

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Competition Appeal (AT) No. 50 of 2018

IN THE MATTER OF:

AKMN Cylinders (P) Ltd. & Anr.

...Appellants

Versus

Competition Commission of India & Ors.

...Respondents

Present:

For Appellant : **Mr. Krishna Kumar, Advocate**

For 1st Respondent: **Mr. Vaibhav Gaggar, Ms. Neha Mishra, Ms. Aayushi
Sharma, Mr. Adarsh Chamoli, Mr. Soham Goswami,
Advocates**

Mr. Tushar Gupta, Advocate

ORDER

20.08.2018 The Commission in exercise of powers conferred under Section 43 of the Competition Act, 2002 initiated *suo moto* Case No. 1 of 2014. By order dated 2nd January, 2014 passed under Section 26(1) of the Competition Act, Competition Commission directed the Director General to cause action and submit the investigation report. On the ground that the appellant had not appeared in spite of repeated notices to him, the Commission *prima facie* observed that there is a non-compliance of the direction of the Director General by the appellant. For the said reason in the *suo-moto* proceeding, it imposed cost of Rupees Ten lakhs on the appellant by the impugned order dated 21st June, 2017.

On 20th July, 2018, when the matter was taken up this Appellate Tribunal passed the following order :

“To find out the bonafide on the part of the appellant and to consider whether the penalty of Rs. 10 lakhs should be reduced to certain extent; we give one opportunity to appellant to appear through its Director/Representative before the Director General of Competition Commission of India. If he appears on or before 16th August 2018, and undertakes to cooperate with the Director General, the appellant will report on the next date.

In the meantime, let notice be issued to Competition Commission of India along with copy of this order. Mr. Navdeep Singh Suhag, Deputy Director accepts notice. Counsel for the appellant will serve a copy of the paper book to him during the course of the day. No further notice need be issued. He may engage a counsel to assist the Court.

Place the case ‘for orders’ on 17th August 2018.

In the meantime, no recovery be made from the appellant pursuant to the impugned order dated 1st March 2018.”

Learned counsel appearing on behalf of the appellant submitted that in compliance of the order of this Appellate Tribunal, the appellant had appeared

before the Director General on 13th August, 2018 at 11.00 A.M. and tendered his apology for not appearing on earlier occasion and reiterated that he has already tendered affidavit dated 6th March, 2014 giving all the details.

Having heard the learned counsel for the parties and taking into consideration that the appellant had already filed the affidavit giving all the details and no further material was required to be produced by the appellant, as nothing has been sought for by the Director General on 13th August, 2018 when the appellant appeared and that the appellant has already tendered his apology for not appearing on the earlier occasion and the appellant is 73 years old, we take lenient view and set aside the order of costs of Rupees Ten Lakhs imposed by the Commission on the appellant. However, the appellant is directed to appear before the DG as and when he will be called for, failing which it will be open to the Commission to pass appropriate orders.

The appeal stands disposed of with the aforesaid observations and directions to the appellant.

[Justice S.J. Mukhopadhaya]
Chairperson

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

ns/uk