

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**

**PRINCIPAL BENCH**

**NEW DELHI**

**Competition Appeal (AT) No. 86 of 2018**

**IN THE MATTER OF:**

**Balrampur Chini Mills Ltd.**

**...Appellant**

**Versus**

**CCI & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Gautam Shahi, Mr. Narinder Kr. Verma, Advocates**

**For Respondents: Mr. Udayan Jain, Mr. Raj Surana, Advocates for R-1/CCI  
Mr. Sridhar Potaraju, Ms. Ankita Sharma, Mr. Aayush,  
Mr. Rajat Srivastava, Ms. Zeba Zoariah, Advocates  
Ms. Shama Nargis, Dy Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 91 of 2018**

**IN THE MATTER OF:**

**Bajaj Hindustan Sugar Ltd.**

**...Appellant**

**Versus**

**Ester India Chemicals Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Sanjeev Kr. Singh, Mr. Devansh Shekhar, Advocates.**

**For Respondent: Mr. Sanyat Lodha, Ms. Hima Bhardwaj, Advocates for  
CCI/R-1.  
Ms. Shama Nargis, Dy Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 92 of 2018**

**IN THE MATTER OF:**

**Mawana Sugars Ltd.**

**...Appellant**

**Versus**

**Competition Commission of India & Anr.**

**...Respondents**

**Present:**

**For Appellant: Mr. P.K. Bhalla, Mr. Gagan, Advocates**

**For Respondent: Ms. Shama Nargis, Dy Director (Law) CCI.**

**Mr. Udayan Jain, Mr. Raj Surana, Advocates for R-1/CCI**

**With**

**Competition Appeal (AT) No. 93 & 98 of 2018**

**IN THE MATTER OF:**

**Dalmia Bharat Sugar & Industries Ltd.**

**...Appellant**

**Versus**

**Competition Commission of India & Anr.**

**...Respondents**

**Present:**

**For Appellant: Mr. M.M. Sharma, Mr. Sudhanshu Prakash Singh, Advocates.**

**For Respondents: Mr. Sanyat Lodha, Ms. Hima Bhardwaj, Advocates for CCI/R-1**

**Ms. Shama Nargis, Dy Director (Law) CCI.**

**Ms. Srishti Vashisht, RA, CCI**

**With**

**Competition Appeal (AT) No. 94 of 2018**

**IN THE MATTER OF:**

**Uttam Sugar Mills Ltd.**

**...Appellant**

**Versus**

**Competition Commission of India & Ors.**

**...Respondents**

**Present:**

*Competition Appeal (AT) Nos. 86,91,92,93&98,94,97,99,100,101,102,103,104 of 2018*

*Competition Appeal (AT) Nos. 03,05,06,07,08,10 of 2019*

**For Appellant: Mr Sanjeev Kumar Singh, Mr. Devansh Shekhar, Advocates.**

**For Respondent: Mr. Sanyat Lodha, Ms. Hima Bhardwaj, Advocates for CCI/R-1.  
Ms. Shama Nargis, Dy Director (Law) CCI**

**With**

**Competition Appeal (AT) No. 97 of 2018**

**IN THE MATTER OF:**

**Triveni Engineering & Industries Ltd. ...Appellant**

**Versus**

**Ester India Chemicals Ltd. & Anr. ...Respondents**

**Present:**

**For Appellant: Mr. Rishi Agarwal, Mr. Pranjit Bhattacharya, Ms. Tarini Khurana, Advocates**

**For Respondent: Ms. Shama Nargis, Dy Director (Law) CCI.  
Mr. Udayan Jain, Mr. Raj Surana, Advocates for R-1/CCI**

**With**

**Competition Appeal (AT) No. 99 of 2018**

**IN THE MATTER OF:**

**The Andhra Sugars Ltd. ...Appellant**

**Versus**

**Competition Commission of India & Ors. ...Respondents**

**Present:**

**For Appellant: Mr. Avdhesh Bairwa, Mr. Aryan Srivastava, Advocates.**

**For Respondent: Mr. Udayan Jain, Mr. Raj Surana, Advocates for CCI/R-1  
Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 100 of 2018**

**IN THE MATTER OF:**

**The Avadh Sugar & Energy Ltd. ...Appellant**

**Versus**

**Competition Commission of India & Ors. ...Respondents**

**Present:**

**For Appellant: Mr. Pankaj Bhagat, Mr. Sadre Alam, Mr. Sandip Munian,  
Mr. Ritwik Singh, Advocates.**

**For Respondent: Mr. Sanyat Lodha, Ms. Hima Bhardwaj, Advocates for  
CCI/R-1  
Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 101 of 2018**

**IN THE MATTER OF:**

**Sir Shadi Lal Enterprises ...Appellant**

**Versus**

**Ester India Chemicals Ltd. & Ors. ...Respondents**

**Present:**

**For Appellant:**

**For Respondent: Mr. Sanyat Lodha, Ms. Hima Bhardwaj Advocates for  
CCI/R-1  
Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 102 of 2018**

**IN THE MATTER OF:**

**KM Sugar Mills Ltd. ...Appellant**

**Versus**

**Competition Commission of India & Anr. ...Respondents**

**Present:**

**For Appellant : Mr. Pankaj Bhagat, Mr. Sadre Alam, Mr. Sandip Munian,**

**Mr. Ritwik Singh, Advocates.**  
**For Respondent: Mr. Sanyat Lodha, Ms. Hima Bhardwaj Advocates for CCI/R1.**  
**Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 103 of 2018**

**IN THE MATTER OF:**

**Indian Sugar Mills Association**

**...Appellant**

**Versus**

**Competition Commission of India & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Sridhar Potaraju, Ms. Ankita Sharma, Mr. Aayush, Mr. Rajat Srivastava, Ms. Zeba Zoariah, Advocates.**

**For Respondent: Mr. Sanyat Lodha, Ms. Hima Bhardwaj Advocates for CCI/R1.**  
**Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 104 of 2018**

**IN THE MATTER OF:**

**The Seksaria Biswan Sugar Factory Ltd.**

**...Appellant**

**Versus**

**Competition Commission of India & Anr.**

**...Respondents**

**Present:**

**For Appellant : Mr Pankaj Bhagat, Mr. Sadre Alam, Mr. Sandip Munian, Mr. Ritwik Singh, Advocates.**

**For Respondent: Mr. Udayan Jain, Mr. Raj Surana, Advocates for CCI/R1**  
**Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 03 of 2019**

**IN THE MATTER OF:**

**Simbhaoli Sugar Ltd.**

**...Appellant**

**Versus**

**Competition Commission of India & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Sushil Shukla, Mr. Aman Kumar Thakur, Mr. Kunal Masiwal, Advocates**

**For Respondent: Mr. Udayan Jain, Mr. Raj Surana, Advocates for CCI/R-1  
Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 05 of 2019**

**IN THE MATTER OF:**

**Shree Kamrej Vibhag Sahakari Khand  
Udoyg Mandali Ltd.**

**...Appellant**

**Versus**

**Competition Commission of India & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Ranjit B. Raut, Mr. Bhushan V Mahadik, Advocates**

**For Respondent: Mr. Sanyat Lodha, Ms. Hima Bhardwaj Advocates for CCI/R-1  
Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 06 of 2019**

**IN THE MATTER OF:**

**Sahakari Khand Udoyg Mandal Ltd.**

**...Appellant**

**Versus**

**Competition Commission of India & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Ranjit B. Raut, Mr. Bhushan V Mahadik, Advocates**

**For Respondent: Mr. Sanyat Lodha, Ms. Hima Bhardwaj Advocates for  
CCI/R-1**

**Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 07 of 2019**

**IN THE MATTER OF:**

**Shree Ganesh Khand Udoyg Sahakari  
Mandli Ltd.**

**...Appellant**

**Versus**

**Competition Commission of India & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Ranjit B Raut, Mr. Bhushan V Mahadik, Advocates**

**For Respondent: Mr. Sanyat Lodha, Ms. Hima Bhardwaj Advocates for  
CCI/R-1**

**Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 08 of 2019**

**IN THE MATTER OF:**

**Shree Mahuva Pradesh Sahakari Khand  
Udoyg Mandali Ltd.**

**...Appellant**

**Versus**

**Competition Commission of India & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Ranjit B. Raut, Mr. Bhushan V Mahadik, Advocates**

**For Respondent: Mr. Sanyat Lodha, Ms. Hima Bhardwaj Advocates for  
CCI/R-1**

**Ms. Shama Nargis, Dy. Director (Law) CCI.**

**With**

**Competition Appeal (AT) No. 10 of 2019**

**IN THE MATTER OF:**

**Sri Sarvaraya Sugars Ltd. & Ors.**

**...Appellants**

**Versus**

**Competition Commission of India & Ors.**

**...Respondents**

**Present:**

**For Appellant:**

**For Respondent: Mr. Udayan Jain, Mr. Raj Surana, Advocates for  
CCI/R-1  
Ms. Shama Nargis, Dy. Director (Law) CCI.**

**JUDGMENT**

**(DATED: 10.10.2023)**

**[Per: Dr. Alok Srivastava, Member (Technical)]**

1. The batch of appeals filed under section 53B of the Competition Act, 2002 (in short 'Competition Act') which are captioned above are being considered and disposed of by this common judgment. These appeals have been filed by the Appellants assailing the judgment of the Competition Commission of India (in short "CCI") being aggrieved by the Order dated 18.09.2018 (in short "Impugned Order") passed by the CCI in case nos. 21, 29, 36, 47, 48 and 49 of 2013.



2. The appeals in the batch were being heard together and after completion of pleadings by the parties concerned, this bench started to hear the arguments on the merits of the competition appeals, beginning with arguments in Competition Appeal (AT) No. 91/2018, and Mr. Debal Banerjee, Learned Senior Counsel for Bajaj Hindustan Sugar Ltd. was heard on 11.5.2023 and 12.5.2023 and the matter was listed for hearing in the other connected appeals on 15.5.2023.

2. After Mr Debal Banerjee, Ld. Senior Counsel concluded his arguments on 15.5.2023, Mr. M.M. Sharma, Learned Counsel appearing for Appellants (in Competition Appeal (AT) No. 93/2018 and Competition Appeal (AT) No. 98/2018) made an oral submission regarding a basic shortcoming in the impugned order, which is as follows: “whether the CCI followed the principle of natural justice as required under sub-section (1) of section 36 of the Competition Act, 2002 during hearings in the matter , following the principle of ‘one who hears must decide, and also, whether the CCI was required to grant the parties an opportunity of oral hearing, after the CCI had directed the Director General (“DG”) in its meeting held on 30.10.2017 to conduct further investigation and furnish a report on investigation and analysis in respect of the depots in the State of Maharashtra and the report of DG, which was submitted subsequently as the ‘Supplementary Investigation Report’ and also whether an opportunity for oral hearing was to be provided necessarily to the opposite parties on the issue of quantum of penalty.”

3. This plea was supported by the learned counsels for certain other appellants. In the light of these submissions, and in the interest of fairness and justice, this bench felt it necessary to consider this question first before continuing to hear the appeals on merits, if found necessary at that stage.

