

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.09.2019

+ **W.P.(C) 1100/2019 & CM APPL. 5026/2019**

**UNITED INDIA INSURANCE COMPANY
LIMITED**

..... Petitioner

versus

COMPETITION COMMISSION OF INDIA Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Udayan Jain, Mr Kamal Sharma,
Advocates.

For the Respondent : Mr Samar Bansal, Mr Manan Shishodka,
Advocates.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 06.12.2018 passed by the respondent (Competition Commission of India – hereafter ‘CCI’). By the said impugned order, the petitioner has been directed to deposit interest on account of delay in payment of the penalty, which was imposed on the petitioner for violating the provisions of Section 3 of the Competition Act, 2002 (hereafter ‘the Act’).

2. The petitioner further impugns the demand notice dated 01.10.2015 (stated to be received on 07.10.2015 by the petitioner), whereby the petitioner was called upon to deposit a sum of

₹1,56,62,00,000/- as penalty within a period of thirty days from the date of receipt of the demand notice, failing which the petitioner would be liable to pay interest at the rate of 1.5 percent for every month of delay. The said penalty was imposed upon the petitioner by the CCI under Section 27 of the Act.

3. The petitioner also impugns the demand notices dated 17.01.2017 and 14.12.2018. By the said demand notices, the petitioner has been directed to pay an amount of ₹32,76,000/- as interest for a delay of fourteen months in payment of the penalty, in terms of Regulation 5 of the CCI (Manner of Recovery of Monetary Penalty) Regulations, 2011 (hereafter 'the Recovery Regulations').

4. The aforesaid penalty has been imposed on the petitioner on account of being involved in 'bid rigging' in collusion with three other companies and thus violating the provisions of Section 3 of the Act. The petitioner had filed an appeal in Competition Appellate Tribunal (hereafter 'COMPAT') challenging the imposition of the aforesaid penalty. On 05.10.2015, COMPAT granted an interim stay on the order dated 10.07.2015 and subsequently, by an order dated 16.12.2016, reduced the penalty imposed on the petitioner. During the pendency of the appeal, a demand notice dated 01.10.2015 was issued to the petitioner to pay the penalty within a period of thirty days, failing which the petitioner would be liable to pay interest at the rate of 1.5% per month. By way of demand notices dated 17.01.2017 and 14.11.2018 (which are impugned in the present petition), the CCI had

called upon the petitioner to pay a sum of ₹32,76,000/- as interest on account of delay of fourteen months in depositing the penalty.

5. The petitioner contends that the aforesaid demand notices are illegal inasmuch as they are contravention of Regulation 5 of the Recovery Regulations'). It is submitted that the demand notice was served on the petitioner during the pendency of the appeal in COMPAT and thus, the petitioner is not liable to pay the interest in terms of the aforesaid Regulations. CCI refutes the same and contends that the pendency of the appeal in COMPAT, in no manner, negates the liability of the petitioner to pay interest on account of delay in payment of penalty. It is further submitted that the CCI has acted within its powers in terms of the Recovery Regulations.

6. The only issue which falls for consideration of this Court is whether the petitioner is liable to pay interest to the CCI on account of delay in payment of penalty as levied upon it.

Factual Background

7. In September 2013, information was filed with the CCI alleging that the petitioner, along with three other Public Sector General Insurance Companies – National Insurance Company Ltd., New India Assurance Company Ltd. and Oriental Insurance Company Ltd. – had indulged in cartelisation in respect of the tenders floated by the State Government of Kerala for the health schemes, namely, Rashtriya Swasthya Bima Yojana (RSBY) and Comprehensive Health Insurance Scheme (CHIS).

8. Pursuant to the aforesaid information, CCI issued notices to the petitioner and the other three companies seeking response as to the aforesaid allegations. On 12.02.2014, the CCI passed an order directing the Director General, CCI (hereafter 'the DG') to conduct an investigation into the allegations as levelled against the aforesaid companies.

9. On 03.02.2015, the DG filed a report wherein it was found that the petitioner, alongwith the aforesaid companies, have indulged in 'bid-rigging' and thus has violated the provisions of Section 3(3) of the Act.

10. The said companies, including the petitioner, filed their objections to the said report and they were given an opportunity to be heard on 14.05.2015.

