

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Competition Appeal (AT) No. 17 of 2019

[Arising out of Order dated 9th November, 2018 passed by the Competition Commission of India in Case No. 32 of 2018]

IN THE MATTER OF:

Ashokbhai Manilal Mehta,

1042, Jivan Pole,
Sankadisheri, Raipur,
Ahmedabad,
Gujarat – 380 001.

...Appellant

Versus

Competition Commission of India,

9th Floor, Office Block – 1,
Kidwai Nagar (East), Opposite Ring Road,
New Delhi – 110 023.

...Respondent

Present:

For Appellant : **Mr. K. K. Sharma and Ms. Amrita Singh, Advocates**

For Respondent: **Mr. Jeevesh Mehta, Advocate**
 Dr. Navdeep Singh, Deputy Director

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by the Appellant – ‘Ashokbhai Manilal Mehta’ (Informant) under Section 53B of the Competition Act, 2002 (for short, ‘the **Act**’) against the order dated 9th November, 2018 passed by the ‘Competition Commission of India’ (hereinafter referred to as the

'Commission') under Section 26(1) of the Act in 'Case No. 32 of 2018'. By the same impugned order the application for interim relief sought for under Section 33 of the Act has been rejected.

2. The Respondent (Commission) had taken a plea that the order having passed under Section 26(1) the appeal under Section 53B is not maintainable.

3. According to learned counsel for the Appellant, the impugned order also amounts to an order under Section 33 of the Act therefore the appeal under Section 53B is maintainable.

4. Therefore, the question arises for consideration in this appeal is whether the appeal under Section 53B is maintainable or not.

5. The brief facts of the case are that the Appellant (hereinafter referred to as the **'Informant'**) filed an information under Section 19(1)(a) of the Act alleging contravention of Section 3 and Section 4 of the Act by leading presses/printers, which, according to the Informant, entered into a cartel in order to place bids at a pre-determined low level prices, during the e-bidding process in Tender No. 01/2018-19 i.e. - "Empanelment for job work of offset printing of textbooks" (hereinafter referred to as the 'Tender') published on 16th April, 2018 by the 'Gujarat State Board of School Text Books', Gandhinagar (for short, **'GSBSTB'**). The Informant alleged cartelization amongst the following presses/printers, which are mentioned below:

Dharam Enterprise	OP-1
Gajjar Offset	OP-2
Horizon Printers	OP-3
Jagdish Offset	OP-4
Jayscan Graphic	OP-5
Kalptaru Offset	OP-6

Mahalaxmi Mudranalay	OP-7
Mangal Offset	OP-8
Mirror Image Pvt. Ltd.	OP-9
Neel Printers	OP-10
Shree R.K. Printers And Binders	OP-11
Reliable Art Printery (Ahmedabad) Pvt. Ltd.	OP-12
Shree Neminath Printers	OP-13
Shree Shivam Corporation	OP-14
Shreedhar Printers Pvt. Ltd.	OP-15
Shreedhar Webprint	OP-16
Sonal Offset	OP-17
Tirth Graphic	OP-18
Vardayani Offset	OP-19
Vijay Offset	OP-20
Yash Printers	OP-21

6. The Informant while making various allegations also provided different information including 'bid rigging' and 'bidding percentage' in tender for proposal of empanelment for job work of Offset Printing of Textbooks. The application was filed for impleadment of 'Gujarat State Board of School Text Books'. The Informant also prayed for interim relief under Section 33 of the Act though no separate application has been filed.

7. The Informant appeared in person before the Commission and after hearing the Informant, the Commission directed the Informant to file additional information in support of the submissions. The 'Gujarat State Board of School Text Books' was also directed by the Commission for a preliminary conference in the matter.

8. On the basis of documents filed by the 'GSBSTB' along with written submissions dated 26th October, 2018, the Commission on careful

consideration and perusing the allegations in the light of the submissions made on behalf of the 'Informant' and 'GSBSTB' (the procurer) observed :

“30. *The Commission observes that the matter under examination is the conduct of the OPs in the Impugned Tender. The Commission notes that the provisions of Section 3(3)(d) of the Act relate to such conduct of the parties, in the bid process, which has the effect of eliminating or reducing ‘competition for bids or adversely affecting or manipulating the process of bidding’ as provided in Explanation to Section 3(3) (d). In simple terms, the point of inquiry under Section 3(3)(d) is whether the price (L1) is the result of natural competition of bids or not. Thus, the Commission is of the view that it is the collusive fixation of prices which comes under the purview of Section 3(3) (d) of the Act, as this can adversely affect competition of bids, which is apparent in the present matter.*

