NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Competition Appeal (AT) No. 07 of 2023

[Arising out of Order dated 15.03.2023 passed by the Competition Commission of India in Combination Registration No. C-2022/11/983]

IN THE MATTER OF:

The U.P. Glass Manufacturers Syndicate .....Appellant

Vs

Competition Commission of India & Ors.....Respondent

Present:

For Appellant: **Mr. Ratnako Banerji and Mr. Rajshekhar Rao, Sr. Advocate, Mr. Abhijeet Sinha, Mr. Indranil Ghosh, Mr. Debabrata Das, Mr. Palzer Moktan, Mr. Shaunak Mitra, Ms. Aanchal Tikmani, Mr. Anuj Singh, Mr. Saptarshi Mukherjee, Mr. Saikat Sarkar, Mr. Yashraj Samant, Advocates.**

For Respondents: **Mr. Naveen R Nath, Sr. Advocate with Mr. Udayan Jain, Mr. Harshwardhan Thakur, Mr. Raj Surana, Ms. Shana Nargis, Ms. Srisuti Vashisht, Ms. Gayathri Virmani, Mr. Raj Surana, Ms. Disha Gupta, Advocates for CCI.**
Ms. Shama Nargis, DD (CCI), Ms. Srishti Vashisht for CCI.

Mr. Vikram Nankani, Sr. Advocate with Mr. Vikram Wadehra, Advocate for R-3/RP.

Mr. Mukul Rohatgi, Mr. Arun Kathpalia and Mr. Krishnendu Datta, Sr. Advocates, Mr. Vaibhav Gaggar, Mr. Sanjeev Sharma, Mr. Akshay Nanda, Ms. Neha Mishra, Ms. Sanya Sud, Ms. Vaishali Goyal, Ms. Praniti Ganjoo, Mr. Aditye Arora, Ms. Threcy Lawrence, Ms. Vaishnavi Bansal, Mr. Ketan Saraf, Ms. Kokila Kumar, Mr. Rajat Sinha, Ms. Diksha Gupta, Ms. Neha Agarwal, Advocates.

With

Competition Appeal (AT) No. 08 of 2023

[Arising out of Order dated 15.03.2023 passed by the Competition Commission of India in Combination Registration No. C-2022/11/983]

IN THE MATTER OF:

Independent Sugar Corporation Ltd. .....Appellant

Vs

Competition Commission of India & Anr.....Respondent

Present:

For Appellant: **Mr. Abhimanyu Bhandari, Ms. Nattasha Garg, Mr. Avishkar Singhvi, Mr. Thakur Ankit Singh, Mr. Vivek Kumar, Advocates.**

For Respondents: **Mr. Naveen R Nath, Sr. Advocate with Mr. Udayan Jain, Ms. Gayathri Virmani, Mr. Raj Surana, Advocates for CCI.**
Ms. Shama Nargis, DD (CCI), Ms. Srishti Vashisht for CCI.

Ms. Smriti Churiwal, Advocate for RP

Mr. Mukul Rohatgi, Mr. Arun Kathpalia and Mr. Krishnendu Datta, Sr. Advocates, Mr. Vaibhav Gaggar, Mr. Sanjeev Sharma, Mr. Akshay Nanda, Ms. Neha Mishra, Ms. Sanya Sud, Ms. Vaishali Goyal, Ms. Praniti Ganjoo, Mr. Aditye Arora, Ms. Threcy Lawrence, Ms. Vaishnavi Bansal, Mr. Ketan Saraf, Ms. Kokila Kumar, Mr. Rajat Sinha, Ms. Diksha Gupta, Ms. Neha Agarwal, Advocates.