11. After hearing the objections advanced by the aforesaid companies, the CCI passed an order dated 10.07.2015 holding the petitioner and the said companies guilty of violating the provisions of Section 3(3) of the Act. A penalty at the rate of two percent of the average annual turnover was imposed on the said companies, which was computed at ₹1,56,62,00,000/-.

12. Aggrieved, the petitioner filed an appeal (being Appeal No. 96/2015) before the COMPAT impugning the order dated 10.07.2015. Similar appeals were filed by the other three companies as well. All the appeals were heard together and on 05.10.2015, COMPAT passed an order granting a stay on the order dated 10.07.2015 subject to the

aforesaid companies depositing 10% of the penalty with the Registry of COMPAT.

13. In the meanwhile, a demand notice dated 01.10.2015 was issued to the petitioner, calling upon it to pay the penalty of ₹1,56,62,00,000/- as imposed by the order dated 10.07.2015 within a period thirty days. It was further stated that the failure to deposit the aforesaid amount within the stipulated time period would attract simple interest at the rate of 1.5% per month on the principal amount and the petitioner would be liable to pay the same. It is stated that the said notice was received by the petitioner on 07.10.2015.

14. The petitioner replied to the aforesaid demand notice on 13.10.2015, stating that COMPAT had stayed the order dated 10.07.2015 subject to deposit of 10% of the penalty amount and a sum of ₹15,662 crores was being deposited by the petitioner in pursuance to the said order.

15. The aforesaid appeal was disposed of by an order dated 09.12.2016, whereby the COMPAT held the aforesaid companies, including the petitioner, guilty of 'bid rigging' and thus "*constituting contravention of Section 3 of the Act*". However, the Tribunal after considering the mitigating factors, reduced the quantum of penalty from 2% of the average turnover to 1% of the relevant turnover. As a result, the total penalty imposed on the petitioner was reduced from ₹156.62 crores to ₹1.56 crores. A tabular statement of the aforesaid

reduction in penalty, imposed on the said four companies, is set out below:

S.no	Name of the Appellant	Turnover being the premium share for 2010-11	Turnover being the premium share for 2011-12	Turnover being the premium share of 2012-13	Average Turnover for Three Years	@1% of the average turnover
1.	National Insurance Co. Ltd.	7.89	20.95	31.10	19.98	0.20
2.	New India Assurance Co. Ltd.	7.89	20.95	31.10	19.98	0.20
3.	Oriental Insurance Co. Ltd.	11.84			3.94	0.04
4.	United India Insurance Co. Ltd.	51.30	167.61	248.84	155.91	1.56

16. Admittedly, the said penalty as reduced was deposited by the petitioner on 04.01.2017.

17. Thereafter, in January 2017, the CCI sent another demand notice dated 17.01.2017 calling upon the petitioner to deposit a sum of

₹32,76,000/- as interest on account of a delay of fourteen months in payment of penalty. In response, the petitioner sent a letter dated 30.01.2017 denying the liability to pay interest; it contended that the question of delay would not arise, since the order dated 10.07.2015 levying of penalty was stayed and subsequently the penalty was substantially reduced by the COMPAT. In this view, the petitioner requested the CCI to withdraw the aforesaid demand notice.

18. Thereafter, the CCI filed an appeal (being Civil Appeal No. 3342/2017) before the Supreme Court under Section 53T of the Act, assailing the order dated 19.12.2016 passed by COMPAT. The said appeal is currently pending before the Supreme Court.

19. In December, 2018, the CCI passed an order dated 06.12.2018 directing the petitioner to deposit a sum of ₹32,76,000/- as interest. Pursuant to the aforesaid order, the petitioner received a recovery notice dated 14.12.2018 calling upon the petitioner to deposit the aforesaid amount within a period of fifteen days, failing which the petitioner would be liable *“for appropriate action under the provisions of the Act and the relevant regulations”* The aforesaid notice was issued in view of the decision of National Company Law Appellate Tribunal (NCLAT) in Competition Appeal (AT) No. 590/2015 captioned *“SCM Soilfert Ltd. & Anr. v. CCI”* on the issue of payment of penalty notwithstanding the pendency of an appeal before the appellate court. In the aforesaid matter, by an order dated 8.08.2018, it was held that the petitioner is liable to pay the interest in terms of the demand notice issued by the CCI.

20. Aggrieved, the petitioner filed the present petition.

21. As observed hereinbefore, the only question that arises for consideration of this Court is whether the demand of interest on the penalty imposed by CCI, is sustainable.