4. The order passed by this bench on 15.5.2023 is reproduced below for ready reference:-

*“In the aforesaid batch of appeals hearing has already commenced. In one of the Competition Appeal (AT) No.91/2018. Mr. Dabol Banerjee, learned senior counsel has concluded his arguments on 12.05.2023 and batch of appeals were directed to be listed today (15.5.2023).*

*Mr. M.M. Sharma, learned counsel appearing on behalf of appellant in Competition Appeal (AT) No.93 & 98 of 2018 submitted that the order impugned is liable to be set aside and remitted back to CCI in view of the fact that the CCI had heard the cases by five Members, however, judgement was delivered by only three Members. In such situation it would be necessary to ask Mr. Udayan Jain, learned counsel appearing on behalf of CCI to produce the original record particularly the original order sheet maintained by the CCI to verify whether the contention raised by Mr. Sharma is correct or not.*

*As requested by learned counsel for the parties list this case under the same caption on 1st August, 2023 on top of the list.*

*In the meanwhile, learned counsel for the parties are permitted to file Notes of Written submissions only on aforesaid point alongwith compilation of judgement within three weeks from today and parties may exchange the notes in between them at least one week before the next date of hearing.”*

5. The bench requested the Learned Counsel for CCI to produce the original record maintained by the CCI for perusal and to also examine the contention made by Mr. M.M. Sharma, Learned Counsel. The bench also

decided to hear the parties on the question of compliance to the principle of natural justice in the hearing of the matter by the CCI and the passing of the Impugned Order. The parties were allowed to file the notes of written submissions on the point raised. Subsequently, this bench proceeded to hear the oral arguments of the parties on the issue as to whether the 'principle of natural justice' and 'one who hears must decide' was followed by the CCI in passing the Impugned Order dated 18.9.2018.

6. In pursuance of the above, we heard the arguments advanced by the Learned Counsel Mr. M.M. Sharma for Dalmia Bharat Sugar & Industries Ltd. in (Competition Appeal (AT) No. 93/2018 and Competition Appeal (AT) No.98/2018), Mr. Rajshekhar Rao, Learned Senior Counsel for Appellant in Competition Appeal (AT) No. 86/2018, Mr. Anil Kumar Mishra, Learned Counsel for Appellant in Competition Appeal (AT) No. 101/2018, Mr. Sridhar Potaraju, Learned Counsel for Indian Sugar Mills Association ("ISMA") in Competition Appeal (AT) No.103/2018, Mr. Pankaj Bhagat, Learned Counsel for Appellant in Competition Appeal (AT) No. 100/2018, Competition Appeal (AT) No.102 /2018 and Competition Appeal (AT) No.104/2018, Mr. Avdhesh Bairwa and Mr. Aryan Srivastava, Learned Counsel for Appellant in Competition Appeal (AT) No.99/2018. Thereafter, Mr. Udayan Jain, Counsel for Respondent/CCI in Competition Appeal (AT) No.86/2018, Competition Appeal (AT) No.92/2018, Competition Appeal (AT) No.97/2018, Competition Appeal (AT) No.99/2018, Competition Appeal (AT) No.104/2018, Competition Appeal (AT) No.3/2019, Competition Appeal (AT) No.10/2019 was heard on the same issue and finally Mr. Sanyat Lodha, Learned Counsel for CCI in

Competition Appeal (AT) No.91/2018, Competition Appeal (AT) No.93/2018, Competition Appeal (AT) No.94/2018, Competition Appeal (AT) No.100/2018, Competition Appeal (AT) No.101/2018, Competition Appeal (AT) No.102/2018, Competition Appeal (AT) No. 103/2018, Competition Appeal (AT) No.5/2019, Competition Appeal (AT) No.6/2019, Competition Appeal (AT) No.7/2019 and Competition Appeal (AT) No.8/2019 was heard in reply. Finally, the learned senior counsel/counsels of the Appellants as mentioned above were heard in rejoinder.

7. We are of the view that if the contention of the Appellants regarding non-adherence to the principle of natural justice in the hearings and passing of the Impugned Order is held to be correct, it would render the Impugned Order infirm, and therefore null and void, and it may not then be necessary to hear the case on merits.

8. In brief, the case leading up to these appeals is as follows:-

An order dated 18.9.2018 was passed by the Learned Competition Commission of India under section 27 of the Competition Act, 2002 imposing penalties on some ethanol producers after finding them guilty of allegations of bid-rigging and cartelization, which was done without defining the 'relevant market' and on the basis of sketchy evidence. As a result, the appellants filed appeals under section 53(B) of the competition Act challenging the common order dated 18.9.2018, whereby they have been found guilty in indulging in rigging and cartelization and imposed penalties on the Appellants

individually. The appellants aggrieved by the Impugned Order filed appeals which are now under consideration of this bench.

9. On the issue of adherence to the principle of natural justice in hearing and passing of Impugned Order by the CCI, Mr. M.M. Sharma, Learned Counsel for Appellant started his arguments by submitting that the matter was heard on various occasions by six members of the CCI, but the final judgment was signed and pronounced by only three members, and therefore, the principle of 'one who hears must decide' was not adhered to. Mr. M. M. Sharma has taken us through the composition of the body of CCI members who participated in the hearing of the matter on 19.7.2017, 20.7.2017, 25.7.2017, 2.8.2017 and 22.9.2017 to bring out the fact that six members including Mr. D.K. Sikri (Chairperson), Mr. U.C. Nahta, Member, Mr. S.L. Bunker, Member, Mr. Augustine Peter, Member, Mr. Sudhir Mital, Member and Justice G.P. Mittal, Member participated in oral hearings on 19.7.2017, 20.7.2017, and 25.7.2017, whereafter in the hearings on 2.8.2017 and 22.8.2017, Justice G.P. Mittal did not join in the hearings and only five members heard the oral arguments. He has further submitted that the Impugned order dated 18.9.2018 was signed and pronounced by only three members, namely Mr. Sudhir Mital, Chairperson (at the time), Mr. U.C. Nahta, Member and Mr. Augustine Peter, Member. He has submitted that Mr. S.L. Bunker, Member retired on 31.1.2018, Mr. D.K. Sikri, Chairperson retired on 12.7.2018 and Justice G.P. Mittal retired on 1.9.2018.

10. Mr. M.M. Sharma, Ld. Counsel has brought to our attention the provision in section 36(1) of the Competition Act wherein it is laid down that “the Commission shall be guided by the principles of natural justice and, subject to other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure”. He has also submitted that section 22 of the Competition Act lays down how the meetings of the CCI shall be held and how questions shall be decided by the majority of members present and voting.

11. The Learned Counsel Mr. M.M. Sharma has also referred to CCI(General) Regulations, 2009 (in short “CCI General Regulations”), particularly Regulation 29 (regarding manner of making submissions and arguments of the parties before the Commission), Regulation 31 (regarding Interim Order) and Regulation 32 (regarding Final Order). He has laid special emphasis on Regulation 32, which stipulates that every order of the Commission shall be signed and dated by the members, which may include a dissent note by the dissenting member, if such a situation arises, and also that the Commission, insofar as it is practicable should pass the final order within 21 working days from the date of conclusion of final arguments. He has also submitted that once the CCI, in its meeting held on 30.10.2017, decided to direct the DG to furnish a ‘Supplementary Investigation Report’ with regard to tender process and the analysis for the State of Maharashtra, and when such a report was submitted and considered by the CCI in its meeting held on 7.6.2018, the CCI should have provided an opportunity for oral hearing to the parties, and since such opportunity was not provided to

the parties, it has resulted in denial of natural justice to the Appellants, which made the order so passed *non est* in law.

12. Mr. M.M. Sharma, Learned Counsel for Appellant has referred to the judgment of the Hon'ble Delhi High Court in the matter of **Mahindra Electric Mobility Limited and Anr. V. Competition Commission of India and Anr., 2019 SCC OnLine Del 8032**, wherein it is held that "the revolving door policy" that enables members to participate in one or the other proceedings of the CCI is not *per se* illegal. He has argued that the converse of this principle should also be taken as true, meaning thereby that the decision should be rendered by all those who may have participated in the oral hearings, otherwise the sanctity of the order is vitiated. He has contended that the members collectively hearing the matter is akin to a 'collegium', who having heard the matter collectively should render the decision collectively, which should be signed and authenticated by the same body of members who heard the case. He has added that if some members and the chairperson had retired once the matter came to the stage of pronouncing the final order, it was incumbent that the matter be set for re-hearing so that the principle of 'one who hears must decide' is not infringed.

13. Mr. M.M. Sharma, Learned Counsel for Appellant has also referred to the judgment of the Hon'ble COMPAT in the matter of **Lafarge India Limited, Crescenzo Bldg v. Competition Commission of India and Another, 2015 SCC Online Comp AT 1120**, wherein the Hon'ble COMPAT has considered the issue and ruled that once the Chairperson of the CCI has initialed his

signature on all the pages, the implication that the authentication is on behalf of all the members is not correct, because while exercising adjudicatory power all the members and the chairperson act as coordinates. He has also referred to the judgment rendered by Hon'ble Supreme Court in the matter of **Gullapali Nageswara Rao etc. v. State of Andhra Pradesh and Others, (1960) 1 SCR 580**, and pointed out that though this judgment pertains to a matter of administrative enquiry, the principle of natural justice which requires that 'one who hear must decide' as expounded in this judgment, is a normative principle which should be followed by all judicial authorities.

14. Basing his arguments on the facts of the present appeal, the Learned Counsel for Appellant Mr. M.M. Sharma has submitted that five members namely Mr. D.K. Sikri (Chairperson), Mr. U.C. Nahta, Mr. S.L. Bunker, Mr. Augustine Peter, and Mr. Sudhir Mittal, in meeting held on 13.10.2017 considered the Investigation Report of the DG, which confined its analysis and findings primarily with reference to depots in Uttar Pradesh only, directed the DG to submit a supplementary investigation report in respect of the depots in the State of Maharashtra too. He has further submitted that the CCI, in order dated 7.6.2018, considered the 'Supplementary Investigation Report' and after careful consideration decided to furnish an electronic copy of the Supplementary Investigation Report to the parties to file their objections/suggestions thereon.

15. Mr. M.M. Sharma has argued that after submission of the Supplementary Investigation Report and supply of its copy to the parties



concerned, it was incumbent on the CCI to have provided an opportunity of oral hearing to the parties as the Supplementary Investigation Report was like an extension of the preliminary investigation, and at the stage of submission and consideration of first investigation report the parties had been afforded an opportunity to present oral arguments. He has thus contended that CCI failed to adhere to the principle of natural justice as is required under section 36 of the Competition Act, 2002 while considering the Supplementary Investigation Report and therefore, the procedure followed while passing the Impugned Order suffers from this grave shortcoming and is liable to be set aside on this ground.

16. Mr. M.M. Sharma, the Learned Counsel has also argued that the CCI directed the sugar mills to file revenue details generated from supply of ethanol for financial years 2011-12, 2012-13 and 2013-14 in the same order dated 7.6.2018 even though at this stage no decision had been made for imposition of penalty, and such action goes to show that CCI had already made up its mind to impose penalty. He has contended that by this action of seeking revenue details and by not giving an opportunity for hearing on the quantum of penalty, the CCI has displayed prejudice against the Appellants which is a certain infringement of the principle of natural justice. He has further argued that when there is a maximum limit of 10% of the average turnover which can be imposed as penalty, the quantum of penalty should have been decided on the extent or gravity of the offence, if so found. He has added that the quantum of penalty should have been decided after hearing the opposite parties on the issue, but it was not done.

17. Mr. Rajshekhar Rao, Learned Senior Counsel for Appellant in Competition Appeal (AT) No. 86/2018 has taken us through section 15 of the Competition Act, wherein sub-section (c) stipulates that any irregularity in the procedure of the Commission not affecting the merits of the case shall not invalidate any act or proceeding of the CCI. He has argued that in the present case there is an irregularity in the procedure followed, as was required by sections 36 and 22 of the Competition Act and therefore the CCI cannot take shield behind section 15(c) of the Competition Act in claiming validity of the Impugned Order. He has also referred to the provision for rectification of orders included in section 38 of the Competition Act and claimed that the error committed by the CCI in not following the norms of natural justice has made the Impugned Order erroneous and therefore, the Impugned Order should be set aside. He has also argued that in view of such basic error in the passing of the Impugned Order, there is no case for rehearing of the matter by the CCI. He has also argued that Regulation 32 of the CCI (General) Regulations, 2009 requires that every order of the Commission shall be signed and dated by the members and in case someone dissents, a dissenting note should also be added under her/his signature. Further, he has argued that sub-regulation (2) of regulation 32 requires that every order or decision of the Commission to be made within 21 working days from the date of conclusion of final arguments and in the present case, Regulation 32 has not been followed. Furthermore, the Impugned Order was passed by the Commission on 18.9.2018, after almost 13 months from 28.2.2017, when the hearing in the case was concluded and it was reserved for order. Such an inordinate

delay in passing the order made it inform as the members would not be able to recall all the oral arguments from their memory and further due to passage of time some members retired which meant that the order was passed by only three members as against five members who heard the case on all the dates, which made the order non est due to such basic infirmities.