Mr. Yadhunath Bhargavan, Mr. Akshay Chandra, Mr. Rahul Choudhary, Mr. Ravjyot Singh, Mr. Utkarsh Bhanu, Advocates in I.A. No. 2443/2023

With

Competition Appeal (AT) No. 09 of 2023

[Arising out of Order dated 15.03.2023 passed by the Competition Commission of India in Combination Registration No. C-2022/11/983]

IN THE MATTER OF:

Geeta and Company .....Appellant

Vs

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

Present:

For Appellant: **Mr. Buddy Ranganadhan, Mr. Pawas Kulshrestha, Advocates.**

For Respondents: **Mr. Naveen R Nath, Sr. Advocate with Mr. Udayan Jain,Ms. Gayathri Virmani, Mr. Raj Surana, Ms. Disha Gupta, Advocates for CCI. Ms. Shama Nargis, DD (CCI) and Ms. Srishti Vashisht for CCI.**

Mr. Vikram Nankani, Sr. Advocate with Mr. Vikram Wadehra, Advocate for R-3/RP

Mr. Mukul Rohatgi, Mr. Arun Kathpalia and Mr. Krishnendu Datta, Sr. Advocates, Mr. Vaibhav Gaggar, Mr. Sanjeev Sharma, Mr. Akshay Nanda, Ms. Neha Mishra, Ms. Sanya Sud, Ms. Vaishali Goyal, Ms. Praniti Ganjoo, Mr. Aditye Arora, Ms. Threcy Lawrence, Ms. Vaishnavi Bansal, Mr. Ketan Saraf, Ms. Kokila Kumar, Mr. Rajat Sinha, Ms. Diksha Gupta, Ms. Neha Agarwal, Advocates.

With

Competition Appeal (AT) No. 10 of 2023

[Arising out of Order dated 15.03.2023 passed by the Competition Commission of India in Combination Registration No. C-2022/11/983]

IN THE MATTER OF:

HNG Industries Thozilalar Nala Sangam .....Appellant

Vs

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

Present:

For Appellant: **Mr. Yadhunath Bhargavan, Mr. Akshay Chandra, Mr. Rahul Choudhary, Mr. Ravjyot Singh, Mr. Utkarsh Bhanu, Advocates**

For Respondents: **Mr. Naveen R Nath, Sr. Advocate with Mr. Udayan Jain,Ms. Gayathri Virmani, Mr. Raj Surana, Ms. Disha Gupta, Advocates for CCI. Ms. Shama Nargis, DD (CCI).**

Mr. Vikram Nankani, Sr. Advocate with Mr. Vikram Wadehra, Advocate for RP

Mr. Mukul Rohatgi, Mr. Arun Kathpalia and Mr. Krishnendu Datta, Sr. Advocates, Mr. Vaibhav Gaggar, Mr. Sanjeev Sharma, Mr. Akshay Nanda,

Ms. Neha Mishra, Ms. Sanya Sud, Ms. Vaishali Goyal, Ms. Praniti Ganjoo, Mr. Aditye Arora, Ms. Threcy Lawrence, Ms. Vaishnavi Bansal, Mr. Ketan Saraf, Ms. Kokila Kumar, Mr. Rajat Sinha, Ms. Diksha Gupta, Ms. Neha Agarwal, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

These four Appeal(s) have been filed against the same order dated 15.03.2023 passed by the Competition Commission of India (hereinafter referred to as the "**CCI**") under Section 31, sub-section (1) of the Competition Act, 2022 (hereinafter referred to as the "**Act**") approving the combination in response to the notice given by Respondent No.2, under Section 6, sub-section (2) of the Act. All the Appeal(s) having been filed against the same order, have been heard together and are being decided by this common judgment.

2. Brief facts necessary to be noticed for deciding the Appeal(s) are:

(i) Hindustan National Glass & Industries Limited – Respondent No.3 (hereinafter referred to as the "**HNG**") was admitted to insolvency by an order dated 21.10.2021 passed by the National Company Law Tribunal, Kolkata. On 21.07.2022, Respondent No.2 AGI Greenpac Limited (hereinafter referred to as the "**AGI**") filed a Resolution Plan for acquisition of HNG. The Respondent No.2 – AGI filed a Notice under Form-1 of the Competition Commission of India (Procedure in regard to the

transaction of business relating to combinations) Regulations, 2011 (for short "**Combination Regulations**") before the CCI seeking approval of proposed Combination. The CCI on 21.10.2022 declared Form-1 filed by AGI as invalid.