Submissions

22. Mr Udayan Jain, the learned counsel appearing for the petitioner submitted that COMPAT had stayed the order imposing penalty, subject to the condition of depositing 10% of the said amount. The petitioner had complied with the said condition and therefore, the demand notice dated 01.10.2015 issued by CCI was unsustainable. He submitted that if the said demand is ignored – since it was contrary to the orders of COMPAT – there was no demand of penalty outstanding against the petitioner. He referred to Regulation 3(3) of the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011 (the Recovery Regulations) and contended that in terms of the said regulation, a demand notice is required to provide time of thirty days from the date of service of the demand notice to the enterprise concerned, to deposit the penalty. He submitted that since a valid demand notice had not been issued prior to the petitioner paying the penalty, no interest was payable since there was no delay. He submits that there has been no delay in paying the penalty.

23. Next, he submitted that the order dated 10.07.2015 passed by the CCI stood merged with the judgment dated 09.12.2016 passed by

COMPAT and therefore the period of delay, if any, was required to be reckoned after the said decision was rendered. He relied on the decision of the Supreme Court in *Khoday Distilleries Limited v. Shri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal: (2019) 4 SCC 376*. He stated that since COMPAT had modified the earlier order passed by CCI, the same ceased to subsist and stood merged with the order dated 09.12.2016 passed by COMPAT. Lastly, he submitted that the respondent cannot take advantage of its own inaction. He contended that the petitioner had complied with the order of COMPAT and had deposited 10% of the penalty amount, as was the condition imposed by COMPAT for staying CCI's order. He submitted that no notices were issued by CCI immediately after the judgment of COMPAT and CCI had accepted the penalty deposited by the petitioner without raising any objection as to any outstanding interest. He further submitted that CCI had raised the demand for interest after significant delay and it cannot be permitted to take advantage of such delay.

24. He also countered the submission that Regulation 5 of the Recovery Regulations indicated that interest was required to be paid even if the demand had been stayed by a superior court.

25. Mr Bansal, learned counsel appearing for CCI countered the submissions made on behalf of the petitioner. He referred to Regulation 5 of the Recovery Regulations and contended that interest on delayed penalty was statutorily payable. He also contended that if the penalty was reduced or modified and interest had been collected

on the entire penalty, an amount commensurate with the reduction was required to be refunded to the concerned enterprise. According to him, it also emphasized the statutory scheme of levy of interest on delayed payment of penalties. He relied upon the decision of the Supreme Court in the *State of Rajasthan and Anr. v. J.K. Synthetics Limited : (2011) 12 SCC 518* in support of his contention that interest was liable to be paid even for the period when the demand had been stayed, if the interim stay of the demand is ultimately vacated. He contended that the petitioner was not absolved of its payment liability solely for the reason that it had preferred an appeal against the said demand.

Reasons and Conclusion

26. At the outset, it is relevant to refer to Regulation 5 of the Recovery Regulations, which reads as under:-

“Interest on penalty.

5. If the amount specified in any demand notice is not paid within the period specified by the Commission, the enterprise concerned shall be liable to pay simple interest at one and one half per cent, for every month or part of a month comprised in the period commencing from the day immediately after the expiry of the period mentioned in demand notice and ending with the day on which the penalty is paid:

Provided that the Commission may reduce or waive the amount of interest payable by the enterprise concerned if it is satisfied that default in the payment of such amount was due to circumstances beyond the control of the enterprise concerned:

Provided further that where as a result of an order of the Competition Appellate Tribunal or the High Court or the Supreme Court of India, as the case may be the amount of penalty payable has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded in accordance with regulation 14.”

27. It is clear from the plain reading of the said Regulation that simple interest at the rate of one and one half per cent for every month, or part of the month, commencing from the date immediately after expiry of the period mentioned in the demand notice, is payable. The contention that since the order passed by CCI had been stayed, there was no delay in making the penalties, is unsustainable. The said issue is no longer *res integra*. In the *State of Rajasthan and Anr. v. J.K. Synthetics Limited (supra)*, the Supreme Court had examined several other decisions and had authoritatively reiterated the position that wherever an interim order or stay is granted, the beneficiary of the interim order is bound to pay interest on the amount withheld or not paid by virtue of the interim order unless the final order indicates otherwise. The relevant extract of the said decision is set out below: -

“19. We may refer to the decisions of this Court that have categorically laid down about the liability to pay interest for the period of stay when the stay is ultimately vacated.

