



**Luthra and Luthra**  
LAW OFFICES INDIA

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As we dive into the February Edition of our Competition Law Newsletter, we are thrilled to connect with you once again. This month we have curated a blend of exciting updates, noteworthy Apex Court, Appellate Tribunal and CCI's Orders happened last month.

## **NCLAT grants interim stay on CCI proceedings against WhatsApp and Meta**

The National Company Law Appellate Tribunal (**NCLAT**) vide order dated 23.01.2025 granted an interim stay on the directives of the Competition Commission of India (**CCI**) against WhatsApp LLC (**WhatsApp**) and Meta Platforms Inc. (**Meta**), provided that they deposit 50% of the total penalty amount.

The CCI vide order dated 18.11.2024 , penalized Meta and WhatsApp for abusing their dominant position by implementing WhatsApp's 2021 privacy policy update (**2021 Update**) and thereby contravening Section 4 of the Competition Act, 2002 (**Act**). The matter will now be heard on 17.03.2025.

## **CCI finds Torrent Power guilty of violating Section 43A but refrains from imposing any monetary penalty**

In its order dated [14.01.2025](#), the CCI found Torrent Power Limited (**TPL**) guilty of contravening Section 43A of the Act but opted not to impose a monetary penalty. The CCI found that TPL's acquisition of 51% shareholding in Dadra and Nagar Haveli and Daman and Diu Power Distribution Corporation Limited (**Target**) required prior approval of the CCI; however, TPL had failed to seek such approval and consummated the acquisition by paying the requisite consideration of INR 555 crores.

TPL contended that the CCI's jurisdiction over this transaction was ousted due to the operation of Section 60 of the Electricity Act, 2003 (**Electricity Act**) which gives the power of reviewing combinations entered into by a licensee to the Joint Electricity Regulatory Commission (**JERC**) formed under the Electricity Act. The CCI, however, after a detailed analysis of the legislative provisions and various judicial pronouncements, rejected this contention and held that there was no conflict between the Act and Electricity Act and CCI's jurisdiction was independent and separate from that of the JERC.

Despite finding a violation, the CCI refrained from imposing a monetary penalty, citing mitigating factors such as TPL's obligation to meet strict bid timelines, legal ambiguities due to overlapping provisions of the Competition Act and Electricity Act, the transaction not resulting in an Appreciable Adverse Effect on Competition (**AAEC**), and TPL's full cooperation with the CCI.

Interestingly, this is the first instance wherein the CCI has decided not to impose any monetary penalty on the contravening parties for violation of Section 43A of the Act. Notably, such a decision could not be passed earlier in view of the mandatory language in the erstwhile Section



43A of the Act, which stated that the “Commission shall impose...”. However, the amended Section 43A of the Act uses the phrase “the Commission may impose” thus giving the CCI the discretion not to impose any penalty if so deemed appropriate despite finding that there has been a contravention. The CCI’s decision to exercise such discretion in the instant case promotes ‘ease of doing business in India’ and reduced burden of compliance.

## **Supreme Court of India dismisses CCI’s SLP against DHC Order in JCB and Bull Machines matter**

On 20.12.2024, the Supreme Court of India (**SCI**) dismissed a Special Leave Petition filed by the CCI challenging the Delhi High Court’s order directing the closure of CCI’s proceedings in the dispute between JCB India Ltd. (**JCB**) and Bull Machines Private Limited (**Bull**).

The matter arose in 2011, when JCB filed a suit against Bull, alleging design infringement and piracy of its registered designs related to the backhoe loader. In response, Bull filed an information before the CCI accusing JCB of abusing its dominant position through “sham litigation”. Based on this information, the CCI initiated an investigation into the matter in 2014. The said order of the CCI was challenged by JCB before the Delhi High Court which was pleased to stay the CCI proceedings.

