

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Competition Appeal (AT) No. 24 of 2020**

**IN THE MATTER OF:**

- 1. Sundaram Brake Linings Ltd.  
Padi, Chennai – 600050** **...Appellant No. 1**
  
- 2. Mr. S. Balaji  
Sundaram Brake Linings Ltd.  
Padi, Chennai – 600050** **...Appellant No. 2**
  
- 3. Mr. P. Bose  
Sundaram Brake Linings Ltd.  
Padi, Chennai – 600050** **...Appellant No. 3.**

**Versus**

- 1. Competition Commission of India  
9<sup>th</sup> Floor, Office, Opposite Ring Road  
Block – 1, East Kidwai Nagar,  
New Delhi – 110023** **...Respondent No. 1**
  
- 2. Chief Materials Manager,  
South Eastern Railway  
5<sup>th</sup> Floor, NAB, 11, Garden Reach Road  
Kolkata, West Bengal – 700043** **... Respondent No. 2.**

**Present:**

**For Appellant: Mr. Aditya Verma and Mr. Shrey Patnaik,  
Advocates.**

**For Respondent: Ms. Shama Nargis, Deputy Director CCI**

**ORDER**  
**(Virtual Mode)**

**23.11.2020** Heard Learned Counsel for the Appellants. The present Appeal is filed under Section 53 B of Competition Act against the order passed by Competition Commission of India/Respondent No. 1 in reference Case No. 3 (and others) of 2016 dated 08<sup>th</sup> October, 2020. The Appellants claim that the

Application for rectification under Section 38 of the Act was erroneously dismissed by an almost non-seeking order.

2. The Learned Counsel states that there were orders passed in reference Case No. 3 (and others) of 2016 on 10<sup>th</sup> July, 2020 (Annexure A3) against which the Appellants have filed Competition Appeal (AT) No. 19 of 2020, Sundaram Brake Linings Ltd Vs. Chief Material Manager and in which Notice has been issued on 19<sup>th</sup> October, 2020, (copy of which order is at Annexure A7 page 204).

3. The Learned Counsel for the Appellant states that before the Appeal came up the Application dated 21<sup>st</sup> September, 2020 was filed before CCI under Section 38 (2) (b) of the Act and amendment for rectification of the Order dated 10<sup>th</sup> July, 2020 was sought seeking deletion of the sentence “He had also attended a meeting with the other opposite parties in March, 2017 at Hotel Piccadelly, Lucknow” The Learned Counsel for the Appellant states that this sentence is found in Paragraph 47 (16) of the Order dated 10<sup>th</sup> July, 2020. Another Amendment was sought in Paragraph 33 (i) of that Order. It is stated that the Appellant had sought amendment and rectification with regard to the said sentences but the Ld. CCI erroneously dismissed the Application stating that considering record the Commission was satisfied that there was no mistake apparent from record.

4. We have seen Section 38 of the Competition Act, 2020 with regard to rectification of Order if there is “mistake apparent from the record”. It appears to us a settled position of legal jurisprudence that whenever an Appeal is filed and pending against a particular Order, then the Courts/Authority which passed the Original Order refrain from making changes in the Order which is already under Challenge in the Appeal.

5. Instance is Section 420 (2) of the Companies Act, 2013 which reads as under:

*“The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:*

*Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.”*

6. When the Appeal is pending, the Appellant would be at complete liberty to point out mistake or error from the record to the Appellate Court. When the Appeal is already pending, we would not hold that the Impugned Order dismissing the Application under Section 38 of the Competition Act should be interfered with.

7. For such reasons, we do not entertain the Appeal and dispose of the same with liberty to the Appellants to raise the issue that there is mistake in Order impugned in the Appeal, before Appellate Court.

Disposed accordingly. No costs.

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

**[V.P. Singh]**  
**Member (Technical)**

Basant B./nn/