common judgment.

2. The Appellants filed informations separately and independent of each other alleging contravention of provisions of Section 3 and 4 of the Act. First and foremost information was filed by 'Saifudheen E.' - Informant in Case No.75 of 2012 alleging that the 'Kerala Cement Dealers Association' (hereinafter referred to as 'KCDA') was interrupting or blocking the supply of cement to the Informant by 'Ramco' as he ignored the instructions of KCDA to sell cement at an unjust price. CCI, being satisfied that a prima facie

case of contravention of Section 3(3) of the Act was made out, passed order dated 6th May, 2013 under Section 26(1) of the Act directing the Director General (DG) to cause an investigation into the matter. Meanwhile, the CCI received another information being Case No. 56 of 2013 from 'K. M. Chakrapani' alleging stoppage of cement supply by 'Ramco' as 'M/s Coir India' was not a member of KCDA. The allegations in the information being similar to allegations in Case No.75 of 2012, CCI clubbed the same with the aforesaid case and send the matter for investigation to DG. Subsequently, CCI received yet another information being Case No. 106 of 2013 from 'Muraleedharan K.' against 'Ramco' and KCDA with allegations of similar nature. 'Muraleedharan' alleged that KCDA forced 'Ramco' to stop cement supplies to him as he did not abide by the directive of KCDA to sell cement at an unjust price. CCI, vide its order dated 5th February, 2014 clubbed this matter also with Case No.75 of 2012 and Case No. 56 of 2013 and referred the same for investigation to DG, who submitted a common Investigation Report to CCI on 30th March, 2015. The investigation in Case No. 75 of 2012 revealed that the supplies were stopped to Informant 'Saifudeen' as he was asking for additional discount and delivery of cement at his branch in a different location. Allegation that 'Ramco' stopped supplies at the behest of KCDA could not be established. In Case No. 56 of 2013, the investigation raised doubt in regard to allegation of 'Ramco' having stopped supplies to the Informant at the behest of KCDA since May, 2013. It noted that there was no proximity of time between Informant's refusal to become a member of KCDA and alleged role of 'Ramco' to stop supplies to it as there was a gap

of four years in between. The DG also found that there were 27 other major dealers of 'Ramco' in Kerala who did not face any hardship in getting the supplies of cement from 'Ramco' though they were not members of KCDA. In Case No. 106 of 2013, investigation revealed that the allegation of Shri Muraleedharan in regard to termination of his dealership at the instance of KCDA was unsubstantiated. It found that it was the continuous misbehavior of Shri Muraleedharan that culminated in termination of his dealership. DG, on review of the material, arrived at the conclusion that the dealership was terminated due to low turnover of SVS Enterprises. It also noticed that Shri Muraleedharan, in his response to Ramco, did not blame KCDA for termination of his dealership. Thus, the investigation did not find involvement of KCDA in termination of dealership of Shri Muraleedharan. Investigation also noticed that there were large number of cement dealers in Kerala and all of them were not associated with KCDA as members which clearly demonstrated that there was competition between cement manufacturers and dealers in the State, which could not be curtailed by blocking supply to one or the another dealer by the manufacturer. Regarding appreciable adverse effect on competition, the investigation was of the view that since Ramco had only about 20% share in the relevant market during the relevant period, same was not at all probable.

3. Report of investigation submitted by DG came to be considered by the CCI, which found some deficiencies in the investigation. DG was accordingly directed to examine all the relevant issues including the

deficiencies pointed out by CCI. This led to filing of supplementary investigation report by DG, wherein DG observed that KCDA had no role in appointing or terminating the dealers, which was the sole prerogative of cement manufacturers. It further observed that supplies to dealers were based on market considerations alone and KCDA had no role as regards the same. It further observed that there was no evidence of involvement of KCDA in stoppage or reduction in supply of cement to any member or non-member. The evidence produced during investigation did not ascribe any role to KCDA in stoppage or reduction of supply. There was no evidence produced to support the allegation that KCDA has forced the dealers to make contribution towards building fund and on refusal it had persuaded Ramco to stop supplies to such dealers. These conclusions were drawn by DG on the basis of detailed examination of some of the dealers and witnesses. Thus, the 'supplementary investigation report' lent further support to the main investigation report.