(ii) On 28.10.2022, the Committee of Creditors ("**CoC**") approved the Resolution Plan of AGI, which was submitted in insolvency proceedings against HNG.

(iii) On 03.11.2022, AGI gave a Notice under Section 6, sub-section (2) of the Act regarding the proposed combination in Form-2. The Appellant (UPGMS) filed objections on 07.10.2022 before the CCI, raising objections against the combination for which notice was given on 27.09.2022. Again on 16.11.2022, the Appellant filed letter before the CCI raising objections to combination notice given by the AGI. The CCI by letter dated 17.11.2022 asked the Acquirer – AGI to provide certain information. The CCI vide letter dated 28.12.2022 required the Acquirer to remove certain defects and provide further information. The Acquirer submitted response to the above two letters of the CCI.

(iv) The CCI held its Meeting on 09.02.2023, considered the information on record, details provided in the Notice and the responses filed by the Acquirer, and formed a *prima facie* opinion that the proposed combination is likely to cause an

Appreciable Adverse Effect on Competition (hereinafter referred to as the "**AAEC**") in relevant market(s) in India. A show-cause notice dated 10.02.2023 under Section 29, sub-section (1) of the Act was issued to the Acquirer, wherein the Acquirer was directed to respond in writing within 30 days of the receipt of the show-cause notice, as to why investigation in respect of the proposed combination should not be conducted.

(v) A letter dated 23.02.2023 was sent by the Commission to the Appellant (UPGMS) in reference to the objection and representations filed by the Appellant in Combination Registration No.C-2022/11/983. The copy of the order dated 22.02.2023 passed by the CCI was sent to the Appellant. The Commission communicated that the concern expressed relating to the assessment of the proposed combination has been noted by the Commission. It was communicated that no personal hearing can be granted. The Appellant filed an application before the CCI on 16.02.2023 for inspection of the case records. The request submitted by the Appellant - The U.P. Glass Manufacturers Syndicate (for short "**UPGMS**") was not acceded and a letter dated 07.03.2023 was sent to the UPGMS by the CCI.

(vi) The Acquirer submitted a response to show-cause notice vide its letter dated 10.03.2023. Along with reply to show-cause notice, the AGI submitted certain voluntary modifications.

Certain additional clarification regarding voluntary modifications were also submitted by the AGI on 14.03.2023.

(vii) The Commission in its Meeting dated 15.03.2023 considered the response to the show-cause notice submitted by Respondent No.2 and voluntary modification submitted by AGI and after analysis of modification proposed by AGI, the CCI came to the conclusion that modification proposed by the Acquirer *prima facie* addressed the concern of the likely AAEC by the Acquirer. The CCI concluded that proposed combination is not likely to have an AAEC. Consequently an order was passed on 15.03.2023 under Section 31, sub-section (1) of the Act, approving the proposed combination on the notice which was given by the AGI under Section 6 sub-section (2) of the Act.

(viii) Aggrieved by the order dated 15.03.2023, all the above Appeal(s) have been filed.

3. We now proceed to notice the details of each of the Appellant(s), who have impugned the order of CCI.

Competition Appeal (AT) No. 07 of 2023

4. This Appeal has been filed by the Appellant - The U.P. Glass Manufacturers Syndicate, who is an industry body of micro, small and medium scale manufacturers of glass based out of Uttar Pradesh representing the interest of MSME Glass Manufacturers in Uttar Pradesh.