18. Mr. Anil Kumar Mishra, Learned Counsel for the Appellant Sir Shadi Lal Enterprises in Competition Appeal (AT) No. 101/2018 has argued that section 36 of the Competition Act requires that the CCI, in discharge of its functions, shall be guided by the principle of natural justice and therefore, each and every proceeding in the consideration of any matter including the passing of the final order should be infused with the principle of natural justice. He has also referred to section 22 of the Competition Act, wherein the modality for holding meetings of the CCI is prescribed, and pointed out to the relevant regulation 3 with regard to holding of meetings i.e. the CCI (Meeting for Transaction of Business) Regulations, 2009 which stipulates how the two types of meetings should be held and the modality for transaction of business in these meetings. He has clarified that the meetings held by the CCI while considering information submitted under the Competition Act are “ordinary meetings” and it is not only desirable, but necessary that ‘one who hears a case must decide’ and pass the final order. He has brought to our attention clause (2) of sub regulation (5) of Regulation 3 of CCI (Meeting for Transaction of Business) Regulations, 2009, which provides an option in the mode of participation in meetings through video conferencing and emphasized that this option is provided so that the matter is heard by the same body of

members who have been hearing/considering the matter all throughout. He has cited the judgment of the Hon'ble Supreme Court in the matter of **State of Uttar Pradesh vs. Singhara Singh and Others [(1964) 4 SCR 485]** to point out that if a statute is conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. He has pointed out that when Regulation 32 prescribes a certain method by which an order shall be passed i.e. through inscription of signature and date by the members and that the Commission shall as far as practicable make a final order within 21 working days from the date of conclusion of the final arguments, there was no reason why the Regulation 32 should have been violated.

19. Mr. Sridhar Potaraju, Learned Counsel appearing for Appellant Indian Sugar Mills Association (ISMA) in Competition Appeal (AT) No. 103 of 2018 has brought to our attention sub-regulation (1) of Regulation 32 of CCI(General) Rules, 2009 to point out that it is necessary for all the members hearing the case to sign and authenticate the final order. The possibility of dissenting order is ingrained in this sub-regulation. He has referred to the judgment of the Hon'ble Appellate Tribunal for Electricity (APTEL) in the matter of **Damodar Valley Corporation vs. Central Electricity Regulatory Commission through the Secretary & Ors.[2019 SCC Online APTEL 40]** to point out that in a matter under consideration, the Impugned Order passed after a lapse of two years and three months which was signed by only three members out of four who had heard and considered the entire matter, made

such an order unsustainable in the eyes of law. He has pointed out that Hon'ble APTEL has held that in doing so, the Central Electricity Regulatory Commission had violated Regulation 62 Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and, therefore, its order was found to be non est in law.

20. The Learned Counsel Mr. Potaraju has also cited the judgment of the Hon'ble Supreme Court in the matter of **Dakshin Haryana Bijli Vitran Nigam Limited vs. Navigant Technologies Private Limited [(2021) 7 Supreme Court Cases 657]**, wherein the importance and necessity of recording dissenting opinion in a case has been recognized in case there is a dissenting opinion. He has thus contended that if all the members, who hear the case, do not sign and authenticate the order, the possibility that a member who does not sign or authenticate the order is holding a dissenting view cannot be ruled out. He has emphasized that it is therefore necessary that all the members who hear the case must sign the final order.

21. The Learned Counsel Mr Potaraju has also cited the judgment of the Hon'ble Supreme Court in the matter of **Anil Rai vs. State of Bihar [(2001) 7 Supreme Court Cases 318]**, wherein a redressal has been granted to an affected party in case there is inordinate delay in pronouncing a judgment, by laying down that among other administrative actions that could be taken by the Hon'ble Chief Justice and Ld. Registrar of the concerned High Court for expediting the pronouncement of the order, any of the parties could file an application before the Hon'ble High Court with a prayer for early

pronouncement of judgment, in case the judgment is not pronounced in three months. He has argued that such an alternative remedy has been provided to the parties so that the judges hearing the matter can apply their mind to the case while the matter and arguments are fresh in their minds, and the judgment does not suffer any infirmity by the judges' loss of memory regarding the case due to long passage of time.

22. Mr. Pankaj Bhagat, Learned Counsel for Appellant in Competition Appeal (AT) No.102 of 2018 and Competition Appeal (AT) No.104 of 2018 has adverted to the situation in the present case and submitted that the judgment was reserved by CCI in the matter on 22.8.2017 after conclusion of hearing, but the final judgment was rendered on 18.9.2018 after a lapse of almost 13 months, which is an inordinate delay in pronouncing the final order. He has also pointed out that in its order dated 13.7.2017, the CCI felt it proper to direct the DG for supplementary investigation in terms of provision contained in Regulation 20(6) of the CCI(General) Regulations, 2009 and once such a report had been submitted by the DG, the procedure as outlined in Regulation 21 of the CCI (General) Regulations, 2009 should have been followed, and so it was necessary that the parties be provided opportunity for oral hearing after submission of objections/suggestions and this has been outlined in Section 29 of the CCI (General) Regulations, 2009.

23. Mr. Adhish Srivastava, Learned Counsel for the Appellant in Competition Appeal (AT) No.99 of 2018 has adverted to Regulation 3-A, which was included in the CCI (Meeting for Transaction of Business) Regulations,

2009 vide notification dated 2.3.2021, to agree that it is clarificatory in nature and it will, therefore, have retrospective application and effect. Expanding on this argument, he has pointed out that clause (e) of sub regulation (5) of the Regulation 3 of the CCI (Meeting for Transaction of Business) Regulations, 2009 has been merely clarified through Regulation 3-A. He has referred to the judgment of the Hon'ble Supreme Court in the matter of **Zile Singh vs. State of Haryana and Ors. [(2004) 8 Supreme Court Cases 1]**, wherein it is held that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. He has also referred to the judgment of the Hon'ble Supreme Court in the matter of **Commissioner of Income-Tax (Central)-I, New Delhi vs. Vatika Township Private Limited**, wherein it is held that unless a contrary intention is apparent, a legislation is presumed to not have retrospective operation, and also the dictum that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature.

24. In reply, Mr. Udayan Jain, Learned Counsel for Respondent CCI in Competition Appeal (AT) No.86/2018, Competition Appeal (AT) No.92/2018, Competition Appeal (AT) No.97/2018, Competition Appeal (AT) No.99/2018, Competition Appeal (AT) No.104/2018, Competition Appeal (AT) No.3/2019, Competition Appeal (AT) No.10/2019 has argued that the CCI has held that the sugar mills, who participated in the bidding process in respect of depots located in Uttar Pradesh/Andhra Pradesh in response to the joint tender floated by Oil Marketing Companies (OMCs) on 2.1.2013 have colluded in submitting the bids, thereby contravening the provision of section 3(1)(d) read

with section 3(1) of the Competition Act and, therefore, they have been directed to 'cease and desist' from indulging in such conduct in future. He has argued that such finding is not supported by facts and circumstances of the case. He has also argued that in similar facts and circumstances, the sugar mills located in the state of Maharashtra have been absolved of any misconduct.

25. On issue of the non-compliance of the requirement of adherence to the principle of natural justice in the hearing of the case by CCI and consequent passing of the Impugned Order, Mr. Udayan Jain has argued that the case was heard by a body/coram of certain members of CCI, which kept on varying from one hearing date to another and the final order was passed by only three members. Expanding on his argument, he has submitted that when the hearing started on 19.7.2017, a body of six members started hearing the oral argument, which continued on 20.7.2017 and 25.7.2017, but thereafter one member out of the original six members, namely Justice G.P. Mittal did not participate in subsequent hearings and only five members namely, Mr. D.K. Sikri (Chairperson), Mr. U.C. Nahta, Mr. S.L. Bunker, Mr. Augustine Peter, and Mr. Sudhir Mital, heard the matter on 2.8.2017, 28.2.2017 and 13.10.2017. He has submitted that it is a fact Mr. D.K. Sikri, Chairperson, Mr. S.L. Bunker, Member and Justice G.P. Mittal, Member retired on 12.7.2018, 31.1.2018 and 1.9.2018 respectively and therefore, they could not participate in the passing of the Impugned Order by signing and authenticating it on 18.9.2018 when the final order was pronounced. He has thus argued that when the Impugned Order was passed on 18.9.2018, only



three members, namely, Mr. Sudhir Mital, Chairperson, Mr. U.C. Nahta, Member and Mr. Augustine Peter, Member were present and available to sign, authenticate and pronounce the final Order.

26. The Learned Counsel Mr. Udayan Jain has cited the judgment of Hon'ble Supreme Court in the matter of **Competition Commission of India v. Steel Authority of India Ltd & Anr. [(2010) 10 SC 744]** to contend that there is no straightjacket formula that can be applied while examining whether the principle of natural justice has been followed and in case no prejudice has been caused to the delinquent party, the principle of natural justice is understood to be complied with. He has also cited the judgment of Hon'ble Supreme Court in the matter of **State of U.P. vs. Sudhir Kumar Singh & Ors, [2020 SCC OnLine 847]**, wherein the Hon'ble Supreme Court has held that regarding the doctrine of *audi alteram partem*, a clear distinction has been made between cases where there was no hearing at all and those where there was mere technical infringement of the principle of natural justice. He has contended that the application of principle of natural justice is to be seen with regards to the facts of each case, and in the present case, when the members were not available at time of passing of impugned order, no infringement of the principle of natural justice can be claimed.

27. Mr. Udayan Jain, the Learned Counsel for Respondents has also referred to the judgment of Hon'ble Supreme Court in the matter of **P.D. Agrawal vs. State Bank of India & Ors. [(2006) 8 SCC 776]**, wherein it is held that there was a gross violation of principle of natural justice if the order

shows prejudice against the affected party, but mere technical infringement of principle of natural justice may not be a sufficient ground for invalidating a judgment or order. He has also cited the judgment of the Hon'ble Supreme Court in the matter of **Union of India & Ors. vs. Alok Kumar [(2010) 5 SCC 349]**, wherein it is held that it must be seen that some real prejudice has been caused to the complainant and there is no such thing as a merely technical infringement of the principle of natural justice and further prejudice de facto should not be based on a mere apprehension or even on a reasonable suspicion, but the element of prejudice should exist as a matter of fact.

28. Mr. Udayan Jain, the Learned Counsel for Respondents has also cited the judgment of Hon'ble COMPAT in the matter of **National Insurance Company Ltd. vs. Competition Commission of India [2016 SCC OnLine Comp AT 450]**, wherein the Hon'ble COMPAT has held that the order in the said case was not vitiated on account of "Quorum Non Judice" and violation of the principle of 'one who hears must decide without any influence' and the presence of the Chairman of the CCI in some deliberations, but not being party to the Impugned Order, does not simply imply prejudice and for the Impugned Order to be vitiated, a prejudice to have been caused by the presence of the Chairman in some deliberations should have been established.

29. While citing the judgment of the Hon'ble Supreme Court in the matter of **Ram Bali vs. State of U.P. [(2004) 10 SCC 598]**, Mr. Udayan Jain has argued that the issue of delayed delivery of judgment in the present case is

not an important issue to make the impugned judgment invalid, since in the **Anil Rai vs. State of Bihar** case (supra), the Hon'ble Supreme Court has only stressed upon the desirability of pronouncement of timely judgment, and a judgment which requires deep and intensive appreciation of facts would require time in formulating the judgment.