4. Responding to the main and supplementary investigation report, the Informants expressed dissatisfaction with investigation and alleged that the DG had failed to appreciate the evidence in proper manner. They filed some additional material with CCI in support of their informations. CCI thereupon, directed DG to cause further investigation in the light of new material. This resulted in filing of second supplementary investigation report by DG wherein DG found contravention of Section 3 of the Act by 'Ramco', 'KCDA' and 'Dalmia Cements' on account of their conduct qua a

meeting held on 23rd October, 2013 at Horizon Hotel, Thiruvanthapuram. Reportedly the meeting was organized by the cement manufacturers with assistance of Thiruvanthapuram Cement Dealers Association which is a unit of KCDA. It found that in the meeting, the representatives of the organizers exhorted the cement dealers not to sell cement below the invoice price. However, it did not find any substance in other allegations including the alleged role of KCDA in award of cement dealership.

5. CCI forwarded the second supplementary investigation report to all concerned parties including 'Dalmia Cements' and after considering the objections raised and hearing the parties, CCI was of the view that the material available on record was not sufficient to conclusively establish any role played by KCDA in termination of cement dealership, insisting on NOC as mandatory requirement for award of cement dealership or stoppage of supplies to the dealers. CCI was of the view that the investigation did not discover material that could persuasively establish indulgence into any anticompetitive conduct covered under the provisions of the Act but it frowned upon 'KCDA', 'Dalmia' and 'Ramco' for its common appeal to dealers to not to sell cement below the invoice price. CCI concluded that no case of contravention of Section 3(3) r/w Section 3(1) of the Act was made out. Thus, the matter was closed.

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

7. It is contended by learned counsel appearing on behalf of the Appellants that the main controversy involved at the bottom of the informations/complaints has escaped the attention of CCI which focused on peripheral issues and failed to consider that KCDA had the pivotal role in insisting upon its consent/NOC as a mandatory requirement for award of cement dealership with non-compliance resulting in choking/ blocking/ reducing supply of cement to the dealers. It is contended that the CCI has erred in evaluating the material on record and failed to appreciate the same in proper perspective. Per contra it is submitted on behalf of the Respondents that these appeals are not maintainable in terms of provisions of Section 53-B r/w Section 53-A of the Act. It is further submitted that the decision of CCI to close the matter is based on application of mind and the material assembled during investigation and findings arrived at by DG have been properly evaluated.

8. Before advertng to the issues raised in these appeals, it would be appropriate to notice the relevant provisions of the Competition Act, 2002. Relevant portion of Section 3 reads as under:-

“3. (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

- (a) directly or indirectly determines purchase or sale prices;*
- (b) limits or controls production, supply, markets, technical development, investment or provision of services;*
- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;*
- (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:*

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation - For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding."

9. On a plain reading of the aforesaid provision it is abundantly clear that Section 3 (1) prohibits agreements, inter-alia in respect of supply of goods between enterprises and persons and their associations which causes or is likely to cause an appreciable adverse effect on competition within India. It lays down that such agreements shall be void. Such agreements between enterprises, persons or their associations including cartels engaged in identical or similar trade of goods or provisions of services which determine purchase or sale price, limit or control, production, supply, markets, shares the market or source of production, etc. by allocating geographical areas of markets or type of goods or services or number of

customers in market in any conceivable manner or directly or indirectly results in bid rigging or collusive bidding is presumed to have an appreciable adverse effect on competition. Joint venture agreements designed to increase efficiency in production, supply, distribution, storage, acquisition or control of goods or provisions of services have been kept out of purview of Sub-section (3) which means that the presumption relating to such agreement shall not be available qua joint venture agreements. The explanation appended to Sub-section (3) provides that an agreement between such enterprises or persons engaged in identical or similar production or trading of goods or provisions of services shall fall within the definition of 'bid rigging', if it has the effect of eliminating or reducing competition or bids or adversely affecting or manipulating the process for bidding. A bare look at the provision engrafted in Section 3 brings it to fore that anti-competitive agreements in respect of certain activities involving production, supply, distribution, etc. which adversely affects competition, at a given time or where there is likelihood of its affecting competition in future are presumed to have an appreciable adverse effect on competition if such agreements or decisions taken in pursuance thereof determine prices, control or limit production, supply, markets or results in sharing market or source of production, etc. or entails bid rigging or collusive bidding. This includes cartels but excludes joint venture agreements. Therefore, it would be imperative for an Informant to demonstrate that there was an agreement between enterprises or persons or their associations engaged in identical or similar business which inter-alia resulted in bid rigging or collusive bidding,