UPGMS having received the information that in the CIRP of HNG, bids have been received from prospective Resolution Applicants, filed an Application before the Adjudicating Authority, seeking intervention, which was not entertained. The UPGMS's further case is that after coming to know about the notice given by the AGI to the CCI under Form – 1, filed the objections on 07.10.2022. The Appellant pleads that proposed combination is likely to cause an AAEC inasmuch the combined entity would have a market share of around 60%, resulting in significant horizontal effect and price would increase in the container glass market in India. Respondent Nos.2 and 3 were the largest players in the container glass market and customers would have limited ability to switch to competing manufacturers. UPGMS also filed an Application before the CCI, asking for details of the notice given by the AGI and to give it a personal hearing, which was denied by the CCI on 22.02.2023. The Appellant further pleaded that AGI and HNG have the largest market share in the relevant market and the acquisition by the AGI would affect product pricing, encourage predatory pricing, encourage cartelization and severely affect the business of several industries that are dependent on the container glass industry. Smaller players like the Members of UPGMS shall be adversely affected. The Appellant has also given certain details with regard to proceedings against HNG in the insolvency proceedings, which are not necessary to be noticed for deciding the Appeal.

Competition Appeal (AT) No. 08 of 2023

5. This Appeal has been filed by Independent Sugar Corporation Limited ("**INSCO**") claiming to be a company incorporated under the laws of

Bermuda. The company INSCO is held by two groups of companies – RAMCO Holding Limited having 50% shareholding and Emil International Holdings Limited having the other 50% shareholding. The INSCO has also submitted its Resolution Plan in the insolvency proceedings of HNG. The Appellant had also given notice to the CCI under Section 6, sub-section (2) of the Act. The Appellant received the requisite approval from CCI vide Notice C-2022/09/974 dated 30.09.2022 under the Green Channel Route. The Appellant was therefore in receipt of the necessary certificate approval, prior to the approval of the Resolution Plan being voted by the CoC. The INSCO aggrieved by the order dated 15.03.2023 has filed this Appeal.

Competition Appeal (AT) No. 09 of 2023

6. This Appeal has been filed M/s. Geeta and Company, which is a proprietorship concern, registered under the Contract Labour (Regulation and Abolition) Act, 1970 and represents 275 workers, who are working at Hindustan National Glass Industries Haridwar Road, at New Tehri, which is a part of the Rishikesh Plant of Hindusthan National Glass & Industries Limited. The Appellant pleads that Rishikesh Plant of the Corporate Debtor is a lucrative and profitable plant of the company. The Rishikesh Plant has substantial and sizeable operations on account of which it has demonstrated growth in terms of revenue over the years. If this Plant is shutdown/ disposed off, it would defeat the basic tenets enshrined under the IBC. The Rishikesh Plan is a 'crown jewel' of the Corporate Debtor company. The Appellant came to know about the CIRP proceedings against the Corporate Debtor and Appellant used to follow the proceedings. The

Appellant also came to know that CCI has granted conditional approval in favour of AGI. The Appellant's case is that there is no guarantee that the new buyer of the Rishikesh Plant to be proposed by AGI will continue to run the Rishikesh Plan as a going concern. The composition proposed by the AGI envisages the sale of the Rishikesh Unit of the Corporate Debtor, land value of which is more than Rs.250 crores excluding the structures and machineries, which puts the future of over 675 workers and employees at jeopardy. The Appellant's case is that no purpose shall be served in disposing off the Rishikesh Plant, which is functioning as a profitable Unit of the Corporate Debtor.

Competition Appeal (AT) No. 10 of 2023

7. This Appeal has been filed by HNG Industries Thozialar Nala Sangam, which is a Workers Union representing the interests of the workers engaged in HNGIL, Puducherry which is sought to be merged by way of the Order dated 15.03.2023. The order dated 15.03.2023 allowed the proposed merger of the entire business of HNG Limited with AGI. The Appellant pleaded that urgent and necessary directions need to be issued with respect to the day-to-day operations of the target company HNGIL, which are of utmost concern for Appellant. The Appellant is entitled to be heard as per the principles of natural justice. The order dated 15.03.2023 passed by the CCI proposing modification which include closure of certain important productions units, would result in the loss of employment of several Members of the trade unions and as such Appellant being the most affected stakeholder be given an opportunity of being heard. The Appellant

question's the order on several grounds. It is pleaded that CCI has failed to follow the process of law and principles of natural justice in passing the impugned order.