30. Mr. Udayan Jain, Learned Counsel for Respondent CCI has also referred to the judgment of Hon'ble Delhi High Court in the matter of **Mahindra Electric Mobility Limited and Anr. V. Competition Commission of India and Anr., 2019 SCC OnLine Del 8032**, wherein after noticing the 'coram' of bench hearing the case, the Hon'ble Delhi High Court has held that if the body comprises of one or several members, it is a necessary corollary that only those who hear should decide. Taking cue from this judgment, Mr. Udayan Jain has argued that when some members who heard the case of sugar mills had retired, the order could only be passed and signed by the members who continued in office and on this account the Impugned Order cannot be said to be invalid.

31. Mr. Udayan Jain, Learned Counsel for Respondents has also cited the judgment of the Hon'ble COMPAT in the matter of **Lafarge India Limited, Crescenzo Bldg v. Competition Commission of India and Another, 2015 SCC Online Comp AT 1120** to argue that the principle of 'one who hears must decide' was considered in the judgment and after adverting to the Hon'ble Supreme Court's decision in the matter of **Gullapali Nageswara Rao etc. v. State of Andhra Pradesh and Others (supra)**, it was held that in any

particular case, whether the concerned party has been prejudiced would have to be examined in the light of the facts and circumstances of that particular case and if no prejudice appears to have been caused, it would not vitiate the order.

32. Mr. Udayan Jain has strongly argued that in **Mahindra Electric Mobility Limited and Anr. V. Competition commission of India and Anr. (supra)** judgment, where the Hon'ble Delhi Court held that hearing by a large body and decision by a smaller number of members (for compelling reasons or otherwise) does lead to an 'undesirable' and perhaps at times an 'avoidable situation', but in the same judgment Hon'ble Delhi High Court that has finally held that the order by smaller members of adjudicating body would not be considered illegal.

33. Mr. Udayan Jain, Learned Counsel for Respondents has pointed out that in the CCI (Meeting for Transaction of Business) Regulations, 2009, Regulation 3 is regarding meetings for transaction of business and their procedure. In this Regulation 3, clause (e) of sub regulation (5) provides a modality by which a member may choose to participate in a meeting through video conferencing, but such a modality is optional. He has further pointed out that the Regulation 3-A, which is regarding quorum for meetings of the CCI is a new regulation inserted vide notification dated 2.3.2021 which is not clarificatory, and in the present matter, the requirement of adhering with Regulation 3-A would not be binding CCI, since this Regulation was inserted after passing of the Impugned Order on 18.9.2018.

34. On the issue of whether a regulation is a clarificatory or otherwise, Mr. Udayan Jain, Learned Counsel for Respondents has cited the judgment of the Hon'ble Supreme Court in **Sree Sankaracharya University of Sanskrit & Ors. v. Dr. Manu & Ar. [(2023) SCC OnLine]**. He has pointed out that as held in this judgment, if a law is curative or merely clarificatory of previous law, retrospective operation thereof may be permitted, but where there is substantive amendment, which is intended to change the law, the provision would be prospective. On this reason, Mr. Udayan Jain has contended that Regulation 3-A is a substantive provision, which is a new addition to the CCI (Meeting for Transaction of Business) Regulations, 2009 and, therefore, it cannot be taken as clarificatory and may not be applied retrospectively.

35. The learned Counsel for CCI Mr. Udayan Jain has referred to the procedure for inquiry set out in section 26 of the Competition Act to point out that under sub-section 5, the Competition Commission on a finding in the report of DG that there is no contravention of the provisions of the Competition Act, shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the DG and after consideration of the objections or suggestions obtained in accordance with sub-section 5, if it agrees with the recommendations of the DG, it shall close the matter and pass necessary orders. He has also pointed out that sub-section 7 of section 26 provides power to the Competition Commission to call for further investigation by the DG, if it forms an opinion that further

investigation is required. He has further referred to Regulation 21 of the CCI (General) Regulations, 2009 to expand the procedure for enquiry under section 26 of the Competition Act, wherein in sub-regulation (6), Secretary has to, with the approval of the Chairperson, fix the meeting of the Commission within seven days for consideration of the report of DG on further investigation is received. He has thus claimed that the Competition Commission has not erred in any way by not providing an opportunity for oral hearing to the parties, after receipt of the Supplementary Investigation Report, since section 26 of the Competition act and Regulation 21 of the CCI (General) Rules, 2009 do not obligate the Commission to hear the parties orally, but require the Competition Commission to consider the objections or suggestions received on the Supplementary Investigation Report in a meeting of the Competition Commission. He has further argued that a challenge to the non-adherence to the principle of natural justice cannot be raised at the stage of the appeal and if any objection was to be given, it should have been given while the hearing was going on before the Competition Commission.

36. The Learned Counsel for the CCI has also brought to our attention section 15 of the Competition Act to contend that any vacancy or any defect in the constitution of the Competition Commission or any irregularity in the procedure which does not affect the merits of the case, shall not make any order or procedure of the CCI invalid.

37. The Ld. Counsel for CCI has cited the judgment of Hon'ble Delhi High Court in the matter of **Cadd Systems & Services Private Ltd. v.**

**Competition Commission of India [2019 SCC Online Del 9252]** in support of his contention that any vacancy or any defect in the constitution of the Competition Commission shall not invalidate the procedure of the Competition Commission, with particular reference to the absence of a judicial member in the constitution of the Competition Commission.

38. Mr. Sanyat Lodha, the Learned Counsel for Respondent CCI [in Competition Appeal (AT) No.91/2018, Competition Appeal (AT) No.93/2018, Competition Appeal (AT) No.94/2018, Competition Appeal (AT) No.100/2018, Competition Appeal (AT) No.101/2018, Competition Appeal (AT) No.102/2018, Competition Appeal (AT) No. 103/2018, Competition Appeal (AT) No.5/2019, Competition Appeal (AT) No.6/2019, Competition Appeal (AT) No.7/2019 and Competition Appeal (AT) No.8/2019] has argued that the important point to be seen is whether any prejudice was caused to the Appellants by alleged non-adherence to the principle of natural justice in oral hearings and claimed that in the appeals under consideration, no prejudice is apparently caused to the Appellants, even if there was a technical deficiency in the pronouncement of judgment by a body of members consisting of fewer members than the number that heard the case. He has further pointed to Regulation 3(5) (c) of the CCI (Meeting for Transaction of Business) Regulations, 2009 to claim that the CCI may grant an opportunity to the parties to present their case, but it is not obligatory to do so. He has further contended that the judgment in the matter of **Mahindra Electric Mobility Ltd. vs. CCI (supra)** has held that “revolving door” policy is a valid policy, and therefore, absence of some members in certain hearings by the

Competition Commission or in the signing or pronouncement of order will not invalidate the proceedings or the order. He has further argued that in the same judgment, Hon'ble Delhi High Court has held that the absence of some members in certain hearings, and the issue of hearing by a larger body but decision by a similar number may lead to an undesirable situation, but does not lead to any illegality in the proceedings or order.

39. In rejoinder, Mr. M.M. Sharma, Learned Counsel for the Appellant has clarified that adherence to the principle of natural justice in oral hearing, particularly adherence to the principle of "one who hear must decide" is necessary to rule out any bias against the alleged offender. He has clarified that Regulation 3(3) of the CCI (Meeting for Transaction of Business) Regulations, 2009 lays down the procedure for ordinary and special meetings and the procedure for the ordinary meeting (which are closed door meetings) is given in regulation 3(5). He has further clarified that the option given to a member to attend the meeting through Video Conferencing is an enabling provision to ensure that the same members must hear a matter on all dates of hearing. He has also clarified that the matter of **Mahindra Electric Mobility Ltd. vs. CCI (supra)** actually relates to a writ petition under Article 226 of the Indian Constitution in which the vires of certain provisions of the Competition Act were challenged and therefore, the observations of the Hon'ble Delhi High Court regarding the varying size of the body hearing the case would not be binding. He has further pointed out that the "revolving door" policy would not provide validity in the present case, as the principle of natural justice, adherence to which is a basic requirement, is infringed in the



present case. He has also clarified that Regulation 3-A of the CCI (Meeting for Transaction of Business) Regulations, 2009 is clarificatory and therefore, it has retrospective operation. He has also distinguished the **CCI vs. SAIL (supra) judgment**, wherein the Hon'ble Supreme Court has held that the compliance to the principles of natural justice can be excluded either by specific legislation and where the law requires compliance with the principles of natural justice, no prejudice should be caused to the offending party if the natural justice principle is not strictly complied with. He has contended that the present case is a case where the principle of natural justice has to be necessarily complied with. He has also differentiated the judgment in the **Lafarge India Ltd. v. CCI (supra) judgment** to point out that the members of the Commission are not "minions" and while exercising judicial power, all the members and Chairperson "as coordinate", and therefore, the Chairperson cannot claim to authenticate an order on behalf of all the members by merely putting his signature on every page of the order.

40. Mr. Gautam Shahi, Advocate for the Appellant Balrampur Chini Mills Ltd. has cited judgments in the matters of **Global Energy Pvt. Ltd. vs. Karnataka Electricity Regulatory Commission (2016 SCC Online APTEL 118)**, **Damodar Valley Corporation vs. Central Electricity Regulatory Commission through the Secretary & Ors. (supra)** and **Mahanagar Gas Limited vs. Petroleum and Natural Gas Regulatory Board (Appeal No. 110 of 2020 in the Appellate Tribunal for Electricity)** to contend that all these judgments of Hon'ble APTEL are very clear that when a larger body heard a

case, but the order was either passed by a smaller body or a member did not sign the order, the order stood vitiated.

41. Mr. Anil Kumar Mishra, Learned Counsel for Appellant Sir Shadi Lal Enterprises (in Competition Appeal (AT) No. 101 of 2018)\_has reiterated in rejoinder when a procedure has been prescribed explicitly in the statute, it should have been followed and further that **Mahanagar Gas Limited vs. Petroleum and Natural Gas Regulatory Board (supra)** judgment does not support the CCI case, because the Hon'ble Delhi High Court merely upheld the validity of "revolving door" policy, but in the same breath also accepted that abuse of such a practice is possible.

42. Mr. Pankaj Bhagat, Learned Counsel for the Appellants (in Competition Appeal (AT) No.100/2018, Competition Appeal (AT) No.100/2018, Competition Appeal (AT) No.102/2018 and Competition Appeal (AT) No. 104/2018) has re-emphasized the point that seeking of revenue details by the Competition Commission in its hearing held on 7.6.2018 very clearly establishes the fact that the Commission was prejudiced and that it had pre-decided to impose penalty, even though till that stage there was no adjudication regarding the offence of the parties. He has also pointed out that after the receipt of the Supplementary Investigation Report some Opposite Parties sought an opportunity for oral hearing, which should have been accorded as is stipulated in Regulation 29 of the CCI (General) Regulations, 2009 and further since the question of quantum of penalty was undecided, the Competition Commission should have heard Opposite Parties on the issue

of quantum of penalty. In this connection, he has pointed out that Regulation 48 of the CCI (General) Regulations, 2009 requires that the procedure for imposition of the penalty under the Act stipulates that a show cause notice should be given to the person or enterprise or party to the proceedings, and the Competition Commission shall receive written submissions on the issue and after oral hearing, decide the matter of imposition of penalty on the basis of the facts and circumstances of the case.

43. We have considered the pleadings and oral arguments of all the parties on the issue of adherence of the principle of natural justice in the hearing of the matter by the CCI and perused the relevant record including the original record of hearing before CCI which was summoned by this bench.

44. The issue raised by the Appellants regarding the correctness of the Impugned Order is basically dependent on whether the 'body' of the Competition Commission, which started oral hearing in the matter, should have remained constant, and whether the final judgment, which was signed and pronounced by only three members against six members who began hearing the matter, is legally in order. The second issue that arises for consideration is whether the Competition Commission should have provided an opportunity of oral hearing to the parties while considering the Supplementary Investigation Report of the DG, and also at the stage of imposition of penalty under section 27 of the Competition Act the Competition Commission was required to provide an opportunity of oral hearing to the Opposite Parties regarding the quantum of penalty.