directly or indirectly. Agreement postulates meeting of minds. The Informant shall have to lay evidence, direct or circumstantial, before the CCI that an agreement was entered into between such enterprises, persons or their associations engaged in identical or similar trade in respect of the prohibited activity which resulted in bid rigging or collusive bidding. It is only then that such agreement can be presumed to have an appreciable adverse effect on competition.

10. Section 19 of the Act deals with enquiry into certain agreements and dominant position of enterprise. It provides that the Commission may inquire into any alleged contravention of provisions under Section 3(1) or Section 4(1) on its own motion or on information received from any person, consumer or association or on reference made by Central Government, State Government or a statutory authority. Section 26 deals with the procedure for enquiry under Section 19 and provides as under:

“26. Procedure for inquiry on complaints under section 19.—*(1) On receipt of a complaint or a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information, under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter.*

(2) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(3) Where on receipt of a complaint under clause (a) of sub-section (1) of section 19, the Commission is of the opinion that there exists no prima facie case, it shall dismiss the complaint and may pass such orders as it deems fit, including imposition of costs, if necessary.

(4) The Commission shall forward a copy of the report referred to in sub-section (2) to the parties concerned or to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General relates on a complaint and such report recommends that there is no contravention of any of the provisions of this Act, the complainant shall be given an opportunity to rebut the findings of the Director-General.

(6) If, after hearing the complainant, the Commission agrees with the recommendation of the Director General, it shall dismiss the complaint.

(7) If, after hearing the complainant, the Commission is of the opinion that further inquiry is called for, it shall direct the complainant to proceed with the complaint.

(8) If the report of the Director General relates on a reference made under sub-section (1) and such report recommends that there is no contravention of the provisions of this Act, the Commission shall invite comments of the Central Government or the State Government or the statutory authority, as the case may be, on such report and on receipt of such comments, the Commission shall return the reference if there is no prima facie case or proceed with the reference as a complaint if there is a prima facie case.

(9) If the report of the Director General referred to in sub-section (2) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.”

11. A close scrutiny of the provision engrafted in Section 26 of the Act brings it to fore that in a case like the present one based on information where the Commission is satisfied about existence of a prima facie case, it is

empowered to direct the Director General to cause an investigation to be made in the matter. Where, upon investigation, the Director General recommends that there is no contravention of provisions of the Act, the Commission is required to invite objections or suggestions from the parties concerned in regard to the investigation report and if upon consideration the Commission agrees with the investigation report, it has to close the matter forthwith. However, if upon consideration of such objections or suggestions the commission is of the view that further investigation is called for, it may direct further investigation by DG or direct further inquiry or itself proceed with further inquiry. Section 26(8) provides that if the report of DG recommends that there is contravention of any provision of the Act and Commission is of the view that further inquiry is called for, the Commission is required to inquire into such contravention in accordance with the provisions of the Act. On a cursory look at the provisions contained in Section 26 of the Act, it appears that Sub-section (8) mandating inquiry into contravention reported by Director General comes into play after report of investigation submitted by Director General in terms of Section 26(3) recommends contravention of any of the provisions of the Act and the Commission is of the view that further inquiry is called for. It is manifestly clear that Sub-section (8) of Section 26 bears nexus with Sub-section (3) of Section 26 and operates independent of Sub-section (5), (6) and (7) of Section 26. It envisages a situation where the Director General submits a report on his findings with recommendation that there is contravention of any of the provisions of the Act. The provision embodied in Section 26 of the

Act takes care of different eventualities but one thing is clear that inquiry contemplated under this Section is of quasi-judicial nature and investigation by Director General is only a component of such inquiry. The findings reported by the Director General in its report of investigation are merely recommendatory in nature and cannot be a substitute for judicial findings. The Commission is required to follow the rules of procedure apart from the rules of natural justice, associate the concerned parties including the alleged contraveners whose complicity is alleged with the inquiry and provide opportunity of hearing to the Informant and the affected party in a fair and transparent manner. It is in this backdrop, that the impugned order has to be appreciated.