Meanwhile, the civil suit was referred to mediation by the SCI, ultimately resulting in a settlement between JCB and Bull. Following this, both parties jointly requested the Delhi High Court to quash the CCI proceedings. On August 14, 2024, the Delhi High Court ruled that since the dispute had been amicably resolved, the CCI proceedings should be set aside.

The CCI challenged this order before the SCI, but the Court declined to intervene, effectively endorsing the High Court’s decision to close the proceedings based on the private settlement.

## **CCI dismisses allegations against IREL for abuse of dominance in Beach Sand Ilmenite Market**

The CCI vide order dated [17.01.2025](#) closed a case of abuse of dominance against IREL (India) Ltd. (**IREL**) for violating the provisions of Section 4 of the Act.

The Informant alleged that IREL abused its dominant position in the market for "mining and supply of Beach Sand Ilmenite in India" by imposing unfair and discriminatory conditions on domestic consumers, restricting supply, and engaging in excessive pricing. It claimed that since 2018, IREL had become the sole producer of Beach Sand Ilmenite in India and created an artificial shortage by prioritizing exports over domestic sales, thereby forcing Indian buyers to accept unfavourable contract terms.



Basis the information, the CCI passed an order of investigation directing the Director General, CCI (**DG**) to investigate the matter. The DG found that IREL contravened the provisions of Section 4(2)(a)(ii) of the Act by charging unfair prices in the relevant market of Beach Sand Ilmenite in India.

However, the CCI despite observing that IREL holds a dominant position in the said relevant market, found no evidence in relation to abuse of dominance position by IREL. The CCI further held that IREL was not engaged in excessive pricing as its pricing was aligned with international benchmarks and market dynamics rather than arbitrary hikes. Thus, the CCI dismissed the allegations against IREL and closed the matter.

### **CCI dismisses allegations against HP and its resellers**

The CCI vide order dated [04.02.2025](#) dismissed the allegations against HP India Sales Private Limited (**HP**) and its resellers for violating the provisions of Section 3 of the Act

It was alleged that HP and its resellers engaged in bid rigging in relation to the tenders floated on the Government e-marketplace (**GeM**) by Gurugram Metropolitan Development Authority, Gurgaon, Haryana (**GMDA Tender**) and Faridabad Metropolitan Development Authority, Faridabad, Haryana (**FMDA Tender**).

The informant alleged the product specification in GMDA and FMDA tenders to be restrictive in nature, preventing participation of LED printers. The informant also alleged the cumulative price for individual components to be substantially more than the composite bid prices quoted by the bidders on GeM portal. The CCI noted that normally a procurer has the choice to procure goods and services as per its needs and requirements. The procurer/consumer has the freedom to specify the kind of product or service, warranty, cartridges etc. and the same cannot be dictated to the procurer. In exercise of such freedom, the procurer specifies the nature, manner and mode etc. based on its requirement, budgetary constraints and other commercial considerations to fulfill its objective or functions. The CCI held that like the product specifications, it is the prerogative of the procurer either to procure individual items from GeM portal or to procure a bundle of products and/or services based on its specific requirements to meet its requirements.

### **Supreme Court clarifies prior approval of the CCI is mandatory before CoC's Approval**

The SCI vide order dated 29.01.2025 held that in relation to the Corporate Insolvency Proceedings under the Insolvency and Bankruptcy Code, 2016 (**IBC**), there is a mandate on the parties to obtain prior approval from the CCI before the approval of a resolution plan by the Committee of Creditors of a corporate debtor (**CoC**) in terms of the proviso to Section 31(4) (Proviso) of IBC. The SCI held that the legislative intent behind Section 31(4) of the IBC is clear and unambiguous and thus the CCI approval must be obtained before the CoC approves the resolution plan. It was further held that this provision was concisely introduced to prevent anti-competitive combinations from being approved without due regulatory scrutiny.



*This newsletter is only for general informational purposes, and nothing in this edition of the newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact G.R. Bhatia/ Arjun Nihal Singh, at the below mentioned coordinates. © Luthra and Luthra Law Offices India 2025. All rights reserved.*

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