31 *With respect to the submissions made by GSBSTB, the Commission also notes **that a prayer for an interim relief has been made under Section 33 of the Act against GSBSTB. However, no separate***

application has been filed to this effect. It is prayed by the informant that the tender floated by GSBSTB ought to be either stayed or cancelled. The Commission observes that GSBSTB, in its submissions, mentioned that the contracts for work have since been awarded and the process of printing under the said tender has already commenced as the books are needed to be supplied for the ensuing academic session. Therefore, the Commission is of the view that at this stage, if any interim relief were granted, it would cause an irreparable damage to the students due to stoppage of printing work and non-availability of textbooks for the next academic session and would have a cascading effect. Further, the Commission observes that if the allegations of the informant are established at a later stage, pursuant to any finding of the Commission in this regard, the informant is not remediless and can seek appropriate damages, which are quantifiable by it. **In these circumstances, the Commission deems it fit that the interim relief as prayed by the Informant cannot be granted to the Informant**

and therefore, the same is rejected by the Commission. (emphasis added)

32. *In view of the above and considering the totality of facts and circumstances, the Commission is of a prima facie view that the present case merits an investigation into contravention of the provisions of Section 3(3) (d) read with Section 3(1) of the Act, by the OPs.*
33. *Accordingly, the Director General (hereinafter, the “DG”) is directed to cause an investigation into the matter. The DG is directed to complete the investigation within a period of 60 days of the receipt of this order and submit his report.*
34. *The Commission observes that supporting information and documents have been filed by the Informant in terms of amended Information. It is, therefore, directed that the amended Information (alongwith the annexed documents) and the documents submitted by GSBSTB, also be forwarded alongwith the original Information to the DG for the purpose of his investigation. Further, the Informant, vide its letter dated 23.08.2018, had requested for impleading GSBSTB as an Opposite*

Party in the present case. The Commission is of the view that the inputs of GSBSTB are critical for investigating the issues in the matter and need to be duly taken during the investigation.

35. *It is made clear that, if during the course of the investigation, the DG comes across anti-competitive conduct of any other entity/person in addition to those mentioned in the Information, the DG shall be at liberty to investigate the same. Also, the DG is directed to conduct a detailed investigation without restricting and confining to the duration mentioned in the information.*
36. *The DG is also directed to investigate the role (if any) of the persons/office bearers who were in charge of, and were responsible for conduct of businesses of the OPs within the meaning of Section 48 of the Act, at the time the contravention was committed, after giving due opportunity of hearing to such persons.*
37. *Nothing stated in this order shall tantamount to final expression of opinion on merits of the case and the DG shall conduct the investigation without being swayed*

in any manner, whatsoever by the observations made herein.”

9. From bare reading of the aforesaid impugned order, it is clear that the order has been passed under Section 26(1) of the Act. In addition the Commission noticed the prayer for an interim relief as sought for by Informant under Section 33 against the ‘GSBSTB’, and held that if any interim relief granted, it would cause irreparable damage to the students due to stoppage of printing work and non-availability of the textbooks for the next academic session which would have a cascading effect. Thereby prayer for interim relief rejected.

10. Section 53A deals with establishment of Appellate Tribunal whereby the Central Government has been asked to notify the Appellate Tribunal for specific purpose, as quoted below :

“53A Establishment of Appellate Tribunal. —

(1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal,—

(a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section

43A, section 44, section 45 or section 46 of this Act;

(b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.

(2) The Headquarter of the Appellate Tribunal shall be at such place as the Central Government may, by notification, specify.”

Section 53B relates to appeal before the Appellate Tribunal, which reads as follows:

“53B. (1) *The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.*

(2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central

Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

- (3) *On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.*
- (4) *The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.*
- (5) *The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.”*

11. Against the order passed under Section 26(1) of the Act, the appeal under Section 53B is not maintainable. However, such part of the order is

not under challenge. With regard to the interim relief sought under Section 33, the prayer for interim relief having been rejected, we hold that the appeal to the extent of interim relief is maintainable under Section 53B.

12. We have heard the learned counsel for the parties on the question of passing order on interim relief. However, taking into consideration the fact that the matter relates to printing of text books of the academic session, we are of the view that the Commission rightly observed that if the interim relief be granted, it would cause irreparable damage to the students.

13. For the reasons aforesaid, we are not inclined to interfere with the part of the impugned order at paragraph 31 as quoted above. The appeals is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

New Delhi
23rd April, 2019

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