8. We have heard Shri Ratnako Banerji, learned Senior Counsel; Shri Rajshekhar Rao, Learned Senior Counsel for Appellant in Competition Appeal (AT) No.07 of 2023; Shri Abhimanyu Bhandari, learned Counsel has appeared in Competition Appeal (AT) No.08 of 2023; we have heard Shri Buddy Ranganadhan, learned Counsel in Competition Appeal (AT) No.09 of 2023 for the Appellant and Shri Yadhunath Bhargavan, learned Counsel appeared in Competition Appeal (AT) No.10 of 2023 for the Appellant. Shri Naveen R Nath, learned Senior Counsel with Shri Udayan Jain, learned Counsel appeared for Competition Commission of India. We have heard Shri Mukul Rohatgi, learned Senior Counsel, Shri Arun Kathpalia and Shri Krishnendu Datta, learned Senior Counsel for Respondent No.2 – AGI; Shri Vikram Nankani, learned Senior Counsel has appeared for RP, Respondent No.3.

9. The learned Senior Counsel appearing for the Appellant(s) have advanced various submissions to challenge the impugned order dated 15.03.2023. All the learned Counsel appearing for the Appellant having challenged the same impugned order dated 15.03.2023, we proceed to note the submission of learned Counsel for the Appellant(s) cumulatively, referring those submissions as submissions of the Appellant.

10. The submission of learned Counsel for the Appellant is that the show-cause notice issued by the CCI under Section 29, sub-section (1) was issued only to AGI – Respondent No.2 (in Competition Appeal (AT) No.07 of 2023) (hereinafter referred to as the "**Acquirer**"), whereas Section 29, sub-section (1) read with Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, requires that notice to be given to parties to combination. Respondent No.2 cannot be treated to be a party to the combination and notice was required to be issued both to Respondent Nos.2 and 3. The reply to show-cause notice was also given by Respondent No.2 – AGI alone suggesting modification. The CCI having not heard Respondent No.3, nor having issued notice to Respondent No.3, the entire proceedings culminating into the order dated 15.03.2023 is vitiated and the order dated 15.03.2023 deserves to be set aside on this ground alone.

11. The CCI having formed a *prima facie* opinion that the combination is likely to cause an AAEC, it was required to proceed with further investigation as per Section 29, sub-section (2) of the Act. The facts of the present case required a full-fledged investigation under Section 29 sub-section (2). The two big players in the relevant market merging together, the CCI ought to have issued an order under Section 29, sub-section (1A) calling a report from the Director General. It is submitted that when the CCI has formed a *prima facie* opinion that combination is likely to cause an AAEC, it was required to proceed under Section 29, sub-section (2), directing parties to the combination to publish details of the combination

after receipt of the reply to the show-cause notice. The scheme of Section 29, sub-section (2) does not envisage formation of any second *prima facie* opinion after receipt of the reply to the notice. In the present case, the CCI has not proceeded to act as per Section 29 sub-section (2), since it did not issue any direction to the parties of combination to publish the details of the combination for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination, which procedure was skipped by the Commission. The interpretation put by the CCI to Section 29 (1) and (2) is not in accord with the scheme of the provisions of the Act. Section 30 itself provides that when a notice under sub-section (2) of Section 6 has been received, the Commission shall examine such notice and form its *prima facie* opinion under sub-section (1) of Section 29 and proceed as per provisions contained in that Section. Section 30 itself makes it clear that after formation of *prima facie* opinion under Section 29, sub-section (1), other part of Section 29 has to be followed as mandated by Section 30. Mandatory procedure has to be followed even where modification is offered under Regulation 25 (1-A) of the Combination Regulations, 2011.