45. For better appreciation of the issues in the light of legal provisions, pleadings, and oral arguments, we reproduce the following provisions of the Competition Act and Regulations made therein hereunder:-

**THE COMPETITION ACT, 2002**

**“7. Establishment of Commission**

*(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".*

*(2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.*

*(3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.*

*(4) The Commission may establish offices at other places in India.*

xx xx xx xx

**18. Duties of Commission** - *Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India: Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country. Inquiry into certain agreements and dominant position of enterprise*

**19. Inquiry into certain agreements and dominant position of enterprise-** *(1) The Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or*

sub-section (1) of section 4 either on its own motion or on - 29 (a) [receipt of any information, in such manner and] accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or (b) a reference made to it by the Central Government or a State Government or a statutory authority.

(2) Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).

(3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely: - (a) creation of barriers to new entrants in the market; (b) driving existing competitors out of the market; (c) foreclosure of competition by hindering entry into the market; (d) accrual of benefits to consumers; (e) improvements in production or distribution of goods or provision of services; (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:— (a) market share of the enterprise; (b) size and resources of the enterprise; (c) size and importance of the competitors; (d) economic power of the enterprise including commercial advantages over competitors; (e) vertical integration of the enterprises or sale or service network of such enterprises; (f) dependence of consumers on the enterprise; (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; (i) countervailing buying power; (j) market structure and size of market; (k) social obligations and social costs; (l) relative advantage, by way of contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; (m) any other factor which the Commission may consider relevant for the inquiry.

(5) For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market" and "relevant product market".

(6) *The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:—*  
 (a) *regulatory trade barriers; (b) local specification requirements; (c) national procurement policies; (d) adequate distribution facilities; (e) transport costs; (f) language; (g) consumer preferences; (h) need for secure or regular supplies or rapid after-sales services.*

(7) *The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:—*

*(a) physical characteristics or end-use of goods;*

*(b) price of goods or service;*

*(c) consumer preferences;*

*(d) exclusion of in-house production;*

*(e) existence of specialized producers;*

*(f) classification of industrial products.*

xx xx xx xx

**22. Meetings of Commission.** - (1) *The Commission shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by regulations.*

*(2) The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting.*

*(3) All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or/casting vote: Provided that the quorum for such meeting shall be three Members.*

xx xx xx xx

**26. Procedure for inquiry under section 19.**

xx xx xx xx

(3) *The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.*

(4) *The Commission may forward a copy of the report referred to in sub section (3) to the parties concerned:*

*Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub- section (3) to the Central Government or the State Government or the statutory authority, as the case may be.*

(5) *If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.*

(6) *If, after consideration of the objections and suggestions referred to in sub section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.*

(7) *If, after consideration of the objections or suggestions referred to in sub section (5), if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.*

(8) *If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.*

**27. Orders by Commission after inquiry into agreements or abuse of dominant position. –**

xx xx xx xx

*(b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:*

*Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.*

xx xx xx xx

**35. Appearance before Commission** - *A person or an enterprise or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.*

*Explanation.—For the purposes of this section,—*

*(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;*

*(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;*

*(c) "cost accountant" means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;*

*(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.*

**36. Power of Commission to regulate its own procedure** - *(1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act*



and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

(2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses or documents;

(e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such of record or document from any office.

(3) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary to assist the Commission in the conduct of any inquiry by it.

(4) The Commission may direct any person:

(a) to produce before the Director General or the Secretary or an officer authorized by it, such books, or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;

(b) to furnish to the Director General or the Secretary or any other officer authorized by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.”

### **Competition Commission of India (General) Regulations, 2009**

#### **21. Procedure for inquiry under section 26 of the Act. –**

XX XX XX XX

(7) If the report of the Director General mentioned under sub-regulation (1) finds contravention of any of the provisions of the Act, the Secretary shall obtain the orders of the Commission for inviting objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(8) On consideration of the objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, or the report of further investigation or further inquiries, as the case may be, if the Commission is of the opinion that further inquiry is called for, the Secretary shall fix the meeting of the Commission for consideration thereof, after issue of notice as per regulation 22, to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(9) The Secretary shall keep the Director General informed of the dates of the meetings of the Commission for inquiry under sub-section (7) or sub-section (8) of section 26 of the Act for appearing in person or through any of his officers in accordance with the provisions of section 35 of the Act.

xx xx xx xx

**29. Manner of making submissions or arguments by parties before Commission.**

(1) Without prejudice to sub-section (1) of section 36 of the Act, the parties to the proceedings or their authorized representatives, as the case may be, shall declare to the Commission at the earliest opportunity whether they would make oral submissions or file written arguments during the course of an inquiry under section 26 of the Act:

(2) Subject to sub-regulation (1), the Commission may fix or limit the time during which the oral submissions or written arguments shall be addressed or filed by the parties or their authorized representatives, as the case may be, before it and may proceed to decide a matter in the absence of the party which does not abide by such timings as per regulation 30.

xx xx xx xx

**32. Final order.** – (1) Every order of the Commission shall be signed and dated by the Members including a dissenting note by the dissenting Member, if that be the case.

(2) Every order or decision of the Commission shall, as far as practicable, be made within twenty-one working days from the date of conclusion of final arguments.

(3) A copy of the order duly certified by the Secretary or such other officer authorized by the Secretary shall be served on the parties to the proceeding as provided in regulation 22 within four weeks of the date of the order.

**xx xx xx xx**

**48. Procedure for imposition of penalty under the Act. –**

(1) Notwithstanding anything to the contrary contained in any regulations framed under the Act, no order or direction imposing a penalty under Chapter VI of the Act shall be made unless the person or the enterprise or a party to the proceeding, during an ordinary meeting of the Commission, has been given a show cause notice and reasonable opportunity to represent his case before the Commission.

(2) In case the Commission decides to issue show cause notice to any person or enterprise or a party to the proceedings, as the case may be, under sub-regulation (1), the Secretary shall issue a show cause notice giving not less than fifteen days asking for submission of the explanation in writing within the period stipulated in the notice.

(3) The Commission shall, on receipt of the explanation, and after oral hearing if granted, proceed to decide the matter of imposition of penalty on the facts and circumstances of the case.

**CCI (Meeting for Transaction of Business) Regulations**

**“3. Meetings for transaction of business and their procedure. –**

(1) The Commission may hold as many meetings and at such places as may be required for the purpose of discharging its functions under the Act.

**xx xx xx xx**

**(5) Procedure for ordinary meetings, –**

(a) the meeting hours of an ordinary meeting shall normally be from 10.30 AM to 1.00 PM and from 2.30PM to 4.30 PM, unless the Commission decides to extend the same in a particular matter;

*(b) subject to section 35 of the Act, the Secretary and such other officers and persons as permitted by the Chairperson shall attend an ordinary meeting;*

*(c) subject to sub-regulation (4), the duration of each ordinary meeting shall be as directed by the Chairperson. Each party to the proceeding may be granted such opportunity to present its case as deemed appropriate by the Commission. The Commission may direct any party to file written submissions, which shall be considered along with replies thereto of the other parties to the proceeding. The Commission may also grant oral hearing to any party if it deems necessary;*

*(d) the Commission may, for reasons to be recorded in writing, adjourn the meeting;*

*(e) any Member unable to be present in a meeting for any reason, may if feasible, choose to participate in the said meeting, through video conferencing and this shall be considered as attendance by the Member for the purpose of casting vote during the meeting;*

*(f) subject to sub-regulation (4), the Commission shall hold, as far as practicable, an ordinary meeting once every month to review compliance of its orders and the Secretary shall report all matters of non-compliance for information or for further orders of the Commission, as the case may be;*

*(g) the proceedings of each ordinary meeting of the Commission shall be recorded under the superintendence and guidance of the Secretary or by any other officer authorized by the Chairperson. The minutes of each matter taken up during an ordinary meeting shall be given continuous serial number for a particular financial year.*

**3-A. Coram for meetings of Commission-** *(1) Subject to the provisions of Section 22 of the Act, the Commission shall set down cases for final hearing after completion of pleadings and during such hearings, coram of the Commission would remain constant and such coram alone would continue to hear and participate in all subsequent proceedings on all hearing dates and would write the final orders. (2) If it becomes impossible to continue the hearings with the same coram, for any reason whatsoever, the matter would be heard afresh with new coram.”*

xx xx xx xx

**5. Effect of any irregularity of procedure.** – *No act or proceedings of the Commission shall be invalid merely by reason of any irregularity in the procedure of the Commission not affecting the merits of the case.*”

46. Section 36 of the Competition Act gives power to the Competition Commission to regulate its procedure, and while doing so, it shall be guided by the principles of natural justice. Further, Section 22 of the Competition Act gives the provision regarding meetings of the Commission. Sub-section (3) of Section 22 stipulates that all questions which come up before any meeting of the Commission shall be decided by a majority of the members present and voting. Furthermore, CCI (Meeting for Transaction of Business) Regulations, 2009, which contains provisions for transaction of business in the meetings of the Competition Commission, stipulate in Regulation 3 that the Commission may conduct either ordinary meeting or special meeting to discharge its business. Matters that come for consideration of the Competition Commission are considered and disposed of in ordinary meetings and the procedure for ordinary meetings is outlined in sub-regulation (5) of Regulation 3. Specifically, in the facts and circumstances of this case, clauses (c) and (e) are relevant. Clause (c) provides that each party to the proceedings may be granted an opportunity to file written submissions as well as oral hearings. Further, clause (e) of sub-regulation (5) of Regulation 3 makes a provision for participation of a member in meeting through video conferencing. Quite obviously, these Regulations are imbued with the requirement of adherence to the principles of natural justice which is ingrained in section 36 of the Competition Act.

47. A conjoint reading of Sections 36 and 22 implies that the members who hear a matter should do so in the light of principle of natural justice. The principle of natural justice is embedded in clauses (c) and (e) of sub-regulation (5) of Regulation 3 of the CCI (Meeting for Transaction of Business) Regulations, 2009 whereby the opportunity of filing written submission and presenting oral arguments may be afforded to the parties.

48. The Learned Counsels for Appellants have referred to Regulation 3-A of the CCI (Meeting for Transaction of Business) Regulations, 2009 to claim that once the Competition Commission sets down a case for final hearing after completion of pleadings, then during hearings, 'coram' of the Commission should remain constant and such 'coram' alone would continue to hear the arguments and take part in the proceedings on all hearing dates, and would write, sign and deliver the final order. They have argued that in the light of the provision of Regulation 3-A, which though inserted in the Regulations by virtue of notification no. R-40007/6/Reg-meeting/noti./2021-CCI dated 2.3.2021 which became effective from 3.3.2021, has retrospective operation, and therefore, the Impugned Judgment suffers from the lacuna that the same 'coram' did not hear the matter on all the dates and the final order was not signed by all the members who heard the matter. They have also argued that adoption of such a procedure contravenes the principle of 'one who hears must decide' and therefore, the Impugned Judgment is *non est* in law.

49. In connection with principle of 'one who hears the case must decide', we note the argument of the Appellants that while five members of the Competition Commission heard the arguments, only three members signed the Impugned Order. While making such a submission, the Learned Counsels for Appellants have submitted that there is a distinct possibility that if all the five members who heard the case had deliberated on the issues of case, the outcome of the case may have been different.

