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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 25.02.2020

+ **W.P.(C) 1714/2020 & CM Nos. 5916/2020 & 5917/2020**

NATIONAL ENGINEERING INDUSTRIES LIMITED

..... Petitioner

Through: Mr.Vaibhav Gaggar, Mr.Nitish
Sharma, Mr.Nilesh Deep,
Mr.Syed Firdaus Ali, Mr.Ishan
Arora, Advs.

versus

COMPETITION COMMISSION OF INDIA & ANR

..... Respondents

Through: Mr.Prashanto C. Sen, Sr. Adv.
with Ms.Aakanksha Kaul,
Mr.Shivank Pratap Singh,
Mr.Prabudh Singh, Advs. with
Mr.Ved Prakash Mishra,
Ms.Sanskriti Jain &
Mr.Saurabh for CCI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. With the consent of the parties, the petition is taken up for final disposal at the present stage itself.
2. This petition has been filed challenging the Impugned Orders dated 21.02.2019, 29.08.2019 and 28.11.2019 passed by the respondent no. 1.

3. By the Impugned Order dated 21.02.2019, the respondent no. 1 was pleased to order further investigation on the *Suo Moto* Case No. 07(2) of 2014 alleging cartelisation in the supply of Bearings (Automotive and Industrial) to the Original Equipment Manufacturers (OEMs). By the Impugned Order dated 29.08.2019, the respondent no. 1 issued notice under Section 48 of the Competition Act, 2002 ('Act') *inter alia* against the petitioner purportedly based on the Reports submitted by the Director General, directing the petitioner to furnish their financial statements for the Financial Years 2009-2010 till 2011-2012.

4. By the Impugned Order dated 28.11.2019, the respondent no. 1 was pleased to dismiss the application of the petitioner seeking recall/review of its Show Cause Notice dated 29.08.2019.

5. The submission of the learned counsel for the petitioner is that in the Main Investigation Report dated 21.06.2019 of the DG as also in the Supplementary Report dated 16.08.2019, there was no adverse finding against the petitioner. Though the respondent no. 1 in its notice dated 29.08.2019 records that the Director General in its Reports has *inter alia* identified the petitioner to be liable under Section 48 of the Act, a bare reading of the Reports does not substantiate any such finding. It was for this reason that the petitioner filed an application seeking recall of the said notice. While dismissing the application vide Impugned Order dated 28.11.2019, the respondent no. 1 placed reliance on paragraph 5.3.2 of the Supplementary Report

of the DG to support its conclusion that there was a finding of contravention of the provisions of the Act, even against the petitioner.

6. Paragraph 5.3.2 of the Supplementary Report of the DG is reproduced hereinbelow:-

“NTN has further stated at that time (2006-2007) NTN had technical collaboration relationship with National Engineering Industries Ltd. (“NEI”) located in India. In September 2007 and October 2007, NTN submitted its quotation assuming that NTN would supply the bearings produced in India by NEI to the Nissan factory in India. As a result, in December 2007 Nissan decided to purchase from NTN the products manufactured by NEI for its production in India.”

7. A reading of the above extract clearly shows that the same does not, in any manner hold the petitioner to be guilty of violating any of the provisions of the Act. It merely records that the petitioner has a relationship with NTN Corporation, Japan (‘NTN’).

8. In view of the above, without any further material before respondent no. 1, even the *prima facie* conclusion could not have been reached by the respondent no. 1 that the petitioner has violated the provisions of the Act or is liable to be proceeded under Section 48 of the Act.

9. This Court vide Judgment dated 27.04.2015 in LPA 733/2014 titled ***Google Inc. & Ors. vs. Competition Commission of India & Anr.***, observed that even at the stage of ordering investigation under

Section 26(1) of the Act, the CCI can order/direct investigation only if it forms a *prima facie* opinion of violation of provisions of the Act having been committed. Where the *prima facie* opinion, though purportedly formed and expressed, is palpably unsustainable, the remedy of Article 226 would definitely be available in such cases.

10. This Court vide its Judgment dated 30.03.2016 in WP (C) 464/2014 titled *Telefonaktiebolaget LM Ericsson (Publ) vs. Competition Commission of India and Another*, further observed that commencement of investigation itself may cause prejudice to a party.

11. In the present case, it is clearly evident that the notice has been issued by the respondent no. 1 without properly considering the Reports of the Director General.

12. The learned senior counsel for the respondent no. 1 has also been unable to show any observation in the said Reports which can be called adverse to the petitioner or having found any violation of the Act by the petitioner.

13. In view of the above, the Impugned Notice/Order dated 29.08.2019 and 28.11.2019 issued against the petitioner are set aside, leaving it open to the respondent no. 1, if so advised, to act in accordance with law against the petitioner.

14. There shall be no order as to cost.

NAVIN CHAWLA, J

FEBRUARY 25, 2020/rv