20. In *Kanoria Chemicals and Industries Ltd. V. U.P. SEB* : [(1997) 5 SCC 772] this Court held that grant of stay of a notification revising the electricity charges does not have the effect of relieving the consumer of its obligation to pay interest (or late payment

surcharge) on the amount withheld by them by reason of the interim stay, if and when the writ petitions are dismissed ultimately. The said principle was based on the following reasoning : (SCC pp. 779-80, para 11)

“11.....Holding otherwise would mean that even though the Electricity Board, which was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the Notification revising the rates and fails in his attack upon the validity of the Notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply - which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law..... It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party

(Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same Notification - the operation of which was stayed."

The above principles have been followed and reiterated by this Court in **Rajasthan Housing Board vs. Krishna Kumari - 2005 (13) SCC 151** and **Nava Bharat Ferro Allays Ltd vs. Transmission Corporation of Andhra Pradesh Ltd - 2011 (1) SCC 216**.

21. The same question was considered by this Court, when examining the constitutional validity of Rule 64-A in South Eastern Coalfields. This Court held that Rule 64-A providing for payment of interest at the rate of 24% per annum, was valid. In that case also, it was contended before this Court that non-payment of the increased amount of royalty was protected by the interim orders of the High Court and therefore, they should not be held liable for payment of interest so long as the money was withheld under the protective

umbrella of the interim orders. It was further contended that merely because the writ petition was finally dismissed, it does not follow that the interim order becomes vitiated of erroneous, as it may still be a perfectly justified interim order. It was further argued that as they had shown their bona fides by paying the difference in royalty immediately after the validity of the notification dated 17.2.1992 was upheld, they could not be made liable to pay interest. All these contentions were rejected by this Court on the ground that the principle of restitution was a complete answer to the said submissions.

22. This Court held (*South Eastern Coalfields* case [(2003) 8 SCC 648], SCC p. 663, para 26)

"26. ... The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 of the CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have

been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing, wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed."

23. It is therefore evident that whenever there is an interim order of stay in regard to any revision in rate or tariff, unless the order granting interim stay or the final order dismissing the writ petition specifies otherwise, on the dismissal of the writ petition or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order. Where the statute or contract specifies the rate of interest, usually interest will have to be paid at such rate. Even where there is no statutory or contractual provision for payment of interest, the court will have to direct the payment of interest at a reasonable rate, by way of restitution, while vacating the order of

interim stay, or dismissing the writ petition, unless there are special reasons for not doing so. Any other interpretation would encourage unscrupulous debtors to file writ petitions challenging the revision in tariffs/rates and make attempts to obtain interim orders of stay. If the obligation to make restitution by paying appropriate interest on the withheld amount is not strictly enforced, the loser will end up with a financial benefit by resorting to unjust litigation and winner will end up as the loser financially for no fault of his. Be that as it may.”

28. It is material to note that the CCI had found the petitioner to be falling foul of Section 3 of the Act. This finding was not disturbed by COMPAT. The COMPAT had merely reduced the penalty and had modified CCI's order dated 10.07.2015 to that extent. Such modification would, obviously, relate back to CCI's order, that is, the order dated 10.07.2015. The contention that the order of CCI had merged with the order passed by COMPAT is correct. However, the COMPAT order reaffirmed CCI's decision to levy penalty and that decision, having been sustained, cannot be considered as inoperative or non-existent for the period during which it was suspended on account of the stay order. The said stay order having been lifted, the CCI's order imposing penalty, albeit to a reduced extent, would require to be enforced.

29. The interest on such penalty being a statutory levy is required to be paid.

30. The contention that the demand notice dated 01.10.2015 was illegal, is unpersuasive. COMPAT had stayed the operation of the

order passed by CCI; it had not obliterated the same. By virtue of the said order, the petitioner was not obliged to immediately pay penalty subject to depositing 10% of the said amount. The petitioner availed the benefit of the said order. However, on vacation of the stay, the order passed by CCI as well as the consequential demand notice became operative, albeit, to a reduced extent. Plainly, the petitioner is required to pay interest on the delayed payment.

31. In view of the above, the petition is unmerited and is, accordingly, dismissed. The pending application is disposed of.

SEPTEMBER 11, 2019

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VIBHU BAKHRU, J

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