12. As per Regulation 19 of the Combination Regulations, 2011, the Commission may accept appropriate modifications offered by the parties before forming a *prima facie* opinion under Section 29, sub-section (1). The Act does not contemplate one party to the combination offering a unilateral modification, the Commission has accepted the unilateral modification offered by Respondent No.2 along with its response to the show-cause

notice, which is a complete abdication of the Commission's statutory duty set out in Section 18 r/w Sections 6 and 29 of the Act. The modification suggested by Respondent No.2 do not eliminate AAEC. The Committee of Creditors having already passed the Resolution Plan on 28.10.2022, the Commission had no jurisdiction to proceed to approve the proposed combination. The modification proposed by Respondent No.2 has not been examined by the Commission, the Commission has merely put its stamp of approval on the modifications offered by Respondent No.2. Accepting the offer to divest the Rishikesh Plant of Respondent No.3 is a mere temporary arrangement without even adverting to the obvious question as to what is to become of the currently installed but non-operational capacity of nearly 1975 TPD is made operational. The CCI without application of mind has hurriedly proceeded to approve the combination after receipt of the modification without completing the process under Section 29. Respondent No.2 has deliberately filed Form-I in order to delay the process of approval of the Commission. Notice in Form-II was subsequently filed after approval of the Resolution Plan by the CoC.

13. There are no two stages of formation of *prima facie* opinion. Section 29 sub-section (2) cannot be read to mean that *prima facie* opinion has to be again made by the commission after receipt of response to the show-cause notice. All steps under Section 29 have to be completed before any order under Section 31 can be passed. Stage of Section 31 comes only after entire procedure under Section 29 is exhausted. The provisions of Act cannot be diluted by Regulation 25(1A). The order passed by the

Commission has effect on economy, hence, all people at large have to be heard. The facts given by Respondent No.2 were accepted as gospel truth without verification of facts by any means.

14. The learned Senior Counsel appearing for CCI refuting the submissions of learned Counsel for the Appellant(s) submits that none of the Appellant(s) have any locus to challenge the order dated 15.03.2023. The Appeal under Section 53B can only be filed by any person aggrieved by any direction, decision or order passed by the CCI. None of the Appellant(s) can be held to be aggrieved person within the meaning of Section 53B. The word 'aggrieved' connotes direct legal grievance, not the mere displeasure or an indirect legal grievance of the Appellant(s). The person aggrieved ought to refer to a person directly aggrieved by the order. The Appellant(s) being outsider to the proceedings, cannot be held to be aggrieved person. Hence, the Appeal(s) are liable to be rejected on this ground alone.

15. The CCI has followed the statutory process as provided in the Act and the Combination Regulations, 2011. After receipt of notice under Section 6, sub-section (2) on 03.11.2022, the CCI scrutinized the notice and asked the Acquirer to remove certain defects and provide certain clarification and documents. The Commission after receipt of the response to the letters issued to Respondent No.2 to provide documents and clarifications, considered the entire matter in its Meeting dated 09.02.2023 and formed a *prima facie* opinion that proposed combination is likely to cause AAEC. A show-cause notice dated 10.02.2023 was issued to Respondent No.2. Reply to show-cause notice was given by Respondent No.2 on 10.03.2023

with further clarification on 14.03.2023. The Commission considered the response in its Meeting dated 15.03.2023 and came to the conclusion that AAEC as was noticed in the show-cause notice, have been adequately addressed by the voluntary modification suggested by Respondent No.2. The Commission did not form any *prima facie* opinion under Section 29, sub-section (2) that combination is likely to cause AAEC, hence, there was no occasion to direct the parties to publish the details of the combination. Further, steps under Section 29 sub-section (2) are dependent on formation of *prima facie* opinion at the second stage, when *prima facie* opinion at the second stage was not formed, the Commission has rightly approved the combination under Section 31, sub-section (1). Regulation 25(1A) of Combination Regulations, 2011, permits suggestion of modification in response to the show-cause notice. The procedure adopted by the Commission in considering the notice under Section 6, sub-section (2) is in accordance with the Act and the Regulations.

16. The definition of 'parties' under the Act has to be considered in light of The General Clauses Act. 'Parties' can be both singular and plural. 'Parties' used in Section 29, sub-section (2) has to be looked into in the above manner.