50. In the above connection, the judgment of Hon'ble Supreme Court in the matter of **United Commercial Bank Ltd. v. Their Workmen [1951 SCC 364]** is relevant, which is reproduced hereunder:-

*"8. ...It is thus clear and indeed it is not disputed that the tribunal as a body should sit together and the **award has to be the result of the joint deliberations of all Members of the Tribunal acting in a joint capacity.** Section 16 requires that all Members of the Tribunal shall sign the award. This again emphasizes that the function of the Tribunal is joint and **it is not open to any Member to refrain from signing the award. If the award is not signed by all Members it will be invalid as it will not be award of the Tribunal.**"*

*"19. ...That seems to us to be the correct position because the fundamental basis on which the Tribunal has to do its work is that all Members must sit and take part in its proceedings jointly. If a Member was casually or temporarily absent owing to illness, the remaining Members cannot have the power to proceed with the reference in the name of the Tribunal, having regard to the absence of any provision like section 5(4) or 6(3) in respect of the Tribunal. The Government had notified the constitution of this Tribunal by the two notification summarized in the earlier part of the judgment and thereby had constituted the Tribunal to consist of three Members and those three were Mr. Sen, Chairman, Mr. Mazumdar and Mr. Chandrasekhara Aiyar. Proceeding with the adjudication in the absence of one, undermines the basic principle of the joint work and responsibility of the Tribunal and of all its Members to make the award ..."*

"28.. ...In our opinion the position here clearly is **that the responsibility to work and decide being the joint responsibility of all the three Members, if proceedings are conducted and discussions on several general issues took place in the presence of only two, followed by an award made by three, the question goes to the root of the jurisdiction of the Tribunal and is not a matter of irregularity in the conduct of those proceedings.** The absence of a condition necessary to found the jurisdiction to make the award or give a decision deprives the award or decision of any conclusive effect ..."

"32. **On the admitted principle that the work of the Tribunal, which is of a quasi-judicial nature, is one of joint responsibility of all its Members, ..."**

[Emphasis Supplied]

51. Further, the judgment in the matter of **Gullapali Nageswara Rao etc. v. State of Andhra Pradesh and Others (supra)** has also been cited where Hon'ble Supreme Court has ruled that 'a person who hears must decide' and that divided responsibility is destructive of the concept of judicial hearing.

52. In the matter of **Mahindra Electric Mobility Limited and Anr. V. Competition Commission of India and Anr. (supra)**, Hon'ble Delhi High Court has deliberated in detail on the procedure for hearing before the Learned Competition Commission of India and observed as hereunder:-

"177. Having so concluded, this Court is nevertheless of the opinion that a hearing by a larger body and decision by a smaller number (for compelling reasons or otherwise) does lead to undesirable and perhaps at times avoidable situations. To address this, the court hereby directs that when all evidence (i.e. report, its objections/affidavits etc.) are completed, the CCI should set down the case for final hearing. At the next stage, **when hearing commences, the membership of the CCI should be constant (i.e. if 3 or 5 members commence hearing, they should continue to hear and participate in all proceedings on all hearing dates); the same number of members (of the CCI) should write the final order (or orders, as the case may be).** This procedure should be



*assimilated in the form of regulations, and followed by the CCI and all its members in all the final hearings; it would impart a certain formality to the procedure. Furthermore, the court hereby directs that no member of the CCI should take a recess individually, during the course of hearing, or 'take a break' to rejoin the proceeding later. Such "walk out and walk in" practise is deleterious to principles of natural justice, and gravely undermines public confidence in the CCI's functioning. Once the hearing commences, all members (who hear the case, be they in quorums of 3 or 5 or seven) should continue to be part of the proceeding, and all hearings, en banc. An analogy may also be drawn to the hearings in courts before benches of more than one member. Hearings may take place from time to time before benches of varying composition, but once the final hearing has commenced, the matter is heard and decided only by the same bench. There is no addition, deletion or substitution in the composition of the bench during the course of final hearing. **If at all, it becomes impossible to continue the hearing before the same bench (for example, due to one of the judges having demitted office), the matter is heard afresh by the new bench even if the composition is partly common with the previous bench.** A similar example may be given of hearings in the Supreme Court - if a matter is heard in part by a bench of two judges, further hearings are held only before that bench, and not before the bench of three judges even if both the original members of the bench are also part of the three judge bench. **The invariable practice of the courts, which also ought to be followed by the CCI, is that the bench which hears the matter decides it, and that every member who participates in the hearing, is also party to the final decision.**"*

*[Emphasis Supplied]*

53. We also take note of the following two judgments of Hon'ble Appellate Tribunal for Electricity ("APTEL"), wherein on similar set of facts, the following conclusions were drawn by Hon'ble APTEL:-

**a. In Global Energy Private Limited v. Karnataka Electricity Regulatory Commission & Ors; 2016 SCC OnLine APTEL 118**, while three (3) members of the State Electricity Commission heard the matter, the final order was signed only by two (2) members. The Hon'ble APTEL held as under:

*"22... the work of the Commission which is of a quasi-judicial nature is one of joint responsibility of all Members. The Commission as a body should sit together and the order of the Commission has to be the result of the joint deliberations of all Members of the Commission acting in a joint capacity. All Members of the Commission who heard the matter should sign the order. If the order is not signed by all Members who heard the matter it will be invalid as it will not be order of the Commission. This is in line with the fundamental proposition that a person who hears must decide and divided responsibility is destructive of the concept of judicial hearing. If a Member dissents he must give reasons for the dissent and that shall form part of the order."*

*[Emphasis Supplied]*

b. In **Damodar Valley Corporation v. Central Electricity Regulatory Commission; (2019) SCC OnLine APTEL 40**, while four (4) members of the Central Electricity Regulatory Commission heard the matter, only three (3) members signed the order as one of the members of the bench had retired. Hon'ble APTEL held as under:

*"20. It is the specific case of the learned senior counsel appearing for the Appellant at the outset that the instant case has been heard by the four Members of the Respondent/the Central Commission as early as 14.10.2014 and the matter has been reserved for orders. It is admitted fact that order has been passed on 18.12.2017 only, is also not in dispute. Further it is not in dispute that the matter has been heard by four Members of the Central Commission. It is significant to note that out of four Members when one Member has retired is also not in dispute. It is manifest on the face of the cause title of the order it emerge that the only three Members have signed the Impugned Order and passed on 18.12.2017 and the same was communicated to the Appellant through posting in the Ist Respondent/the Central Commission website on 20.12.2017 after gap of three years and two months. It is astonishing to note that the said order impugned passed contrary to the relevant Regulation as per the notification bearing No. 8/1/99-CERC published in official gazette on Monday, the 23 April, 1999. It is worthwhile to extract the relevant clause 62 which reads as under:—*

*"62. The Commission shall pass the orders on the Petition and the Chairperson and the Members of the Commission who hear the matter and vote on the decision shall sign the orders."*

*21. After careful reading of the Regulation 62 as stated supra it is mandatory on the part of the Chairperson and Members of the Commission to hear the matter and vote on the decision shall sign the order which is mandatory in nature. There is no saving clause as such to the fact that what is sufficed to sign the Impugned Orders. Therefore, we are of the considered view that there is substance in the submissions made by the learned senior counsel appearing for the Appellant and we do not find substance in the submissions made by the learned senior counsel for the Respondents."*

54. It is correct that when the final judgment/order in the present matter was passed by the Competition Commission on 18.9.2018, Mr. S.L. Bunker, Member and Mr. D.K. Sikri (Chairperson) had retired and therefore, it was not possible for them to sign and authenticate the Impugned Order, and in such a situation, only Mr. Sudhir Mital, Chairperson, Mr. U.C. Nahta, Member and Mr. Augustine Peter, Member signed the Impugned Order. It is noted that Justice G.P. Mittal, who was a member on 18.9.2018 (the date of the Impugned Order), did not sign and authenticate the Impugned Order. It is noted that Justice G.P. Mittal did not hear the case from 2.8.2017 onwards, and so we may assume that since he did not hear the case in full, he did not participate in decision making and sign and authenticate the Impugned Order.

55. On the basis of the ratio in judgments reproduced above, we find that the possibility of a different opinion being held by the body of members hearing the case is distinctly possible if all the members were to jointly apply their mind and come to a conclusion. We note that the above-mentioned judgments of Hon'ble APTEL unambiguously lay down that the final judgment

in a matter should be rendered by the same set of members as those who heard the case.

56. From the above noted facts of the present case and the judgments of Hon'ble APTEL that are cited earlier in this judgment, it can be inferred that there is not only a strong desirability, but also a legal requirement that all the members who hear the case must deliver/pronounce the Impugned Order and sign and authenticate it.

57. In the present case, we find that one member Justice G.P. Mittal did not participate in four hearings, and therefore, he may have chosen not to sign the Impugned Order, even though he continued to be a member on the date the Impugned Order was pronounced. We may, therefore, consider that Justice G.P. Mittal, Member did not form part of the "coram", who heard the case and therefore, the other five members heard the case on all the dates of hearings before the final order was pronounced. In view of the ratio in the judgments of Hon'ble APTEL cited above, it would be definitely legally required that all these five members should sign and authenticate the Impugned Order.

58. We note that the possibility of the five members who heard the case on all the dates to have signed the Impugned Order became impossible because the matter was reserved for orders on 22.8.2017, and the Impugned Order was pronounced on 18.9.2018, after almost thirteen months and during the intervening period Mr. S.L. Bunker, Member and Mr. D.K. Sikri, Chairperson retired on 31.1.2018 and 12.7.2018 respectively. It is quite possible that both

Mr. D.K. Sikri and Mr. S.L. Bunker may have participated in the preparation of the Impugned Order, but from the facts and circumstances of the case, it is not clear as to what opinion they held if they had participated in decision making. Such a doubt about the members having participated in the decision making but not being party to delivery of the impugned order creates legitimate perception about some ‘infirmity’ in the said order, which itself would go against the principle of natural justice because ‘justice must not only be done, but also appear to have been done.’

59. The understanding of the Learned Counsel of Respondent that **Mahindra Electric Mobility Limited & Anr. V CCI & Anr. (supra)** judgement accepts the validity of a situation when some member may have participated in some hearings, but not signed the final judgment would lend support to his contention about the legality of the order in the present case, in our opinion is not the correct understanding. In this connection, for better appreciation we reproduce the relevant paragraphs of this judgment as below:-

**“163.** *There can be no two opinions about the impropriety of a decision which is contrary to the principle that a tribunal or adjudicatory body is bound to render its decision, after hearing the parties; if the body comprises of one or several members, it is a necessary corollary that only those who hear should decide. The decisions of the Supreme Court in Guttapalli Nageswara Rao (supra); Union of India v. Shiv Raj (2014) 6 SCC 564 establish this rule. The ratio of these judgments is that one who hears must decide and violation of this rule will render the final order void. question here is, did anyone who did not hear the complaints decide it?*

**164.** *The record and the tabular chart, listing the members who heard the matters on 05.02.2013 to 08.02.2013, shows that those who*

participated were Mr. HC Gupta, Anurag Goel, M L Tayal, Ashok Chawla, R Prasad, Justice S.N. Dhingra (Retd) and Ms. Geeta Gouri. On 05.03.2013, when CCI requested for additional information from the informant and the other OEMS, the same members - except Mr. R. Prasad participated; he had retired, in the meanwhile. On 09.05.2013, the same combination (Mr. HC Gupta, Anurag Goel, M L Tayal, Ashok Chawla, Justice S.N. Dhingra (Retd) and Ms. Geeta Gouri) were present. Instead of R Prasad, Mr. Bunker, was present at this meeting. He was not present during the oral submissions and he joined the CCI on 25 March 2013. On 08.08.2013, five equipment manufacturers (OEMs) made submissions; on this date, Mr. Anurag Goel, M L Tayal, Ashok Chawla, Justice S.N. Dhingra (Retd) and Ms. Geeta Gouri (from the original combination who heard the matter consecutively on 5th-8th February, 2013) were present; two (R. Prasad, who had retired and H.C. Gupta) were not present; Mr. Bunker was present like in the previous hearing. The final order was made on 25.08.2014; it was by three members, i.e. Mr. Anurag Goel, Ashok Chawla and M.L. Tayal.