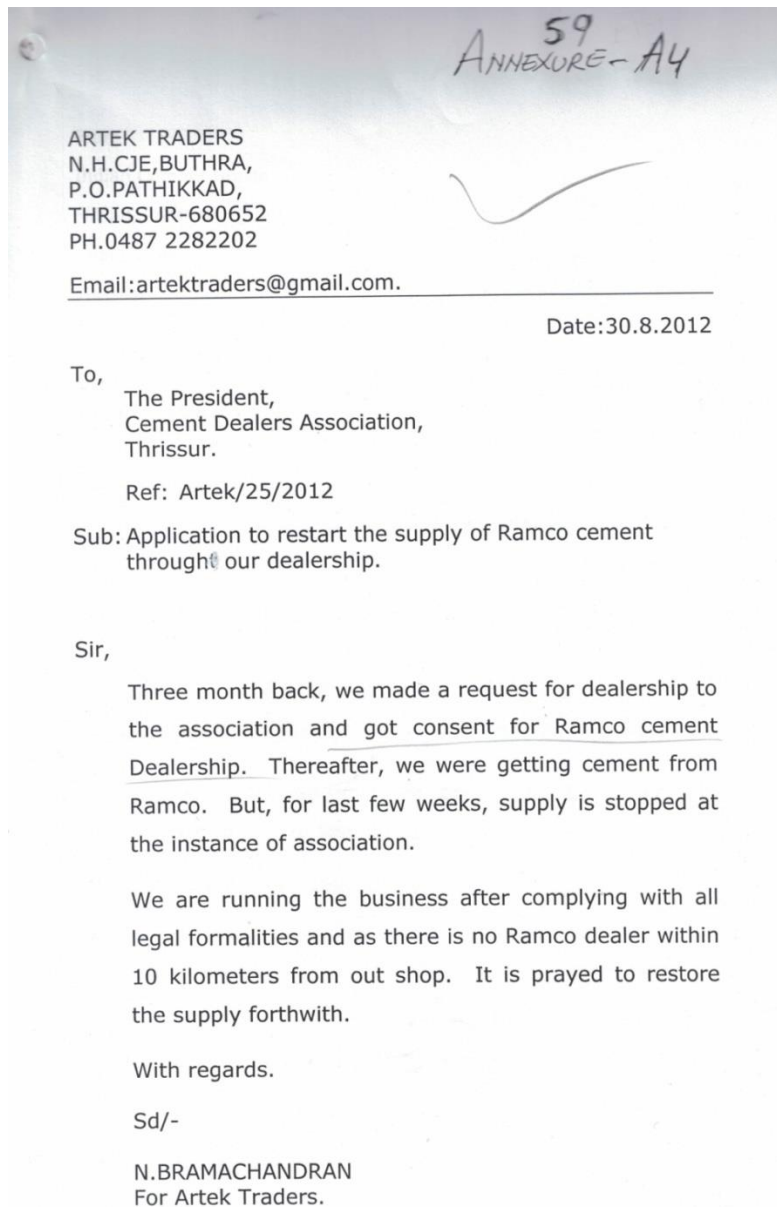
12. Before coming to grips on the merits of the case be it seen that the objection raised by Respondent in regard to maintainability of appeal is not sustainable. Initially, the DG reported no contravention. Since the Commission found some deficiencies in investigation, it directed the DG to examine all relevant issues including the deficiencies pointed out by the Commission. Further investigation was carried out by DG culminating in filing of supplementary investigation report, wherein, DG reiterated its earlier conclusions and observed that KCDA had no role in appointing or terminating the dealers, which was the sole prerogative of cement manufacturers. It also found that KCDA had no role in regard to supply of cement by the cement manufacturers to dealers, which purely depended on market considerations. The supplementary investigation report thus further

