

(2014) 10 DEL CK 0109

In the Delhi High Court

Case No : Writ Petition (Civil) 6361, 6362/2014

DLF Home Developers Limited

APPELLANT

Vs

Competition Commission of India

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Competition Act, 2002 — Section 3, 36, 4
Constitution of India, 1950 — Article 226

Citation : (2014) 146 DRJ 69 : (2015) 129 SCL 503

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Rajiv Nayar, Ramji Srinivasan, Senior Advocates, Kanika Chaudhary Nayar and Nidhi Singh, Advocate for the Appellant; Amit Sibal, Senior Advocate, Abhishek Singh Baghel, Tahir Siddiqui, Kirtiman Singh and Mansimran Singh, Advocate for the Respondent

Judgement

Manmohan, J.

CM APPL. 15338/2014 in W.P.(C) 6361/2014

CM APPL. 15341/2014 in W.P.(C) 6362/2014

Allowed, subject to just exceptions.

W.P.(C) 6361/2014 and CM APPL. 15337/2014

W.P.(C) 6362/2014 and CM APPL. 15340/2014

1. Present writ petitions have been filed seeking a direction to respondent No.1-CCI to frame and decide the issue of jurisdiction prior to passing of orders on merits of the cases and deferring the matters until final adjudication by the Supreme Court in Civil Appeals Nos. 6328, 6451 and 6487 of 2014 involving the same jurisdictional issue.

2. Both the learned senior counsel for petitioner submitted that respondent no. 1-CCI ought to have determined the question of jurisdiction before fixing the

hearing on merits. They stated that, in fact, the Competition Appellate Tribunal (for short "COMPAT") had in petitioner's own case held that respondent no. 1-CCI did not have jurisdiction in respect of agreements entered into prior to the enforcement of The Competition Act, 2002 (for short "Act, 2002") , i.e., 20th May, 2009. In this connection, they relied upon observations of the COMPAT in Appeal Nos. 8, 9, 11, 12, 19, 20, 22, 23 and 29 of 2012 wherein it has been held as under:-

"71. If that interpretation is accepted, then a flood gate of litigation would be open and all those parties which had validly entered into agreements, but are not happy, would rush to the CCI creating an unprecedented and unintended situation. Such cannot be the interpretation of the Act. What is prohibited, is the imposition under section 4 of the Act. Since we are dealing only with section 4 of the Act in this judgment, we will have to be specific in respect of the factual findings and it would have to be found whether there has been an imposition of unfair or discriminatory conditions for the sale of service. If that imposition is post 20th May, 2009, it would certainly attract the provisions of the Act, but if it is prior, then it would not amount to imposition at all. The parties would then have to be governed under the agreement itself. For these reasons, we do not approve of the course taken by the CCI, in directing the ABA to be re-written.

xxxx xxxx xxxx xxxx

73.. In our opinion, the approach by the CCI in examining these clauses in Issue No.4 is a serious error. We will deal with this aspect in the latter part of the judgment, when we deal with the appeals filed by the Appellant against the subsequent orders passed by the CCI suggesting the ideal clauses in the ABA, but suffice it to say at this juncture, that the CCI could not have examined all these clauses, which were valid at the time when the ABA was enacted in December 2006-07 and viewed the abuse on the part of the Appellant on that count alone. We have already shown that both sections 3 and 4 of the Act were not available on the day when these agreements were executed"

3. They also pointed out that respondent no. 1-CCI had also filed an application for clarification before the Supreme Court seeking stay of the observations and findings in the order dated 19th May, 2014 passed by the COMPAT to the extent that respondent no. 1-CCI could not examine and suggest modification in the Agreements entered into prior to 20th May, 2009, i.e., before coming into force of Section 4 of the Act, 2002. The petitioner contended that it was the respondent no. 1-CCI's case in its application that COMPAT had failed to appreciate that the effect of such an anti-competitive agreement was subsisting and continuing post 20th May, 2009.

4. Upon a perusal of the paper book, this Court finds that initially the matters had been adjourned by respondent no. 1-CCI on the request of the petitioner to await the decision of COMPAT. As of now, both respondent no. 1-CCI and COMPAT have held that petitioner is guilty of violation of Section 4 of the Act, 2002 in

similar matters. In fact, in the order referred to and relied upon by both learned senior counsel, the COMPAT has held as under:-

"46. ..It is on these basis that we now proceed to decide the issues as under :-

Issue : Whether the provision of Competition Act applied to the facts and circumstances of the instant case. "

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76. We therefore, conclude that the CCI had the jurisdiction, but that is not the be-all and end-all of the matter. Since the buyer/ allottees have alleged breach of section 4 of the Act, not only on account of the various clauses in the ABA, but also on some other counts. In respect of all the three residential apartments namely " Belaire, Park Place and Magnolia, the buyers/ allottees complained of imposition of unfair and discriminatory conditions by the action of the Appellant against themselves and this imposition was stated to be after 20th May, 2009. If that is so, then the CCI certainly has the duty and jurisdiction to take into account such impositions. Therefore, even if we do not find any justification on the part of CCI to look into and consider the ABAs, which were dated way back in 2006/2007, we do feel that the complaints about the breach of section 4 of the Act could be and were rightly entertained by the CCI, particularly of those impositions, which were post 20th May, 2009.

77.....On the basis of this reasoning, we are of the opinion that CCI was well justified in entertaining the information particularly because the facts and circumstances prevailing did justify the action on the part of CCI. We accordingly conclude Issue No.1 against the Appellant and in favour of the apartment buyer owners. "

(emphasis supplied)

5. In view of the aforesaid findings of COMPAT as well as the fact that it is the petitioner's case that the issue of jurisdiction of respondent no. 1- CCI vis-a-vis Section 4 of the Act, 2002 has been settled, this Court is of the opinion that it would be futile to ask respondent no. 1-CCI to re-decide the issue of jurisdiction and that too as a preliminary issue! Consequently, no preliminary issues are warranted in the facts of the present cases.

6. Though this Court in proceedings under Article 226 has the jurisdiction to pass an order directing the respondent no. 1-CCI to hear and decide the preliminary issue of jurisdiction, yet it is of the opinion that a writ petition is not maintainable as a matter of right for seeking framing of a preliminary issue in any proceeding pending before a statutory or quasi- judicial body. It is pertinent to mention that Section 36 of the Act, 2002 gives power to respondent no.1-CCI to regulate its own procedure.

7. As far as the argument of deferring the hearing until final decision of the Supreme Court in Civil Appeal Nos. 6328, 6451 and 6487 of 2014 is concerned,

this Court is of the view that such a prayer should have been made before the Apex Court at the time of admission of the aforesaid Civil Appeals.

8. This Court is also of the opinion that present writ petitions have been filed to prevent the respondent no. 1-CCI from passing orders on merits. The intent of the petitioner in filing the present writ petitions is to get the issue of jurisdiction decided against them and then to challenge it by way of writ petitions and to ensure that in the meantime matters are not heard on merits.

9. This Court is confident that the respondent no. 1-CCI would deal with all the arguments advanced by petitioner while finally deciding the matters. In any event, if the petitioner is aggrieved by the final decision of respondent no. 1-CCI, it shall be at liberty to challenge the same by way of an appeal.

10. Consequently, present writ petitions and applications are dismissed. However, it is clarified that the aforesaid observations are in the context of the present writ petitions and the respondent no. 1-CCI would decide the matters on their own merits.