**169.** *It is clear that on the question whether in a particular case, a suitor or litigant can justly complain of violation of principles of natural justice- on the aspect that a tribunal of varied composition rendered decision through only some members, when at earlier stages, all members had participated and heard, is not capable of any one answer. Much depends on the factual context. Here, the three members who did finally decide the complaints (Mr. Anurag Goel, Ashok Chawla and M.L. Tayal) were present throughout all the dates of final hearing. No doubt, as time passed, four original members (Mr. R. Prasad, H.C. Gupta, Justice S.N. Dhingra (Retd), and Ms. Geeta Gouri) retired or completed their tenure. That fact is not disputed; in these circumstances, in the opinion of the court, the mere fact that Mr. Bunker participated in two intervening hearings, but was not a party to the final decision, per se does not amount to violation of principles of natural justice.*

**170.** *That proviso to Section 22(3) permits the possibility of the "revolving door" in the opinion of the court, does not result in its invalidity. It is well settled that the possibility of abuse of power is not a ground to hold the law, or provision of a law, arbitrary. In Sushil Kumar Sharma v. Union of India (2005) 6 SCC 281 it was observed as follows:*

*"11. It is well settled that mere possibility of abuse of a provision of law does not per se invalidate a legislation. It must be presumed,*

*unless contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand" (see: A. Thangal Kunju Musaliar v. M. Venkatachalam Potti, Authorised Official and Income-Tax Officer) (1956) 29 ITR 349 (SC).*

**177.** *Having so concluded, this Court is nevertheless of the opinion that a hearing by a larger body and decision by a smaller number (for compelling reasons or otherwise) does lead to undesirable and perhaps at times avoidable situations. To address this, the court hereby directs that when all evidence (ie. report, its objections/affidavits etc.) are completed, the CCI should set down the case for final hearing. At the next stage, when hearing commences, the membership of the CCI should be constant (i.e. if 3 or 5 members commence hearing, they should continue to hear and participate in all proceedings on all hearing dates); the same number of members (of the CCI) should write the final order (or orders, as the case may be). This procedure should be assimilated in the form of regulations, and followed by the CCI and all its members in all the final hearings; it would impart a certain formality to the procedure. Furthermore, the court hereby directs that no member of the CCI should take a recess individually, during the course of hearing, or "take a break" to rejoin the proceeding later. Such "walk out and walk in" practise is deleterious to principles of natural justice, and gravely undermines public confidence in the CCI's functioning. Once the hearing commences, all members (who hear the case, be they in quorums of 3 or 5 or seven) should continue to be part of the proceeding, and all hearings, en banc. An analogy may also be drawn to the hearings in courts before benches of more than one member. Hearings may take place from time to time before benches of varying composition, but once the final hearing has commenced, the matter is heard and decided only by the same bench. There is no addition, deletion or substitution in the composition of the bench during the course of final hearing. If at all, it becomes impossible to continue the hearing before the same bench (for example, due to one of the judges having demitted office), the matter is heard afresh by the new bench even if the composition is partly common with the previous bench. A similar example may be given of hearings in the Supreme Court - if a matter is heard in part by a bench of two judges, further hearings are held only before that bench, and not before the bench of three judges even if both the original members of the bench are also part of the three judge bench. The invariable practice of the courts, which also ought to be followed by the CCI, is that the bench which hears the matter decides it, and that every member who participates in the hearing, is also party to the final decision."*

60. Insofar the present matter is concerned, we are of the opinion that the facts and circumstances, in that, fewer members signed the order when a larger body heard the case, and that too, after a long delay, makes for non-applicability of ratio **Mahindra Electric Mobility Limited & Anr. V CCI & Anr.** judgment.

61. We note that Hon'ble Supreme Court has held in the matter of **Ram Bali v. State of U.P., [(2004) 10 SCC 598]** regarding the desirability of timely delivery of judgments. The relevant part of the judgment is reproduced hereunder:-

*“18. We also find that the plea of delayed delivery of judgment and the same rendering it vulnerable is without any substance. In Anil Rai case this Court has only stressed upon the desirability of early delivery of judgments. In fact, the judgment impugned before this Court in the said case was not set aside on the ground of delayed delivery of judgment and was dealt on merits. In paras 10 and 45 of the judgment this Court had indicated options to a party in case judgment is not delivered for a considerably long time. We are unable to appreciate that any detriment as such was caused to the appellant on that account alone, on the peculiar facts of the case, as well.”*

62. We further note that the Hon'ble Supreme court has held in the matter of the **Anil Rai vs. State of Bihar (supra)** the guiding principles regarding timely pronouncement of judgment, which is as hereunder:-

*“43. Should the situation continue to remain so helpless for all concerned? The Apex Court made an exhortation in 1976 through a judgment which is reported as R.C. Sharma v. Union of India for expediting delivery of judgments. I too wish to repeat those words as follows: (SCC Headnote)*



*"Nevertheless an unreasonable delay between hearing of arguments and delivery of judgment, unless explained by exceptional extraordinary circumstances, is highly undesirable even when written or arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments."*

xx xx xx xx

45. Sethi, J. has enumerated them succinctly as follows:

- (i) *The Chief Justices of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the Court Officer concerned.*
- (ii) *That Chief Justices of the High Courts, on their administrative side, should direct the Court Officers/ Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.*
- (iii) *On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months the Chief Justice concerned shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.*
- (iv) *Where a judgment is not pronounced within three months from the date of reserving judgment, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when*

*filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.*

- (v) *If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.*

(Emphasis Supplied)

63. From the above-stated two judgments in matters of **Anil Rai vs. State of Bihar (supra)** and **Ram Bali v. State of U.P. (supra)**, it is quite clear that the issue of delayed delivery/pronouncement of judgment is a serious issue on which Hon'ble Supreme Court had occasion to apply its mind. Regulation No. 32 of the CCI (Meeting for Transaction of Business) Regulations, 2009 also stipulates that the Competition Commission may deliver final judgment within 21 days from the date the Competition Commission reserved the matter for final judgment. Therefore, it is trite to infer that the matter of timely delivery/pronouncement of judgment is an important one and therefore, even in the CCI (General) Regulations, 2009 a specific stipulation has been made under sub-regulation 2 of Regulation 32. Of course, this sub-regulation also contains a rider which states that the order or decision of the Competition Commission shall be made within 21 working days from the date of conclusion of final arguments, insofar as it is practicable.

64. We note the judgment of Hon'ble COMPAT in the matter of **National Insurance Company Ltd. vs. Competition Commission of India (supra)**

regarding the requirement of 'one who hears must decide'. The relevant portion of the judgment is reproduced below:-

*"17. The Appellants have sought quashing of the impugned order on the ground of violation of the principles of natural justice. It was stated that, all the members of the Commission and the Chairman were present for the hearing dated 07.04.15, wherein counsel for the Appellants was heard for some time on the preliminary objection regarding the maintainability of the proceedings under Section 3(3) of the Act against companies forming a Single Economic Entity'. Further, It was submitted that a specific question was raised by the Chairman as to whether the Government of India supported the argument advanced by the Appellants that they were a 'Single Economic Entity' and the matter was adjourned for a final hearing on 14.05.15, on which date the Appellants filed a letter dated 14.05.15 issued by the DFS, responding to the Chairman's query, but a quorum of four members without the Chairman, heard the arguments and reserved the order. The Appellants asserted that on inspection, they had found that the Chairman participated in the internal deliberations of the Commission on 10.06.15 when submissions of the parties were considered and a decision to call for financial details was taken, which in effect meant a decision to impose penalty. Therefore, their stand is that the Chairman was part of deliberations and the decision making of the case but chose not to sign the final order. The contention was that, the entire order was vitiated on account of Quorum Non Judice and on account of the violation of the important principle of 'one who hears must decide without any influence'. Reliance was placed on our decision in the case of Lafarge v. CCT' (Case No. 103 of 2012), which, inter alia, referred to the Supreme Court judgment in the case of 'A.K. Kraipak v. Union of India' [(1969) 2 SCC 262], to claim that this violation was a fatal irregularity. Further, it was stated that in a case of similar irregularity, the King's Bench Division in the case of RV Sussex, [1924] 1 K.B. 256, had also set-aside the order under challenge with the following observation:*

*"The answer to that question depends not upon what actually was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."*

xx xx xx xx

*17.2 We see no merit in the arguments of the Appellants. Vitiating of an Order on account of influence, based on the principle that 'one who hears*

*must decide without any influence', requires possibility of influence by an interested person to the prejudice of the party challenging the Order. The Appellants in the present case have failed to establish any personal interest of the Chairman in the proceedings or how his presence in some deliberations and not being party to the Impugned Order, caused any prejudice to their case. Reference to the judgment of the Supreme Court in the case of A.K. Kraipak (ibid), referred by us in the Lafarge case (ibid) is misplaced as in that case a person who was himself a candidate for selection from the State Service to an All India Service, was a member of the Selection Committee. The Supreme Court was of the view that, though such an interested person may not have participated in the deliberation when his own case was being considered, his bias could have operated in a subtle manner in selection of other persons, including his competitors. Similarly, in the King's Bench decision (ibid), the court was considering challenge to an order convicting a person involved in a collision, of driving in a manner dangerous to public. The presence of Justices' clerk, who was interested in the proceedings, being member of the firm of solicitors representing a client in a civil suit for damages in respect of the same collision, while the justices were considering their decision, led to quashing of the conviction.*

*In the present case, there is no material to indicate personal interest of the Chairman or how his presence in some of the meetings vitiated arriving at a just decision by the Members, or the kind of influence he allegedly exercised. The impugned Order is by the Members of the Commission, who heard the Appellants and the Chairman was rightly not party to the Order, as admittedly he was not present during all the proceedings when the Appellants were heard.”*

65. The inapplicability of the above-mentioned judgment in the facts of the present case is due to reason that this judgment is in a matter in which the Chairperson participated in the deliberations, but did not sign the judgment, whereas in the present matter the members who could not sign the judgment was due to inordinate delay in pronouncement, having demitted office before the judgment was pronounced.

66. We note the following from judgment of Hon'ble COMPAT in the matter of **Lafarge India Limited, Crescenzo Bldg v. Competition Commission of India and Another (supra) :-**

*"79. In Union of India v. Shiv Raj-[(2014) 6 SCC 564], a three-Judge Bench of the Supreme Court reiterated the principle laid down in Gullapalli Nageswara Rao's case. This is evident from paragraphs 17 to 20 of the judgment, which are reproduced below:*

*"17. This Court in Gullapalli Nageswara Rao, held: (AIR p. 327, para 31)*

*"31. ...Personal hearing enables the authority concerned to watch the demeanor of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes and empty formality. We therefore, hold that the said procedure followed in this case also offends another basic principle of judicial procedure."*

*18. This Court in Rasid Javed v. State of U.P. following the judgment in Gullapalli Nageswara Rao, held that : (Rasid Javed case, SCC p. 796 para 51):*

*"51. "...a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted."*

*19. A similar view has been reiterated by this Court in Automative Tyre Manufacturers Assn. v. Designated Authority, wherein this Court dealt with a case wherein the designated authority (DA) under the relevant statute passed the final order on the material collected by his predecessor-in-office who had also accorded the hearing to the parties concerned. This Court held that the order stood vitiated as it offended the basic principles of natural justice.*

*20. In view of the above, the law on the issue can be summarized to the effect that the very person/officer, who accords the hearing to the objector must also submit the report/take decision on the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated having been passed in violation of the principles of natural justice."*

xx xx xx xx

81. *The signing of each page by the Chairperson is strongly indicative of the fact that the orders were authored by him and not by any of the six Members, who had heard the arguments on the above noted three dates. During the course of hearing, Mr. Vaibhav Gaggar, learned counsel assisting Mr. Pallav Shishodia, Senior Advocate for the Commission made a statement that by putting initials on each page of the order, the Chairperson had authenticated the signatures of the remaining six Members but Mr. Shishodia did not endorse this assertion and, in our view, he rightly did so because it is beyond comprehension that the signatures of the Members, most of whom are former Class-I officers of the Government and one is a former Judge of the High Court, are required to be authenticated by someone. In this context, it is necessary to remember that the Members of the Commission are not minions. They are part of a important body, whose powers have few parallels in the country. While exercising adjudicatory powers, all the Members and the Chairperson act as coordinates. If for any reason, the Chairperson is absent then the senior most Member is required to preside over the meeting of the Commission. Therefore, it is naive to suggest that the Chairperson had put initials on each page of orders dated 20.06.2012 to authenticate the signatures of six Members.”*

67. It is clear from the above judgment, that the principle of “one who hears must decide” is not only relevant, but also that it impacts the spirit of natural justice to the order. Order passed by a person, who had not heard the arguments offended the principle of judicial procedure, and further it was held that the very person who hears the matter must pass the order. He has also argued that this judgment holds that the Chairperson cannot sign on behalf of other members and while exercising judicial power, since all the members and the Chairperson act as “coordinates”.