reinforced conclusions arrived at in the main investigation report. The Commission invited objections and suggestions from the Appellants, who expressed dissatisfaction with the investigation and filed some additional material with the Commission. This led to passing of a direction by the Commission to DG to cause further investigation in the light of new material. As a result thereof second supplementary investigation report came to be filed by DG, who reported contravention of Section 3 of the Act by 'Ramco', 'KCDA' and 'Dalmia Cements' referable to their conduct in a meeting held on 23rd October, 2013 at Horizon Hotel, Thiruvananthapuram organized by Cements Dealers Association wherein the representatives of the organizers exhorted the cement dealers not to sell cement below the invoice price. However, other allegations including alleged role of KCDA in award of cement dealership were found baseless. It is manifestly clear that while the first supplementary investigation report reiterated the conclusions arrived at in the main investigation report that there was no involvement of KCDA in termination of dealership, second supplementary investigation report, while reiterating the same, however reported contravention of Section 3 of the Act, by 'Ramco', 'KCDA' and 'Dalmia Cements' attributable to their conduct qua a meeting held on 23rd October, 2013 at Horizon Hotel, Thiruvananthapuram organized by Cements Dealers Association wherein the representatives of the organizers exhorted the cement dealers not to sell cement below the invoice price. The Commission, after providing opportunity to the Informants to file objections and according consideration thereto was of the view that there was no evidence to persuasively establish indulgence into any anti-

competitive conduct covered under the provisions of the Act. However, it expressed its displeasure with the conduct of 'KCDA', 'Dalmia' and 'Ramco' in making a common appeal to the dealers. It is abundantly clear that the Commission, while disagreeing with the second supplementary investigation report of the DG in regard to contravention of Section 3 of the Act for lack of substantive evidence, accepted the conclusions arrived at by DG in main as well as supplementary investigation report that complicity of KCDA in award or termination of cement dealership was not disclosed by the material assembled during investigation and there was no substance in the allegations leveled by the Appellants – Informants. Viewed thus it is crystal clear that the Commission closed the matter largely agreeing with the recommendation of DG though disagreeing with its finding regarding contravention of Section 3 noticed hereinabove passing the order within the ambit of Section 26(6) of the Act which is appealable in terms of Section 53-B r/w Section 53-A clause (a) of the Act. Objection raised by the Commission in regard to maintainability of appeal being devoid of merit is accordingly overruled.

13. The next question arising for consideration is whether the Commission was justified in overturning the finding of DG in regard to alleged contravention of Section 3 of the Act. In order to demonstrate that KCDA had a role in award or termination of dealership or that KCDA urged the cement manufacturers to stop supplies to the Appellants or other cement dealers, the Appellants relied upon a communication between one of the cement dealers and the cement dealers association. Annexure A4 at

page 59 of the paper book is an application dated 30th August, 2012 originating from 'Artek Traders' and addressed to 'President, Cement Dealers Association, Thrissur' to restart supply of 'Ramco' Cement through its dealership with allegations therein that the dealer had obtained consent for Ramco dealership months before and had been getting supply of cement from Ramco which had been stopped since a few weeks. The letter reads as under:-



Appellants also relied upon a communication from KCDA State Committee dated 8th May, 2014 forming Annexure A11 at page 77 of the paper book wherein Clause 05 reads as under:-

“05. Dealership Appointment

Any new appointment of stockists to be as per the understanding with KCDA and any complaints to you in this from district committee on the eligible cases may be referred to state committee for smooth operations.”

