

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Review Application (AT) No. 03 of 2017

IN

TA(AT)(Competition) No. 31 of 2017
(Old Appeal No. 56/2016)

IN THE MATTER OF:

Competition Commission of India

.. Appellant

Vs.

**The Karnataka Chemist &
Druggists Association & Ors.**

.. Respondents

Present:

**For Appellant: Mr. Manish Vashist, Mr. Manish Palilwal and Mr.
Manashwy Jha Advocates**

For Respondents: Mr. Nakul Mohta, Advocate

ORDER

24.01.2018: This Review Application has been preferred by Competition Commission of India (hereinafter referred to as 'Commission') under Section 53O(2)(f) of the Competition Act against order and judgment dated 20.09.2017 passed by this Appellate Tribunal in TA(AT) (Competition) No. 31/2017. The aforesaid judgment was passed in view of a decision of COMPAT against the same very impugned order dated 28.07.2016 passed by the Commission, the relevant portion of which reads as under:

.....

"6. Learned Counsel for the parties brought to our notice that the same very impugned order dated 28th July, 2016 passed by the Commission in Case No. 71 of 2013 was challenged by M/s Lupin Limited and two others before the COMPAT in Appeal No. 40 of

2016. The COMPAT by the judgment dated 7th December, 2016, allowed the appeal and set aside the impugned order dated 28th July, 2016. The opening paragraph of the judgment of COMPAT aforesaid reads as follows:

“This appeal filed against order dated 28.07.2016 passed by the Competition Commission of India (for short, ‘the Commission’) in Case No. 71 of 2913 is illustrative of how the appellants have become victim of rivalry between different factions of Karnataka Chemists and Druggists Association (Respondent No. 3) and they have been penalized by the Commission under Section 27 of the Competition Act, 2002 (for short, ‘the Act’) on the premise that there was an anti-competitive arrangement/ understanding between Appellant No. 1, M/s Lupin Ltd. and Respondent No. 3 in violation of Section 3(1) of the Act.”

The aforesaid observation has also been reflected in the final decision of the COMPAT.

7. *In view of the aforesaid development, as the impugned order dated 28th July, 2016 passed by the Commission in Case No. 71 of 2013 has already been set aside as a whole by the then COMPAT, we hold that the present appeal is also covered by the decision aforesaid. The appellants who were ‘Opposite Parties’ before the Commission and the ‘Respondents’, who were also parties before the COMPAT, will be governed by the decision of the COMPAT.*

8. *It is informed that the aggrieved persons have moved before the Hon’ble Supreme Court in appeal. If that be so, we are of the view that the appellants and respondents both sides will be governed by the decision of the Hon’ble Supreme Court, as may be rendered. No further decision is required to be rendered in this appeal.”*

....

Learned Counsel appearing on behalf of the Commission submitted that by judgment dated 28th July, 2017 the Commission held that there was anti-competitive arrangement/understanding between M/s Lupin Ltd and Karnataka Chemists & Druggists Association. The Commission also observed that there was an anti-competitive arrangement/understanding between M/s Lupin Ltd and Karnataka Chemists & Druggists Association and some other parties. This Appellate Tribunal by judgment under review dated 20.09.2017 though noticed the finding of the COMPAT that anti-competitive arrangement/understanding between M/s Lupin Ltd and another party has been set aside, it failed to notice that there was anti-competitive arrangement/understanding between 'M/s Lupin Ltd and Karnataka Chemists & Druggists Association' and some others.

We have heard learned Counsel appearing on behalf of the Commission and Counsel appearing on behalf of Karnataka Chemists & Druggists Association.

From the order dated 28.07.2016 passed by the Commission in case No. 71/2013, which was under challenge, it is clear that the Commission on perusal of the records has come to a definite conclusion that there was anti-competitive arrangement/understanding between M/s Lupin Ltd and Karnataka Chemists & Druggists Association. While holding so, the Commission further held that one Mr. K.E. Prakash, President - Karnataka Chemists & Druggists Association was also actively involved in anti-competitive conduct carried by Karnataka Chemists & Druggists Association. As admittedly, finding of the Commission with regard

to anti-competitive agreement was reached between M/s Lupin Ltd and Karnataka Chemists & Druggists Association has been held to be incorrect by the COMPAT, this Appellate Tribunal held that the appeal preferred by 'Karnataka Chemists & Druggists Association' is also covered by the decision of COMPAT. Rest of the parties being erstwhile president of Karnataka Chemists & Druggists Association and M/s Lupin Ltd, the question of anti-competitive practices in absence of curtail between M/s Lupin Ltd and the 'Karnataka Chemists & Druggists Association' cannot be accepted.

Further in the present case, as we find there is no error apparent on the face of the records and that no new fact has been brought to our notice, we hold that the review application is not maintainable.

This apart, this Appellate Tribunal having already observed that the Appellant and Respondents will be covered by the decision of the Hon'ble Supreme Court, as may be rendered by Hon'ble Supreme Court, no case is made out to review the impugned judgment dated 20.09.2017.

For the reasons aforesaid, review application is dismissed. However, in the facts and circumstances, there shall be no order to cost.

(Justice S. J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

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