68. The judgment in **Competition Commission of India v. Steel Authority of India Ltd & Anr. (supra)**, whose relevant portion is reproduced

below, lays down that the right to notice and hearing may not be mandatory requirement:-

*“79. It is difficult to state as an absolute proposition of law that in all cases, at all stages and in all events the right to notice and hearing is a mandatory requirement of principles of natural justice. Furthermore, that non-compliance therewith, would always result in violation of fundamental requirements vitiating the entire proceedings. Different laws have provided for exclusion of principles of natural justice at different stages, particularly, at the initial stage of the proceedings and such laws have been upheld by this Court. Wherever, such exclusion is founded on larger public interest and is for compelling and valid reasons, the courts have declined to entertain such a challenge. It will always depend upon the nature of the proceedings, the grounds for invocation of such law and the requirement of compliance with the principles of natural justice in light of the above-noticed principles.”*

69. We note that in the present case the non-compliance to the principle of natural justice is not due to some legal, compelling reason or public interest, but solely due to a faulty, and irrational procedure followed by the Competition Commission which has certainly meant prejudice to the appellants as they were imposed penalty on the basis of such a procedure being followed by CCI.

70. In the present matter, we find that the final order was delivered after almost 13 months from the date the matter was reserved for orders, after conclusion of final arguments. This period is definitely a very long period, and it may be entirely possible that the members, who did not sign the judgment may have held a different point of view, or that, when they participated in collective deliberation and discussion while preparing the final order, the final order may have gone in a different direction. Added to this is also a distinct possibility that even the members, who signed and

authenticated the final order, may have suffered from some loss of memory regarding the facts of the case, which also could have a bearing on the final outcome in the case. We note the fact that the Impugned Order was pronounced after about 13 months from the date the matter was reserved for orders, it is much more than the time limit of six months that the Hon'ble Supreme Court has felt as an outer time limit in **Anil Rai vs. State of Bihar case (Supra)**. We are of the view that long delayed delivery of final order/judgment was completely overlooking the desirability of pronouncing final judgment. All the above analysis point to the necessity, much rather the desirability of timely pronouncement of judgment, and also the necessity of the same set of members, who heard the final arguments, to be party in the decision making and then sign and authenticate the final judgment.

71. While considering the argument of the Ld. Counsel of CCI that no judgment of the CCI would become invalid just by the reason of vacancy in the constitution of the Competition Commission we are of the view that in the present case the reason of a smaller body not being able to sign and deliver the judgment is not because of any vacancy in the CCI but due the inability of two members having retired in signing the judgment. Therefore, the ratio of the judgment in **Cadd Systems & Services Private Ltd. v. Competition Commission of India (supra)** would not be applicable in the facts of the present case when the smaller body of members signing the judgment was not due to any vacancy in the CCI from the very instant when the case was heard, but due to the following of a flawed procedure in hearings.



72. We are, therefore, of the view that the delay of about 13 months in the pronouncement of the Impugned Order so that only three members could sign and authenticate it instead of five members who heard the case on all the dates leads to two infirmities in the Impugned Order. The first infirmity that the same “coram” of members, who heard the matter, did not sign the order was a major infirmity. It was compounded by the fact that there was inordinate delay in the pronouncement of the final order. In such a situation, we are inclined to hold the opinion that the Impugned Order was not pronounced by following the spirit of the principle of natural justice as was required by section 36 of the Competition Act, 2002.

73. Another important issue raised by the Appellant is that when the Competition Commission considered the matter in its meeting held on 30.10.2017 and directed the DG to make further investigation/analysis and submit a Supplementary Report, five members were present in the hearing. The relevant part of the order dated 30.10.2017 is reproduced below:-

*“11. In fact, the Opposite Parties during the course of arguments on the DG Reports made a criticism of the DG Reports on this count by arguing that the DG has examined producers of UP leaving out the producers located in Maharashtra.*

*12. Having considered the DG Reports and the submissions of the parties, the Commission is of considered opinion that having collected the necessary data and investigated into the matter, it was incumbent upon the DG to have analysed the same and to have made its recommendations/ findings in respect of the depots in the State of Maharashtra.*

*13. On a careful perusal of the DG report, the Commission is of opinion that before proceeding any further in the present matter, it would be appropriate to direct the DG in terms of the provisions contained in Regulation 20(6) of the Competition Commission of*

*India (General) Regulations, 2009 to conduct further investigation on the issues identified in para 12 above. Accordingly, the DG is directed to make further investigation/ analysis and submit a supplementary report on the specific issue identified in this order within a period of 60 days from the receipt of this order. While conducting such further investigation, the DG shall not be hidebound by the fact that the bidders who participated in respect of the depots of State of Maharashtra have not been named in the information.*

*14. The Secretary is directed to communicate to the parties and the DG accordingly.”*

74. In the matter of the opposite parties being granted further opportunity of submitting objections or suggestions and also presenting oral submissions, we note that sub-section (5) of section 26 of the Competition Act makes it mandatory that even if there is no contravention of the provisions of the Competition Act, the Commission shall invite objections or suggestions from the parties concerned on the report of the DG, and thereafter pass necessary order. Further, sub-section 7 of section 26 lays down that if the Competition Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the DG, as was done by order dated 30.10.2017 of the Competition Commission.

75. In view of sub-section (5) of section 26, once supplementary investigation was ordered by the Competition Commission vide its order dated 30.10.2017, this Supplementary Investigation Report should have been examined and acted upon by following the procedure laid down in sub-section 5 of section 26. We further note that the procedure for inquiry under section 26 of the Act is etched out in Regulation 21 of the CCI(General) Regulations,

2009, wherein objections/suggestions from the opposite parties have to be invited in accordance with sub-regulations (2) and (4). On receipt of further investigation report, the Competition Commission shall invite further objections/suggestions from the relevant parties including the opposite parties. We further note that the manner of making submissions or arguments is laid down in Regulation 29 of the CCI (General) Regulations, whereby the requirement of providing opportunity for making oral submissions on written arguments is laid down. The requirement of adherence to the principle of natural justice as envisaged in section 36 of the Competition Act would require that once suggestions and objections were invited from the opposite parties by the Competition Commission vide its order dated 30.10.2017, and since the reason that the supplementary investigation was directed to be done on the request of the opposite parties, the need for compliance with principle of natural justice certainly required that the opposite parties be granted an opportunity to present oral arguments to buttress whatever objections or suggestions they may have submitted in the matter. Thus, we are of the view that the Competition Commission should have provided an opportunity to the opposite parties (appellants) to present oral arguments when it was considering the Supplementary Investigation Report prepared by the DG, which was not done.

76. Another point made by the Appellant is whether Regulation 3-A of the CCI (General) Regulations, 2009 would have retrospective effect? In this connection, we note that Regulation 3-A regarding “coram” was inserted by notification dated 2.3.2021. We also note that this insertion was made after

Hon'ble Delhi High Court's judgment in the matter of **Mahindra Electric Mobility Limited and Anr. V. Competition Commission of India and Anr. (supra)**, wherein by its judgment dated 10.4.2019, Hon'ble Delhi High Court had concluded as follows:-

**“212.** *In view of the findings of this Court, in the previous parts of this judgment, the following conclusions are recorded and directions issued:*

*xx xx xx xx*

*(iii) All other provisions of the Competition Act are held to be valid subject to the following orders:*

*(a) The CCI shall frame guidelines with respect to the directions contained in para 179 of this judgment, i.e. to ensure that one who hears decides is embodied in letter and spirit in all cases where final hearings are undertaken and concluded. In other words, once final hearings in any complaint or batch of complaints begin, the membership should not vary-it should preferably be heard by a substantial number of 7 or at least, 5 members.*

*(b) The Central Government shall take expeditious steps to fill all existing vacancies in the CCI, within 6 months;*

*(c) The CCI shall ensure that at all times, during the final hearing, the judicial member (in line with the declaration of law in Utility Users Welfare Association, (supra) is present and participates in the hearing;*

*(d) The parties should in all cases, at the final hearing stage, address arguments, taking into consideration the factors indicated in Excel Crop Care (supra) and any other relevant factors; they may also indicate in their written submissions, or separate note, of submissions, to the CCI, why penalty should not be awarded, and if awarded, what should be the mitigating factors and the quantum-without prejudice to their other submission.”*

77. Thus, Regulation 3-A was included in the CCI (Meeting for Transaction of Business) Regulations, 2009 after Hon'ble Delhi High Court had given a

direction as above, where it had directed that “once final hearings in any complaint or batch of complaints begin, the membership should not vary-it should preferably be heard by a substantial number of 7 or at least, 5 members”. We also note that this judgment of Hon’ble Delhi High Court was delivered in petition under Article 226 of the Constitution of India, whereby the petitioners had challenged the vires of some provisions of the Competition Act, 2002. We are of the opinion that it is not necessary to look at the issue of retrospective operation of Regulation 3-A, since in the present case we have already formed an opinion that the Impugned Order suffers from illegality of a smaller body of members signing and pronouncing the final order than the body of members that heard the case and the inordinate delay in pronouncing the judgments – with both the reasons having struck at the spirit of principle of natural justice.

78. We are, therefore, of the clear view that the Impugned Order does not comply with the requirement of adherence to the principle of natural justice for the reason that the “coram” of CCI that heard the final arguments did not pass the necessary orders within reasonable period of time, and by the time, the orders were pronounced in the case, one member was not present in at least four later hearings and two members had demitted office and therefore they did not participate in the decision making nor sign and authenticate the final order. Thus the delay in pronouncing the impugned order also resulted in serious infirmity in that ‘one who hears must decide’ was not followed in letter and spirit. Further, we are also of the opinion that CCI should have afforded an opportunity of oral hearing to the opposite parties after the

“Supplementary Investigation Report” was received from the DG, and before pronouncing the final Impugned Order on 18.9.2018. We thus find that the Impugned Order does not satisfy the basic tenet of adherence to the principle of natural justice which was ingrained in section 36 of the Competition Act.

79. On these grounds, we set aside the Impugned Order. We are also of the opinion that since we have set aside the Impugned Order, it is not necessary to hear the appeals under consideration on merit. We further direct for remanding the matter to the Competition Commission of India for constitution of an appropriate “coram” of members to undertake fresh hearing of the case keeping all the contentions of rival parties open. The oral hearing should also cover the contentions of the parties on the Supplementary Investigation Report and the issue of penalty and its quantum, in case it is found necessary to impose penalty on erring parties. We order accordingly.

80. With the order as above, this batch of appeals is disposed of.

81. According to the order of this Tribunal dated 29.11.2018, the Appellants who were imposed penalty by the Impugned Order of the Competition Commission of India, were directed to deposit 10% of the penalty amount in the form of FDR in favour of the Registrar, NCLAT within 15 days, which was subject to decision of this appeal. Since we have, through this judgment, set aside the Impugned Order of the Learned Competition Commission of India, we direct that the FDRs deposited by the Appellants

may be released to them by the Registrar, NCLAT within fifteen days of this judgment.

82. No order as to costs.

**(Justice Rakesh Kumar]**  
**Member (Judicial)**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

**New Delhi**

**10<sup>th</sup> October, 2023**

**/aks/**