Clause 05 of Annexure A11 provides that any new appointment of stockists/dealers shall be as per understanding with KCDA. Normally, grant of dealership or appointment of stockists should rest exclusively with the cement manufacturing company. Merely because the cement manufacturer has an understanding with the Cement Dealers Association in regard to grant of dealership or appointment of stockists does not imply that a role is assigned to KCDA in appointment of stockists/dealers. ‘Understanding with KCDA’ does not necessarily speak of an agreement between KCDA and the cement manufacturers. It may be for regulating even and equitable distribution besides ensuring regular supplies at fair and reasonable prices to protect the interests of consumers. The allegations emanating from the Appellants /Informants in regard to termination of

dealership and stoppage of supplies to dealers have been inquired into by the Commission and on the basis of available evidence it has been found to be attributable to reasons peculiar to the dealer/ stockists. CCI appears to have considered these documents to arrive at a finding that there was no meeting of minds between KCDA and the cement manufacturers in regard to grant or termination of dealership. No fault can be found with the conclusions drawn by the Commission on consideration of the available material, moreso as the investigation found that there were several cement dealers in Kerala who were not members of KCDA.

14. It is a matter of record that the investigation ordered by the Commission qua the allegations in the Informations was followed by two supplementary investigations. The primary investigation report followed by further investigation reporting no contravention came to be sharply criticized by the Informants for failing to appreciate the material placed before DG in a proper manner. They also placed additional material before the Commission. This led to a direction by the Commission to cause further investigation to be conducted by DG. However, the second supplementary investigation report implicated 'Ramco', 'KCDA' and 'Dalmia Cements' for activities in contravention of Section 3 of the Act, primarily on the basis of their conduct during a meeting held on 23rd October, 2013 at Horizon Hotel, Thiruvananthpuram. The Commission invited objections and suggestions from the concerned parties and upon consideration passed the impugned order which has been assailed in this batch of appeals. It appears that the

Commission, in arriving at the conclusion that no case of contravention of Section 3(3) r/w Section 3(1) of the Act was made out was largely influenced by the fact that the investigation reports consistently concluded that there was no material to attribute any role to KCDA in award or termination of dealership.

15. As regards price fixation be it seen that the second supplementary investigation report found evidence of cartel among 'Ramco', 'Dalmia' and 'KCDA'. The evidence in this regard is reportedly in the shape of statements of representatives of the trio to cement dealers exhorting them to desist from selling cement below the invoice price. It is a matter of common knowledge that the invoice price ordinarily rests upon the well recognized price determination system which has no direct and proximate nexus with the dealers or their association. The Commission has noted that there are a number of cement brands and thousands of dealers across Kerala and in view of the same cartelization of only two cement manufacturers with the dealers association for fixing the sale price would be repugnant to common sense. The Commission also noted that 'Ramco' has been suggesting its dealers to desist sales below the invoice price as the practice of issuing credit notes lead to dealers being forced to pay the VAT on an amount on which 'Ramco' had already paid VAT. It also noted that 'Ramco' has stopped issuing credit notes to avoid losses of dealers arising out of dealer's sales below the invoice price. Commission observed that sale of cement by dealer below invoice price would incur loss to the dealer. Therefore, any

exhortation to refrain from loss making sales cannot be construed as a price fixation agreement. This cannot be explained on any hypothesis other than the one that the manufacturer warned the dealers and their association of the disastrous consequences of loss making sales with a clear message that the manufacturer would not compensate the dealer for the loss caused on account of sales below the invoice price. The instance with reference to the meeting in a hotel can by no stretch of imagination be construed as a decision by KCDA to restrain competition among dealers, moreso as the investigation clearly pointed out that during the last quarter of 2013 price of Ramco cement varied from dealer to dealer. Moreover, a manufacturer may ask its dealers to fix price of the product in a manner that obviates double taxation on the same amount. Viewed thus, an isolated instance of merely two manufacturers out of a large number of manufacturers of a product withdrawing post sale discounts would not necessarily be a proof of an anti-competitive agreement, moreso, as the rationale behind the same as noticed above has been explained. While it is true that the aforesaid exhortation on the part of KCDA jointly with the two odd cement manufacturers to dealers would impinge on the fair concept of competition, the same would not fall within the mischief of Section 3(3) r/w Section 3(1) of the Competition Act.

16. For the foregoing reasons, we are of the considered opinion that the impugned order does not suffer from any legal infirmity and the conclusions drawn on evaluation of material are not erroneous. There is no merit in

these appeals. We accordingly dismiss the appeals. There shall be no order as to costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

16th April, 2019

AM