17. It is submitted that divestiture of the Rishikesh Plan as suggested by the modification adequately addresses the AAEC concern. The Commission has in detailed considered all materials information given in the notice and other relevant materials on record and in accordance with Section 20, sub-section (4) has considered the matter. The decision of the Commission on

notice under Section 6, sub-section (2) has to be taken within a time line and the submission of the Appellant that the Commission hurriedly passed the order under Section 31, sub-section (1) is not correct. The commission after the AGI on 03.11.2022 filed a detailed application and after considering all relevant documents has passed the impugned order. The Commission is an Expert Body, which has been entrusted with inquisitorial jurisdiction in approving the combinations. At the stage when Commission approves the combination, the Appellant(s) had no right to be heard or permitted to participate in the proceedings. The approval of Resolution Plan by the CoC on 28.10.2022, does not affect the jurisdiction of the CCI to examine the notice under Section 6, sub-section (2) of 03.11.2022.

18. The learned Senior Counsel appearing for AGI also contended that none of the Appellant(s) have any locus to file the Appeal(s). The Appellant(s) cannot be said to be aggrieved person within the meaning of Section 53B. The Appellant(s) being not party to combination proceedings have no right to question the order dated 15.03.2022. It is submitted that the CCI is an Expert Body and it having taken the decision after following the due process of law, the Appellate Tribunal shall not substitute its own determination for determination which has been provided by an Expert Body. The information submitted by AGI were information, which were in public domain, which were provided by Resolution Professional of HNG. The RP having examined the Resolution Plan submitted by Respondent No.2 and having found it compliant with IBC Code has placed it before the CoC, which clearly indicates that Respondent No.3 has no objection

regarding acquisition by Respondent No.2. Referring to the Appeal filed by INSCO, it is submitted that INSCO being Resolution Applicant, whose bid has not been approved by the CoC, has no occasion to file this Appeal. INSCO when applied for approval from CCI they stated that they have no presence in India, whereas in the Appeal filed by them, it has been pleaded in paragraph 1 that it has a strong presence in India. The Appellant, who give such contradictory pleadings, need not be heard. By notice under Section 6, sub-section (2) an approval was sought and for any combination, the Regulator is required to consider several factors as enumerated in Section 20, sub-section (4) of the Act, which is a complex consideration. The Commission being satisfied by the response submitted by Respondent No.2 along with voluntary modification that AAEC effect is taken care of and in view of the modification proposed there is no likelihood of any AAEC, has rightly decided to not to proceed any further and has approved the combination. Public participation begins only when details are published as required by Section 29, sub-section (2) and there being no publication under Section 29, sub-section (2), the Appellants have no right to participate in any of the proceedings.

19. Shri Vikram Nankani, learned Senior Counsel appearing for Resolution Professional submits that the RP after being satisfied with the Resolution Plan submitted by Respondent No.2 is compliant of Insolvency and Bankruptcy Code, 2016 has placed the same before the CoC. The RP can have no objection, he having himself placed the Plan for approval, to the order dated 15.03.2023 passed by the CCI. The RP has placed the said

order before the Adjudicating Authority in the insolvency proceedings of Respondent No.3. The RP is not in any manner objecting to the order of the CCI dated 15.03.2023. The RP further submitted that at present the Corporate Debtor is functioning with only 50% capacity, hence, remedial actions are urgently required.

20. We have heard the submission of learned Counsel for the parties and have perused the record.

21. From the submission of learned Counsel for the parties and material on record, following points arose for consideration in these Appeal(s):

(I) Whether the Appellant(s) have locus to challenge the order of the Competition Commission of India dated 15.03.2023 within the meaning of Section 53B of the Competition Act, 2002?

(II) Whether Section 29, sub-section (1) contemplates that a Show Cause Notice to be issued to the parties to combination, i.e., both acquirer and the target entity or word 'parties' occurring in Section 29(1) has to be read singularly?

(III) Whether non-issuance of Show Cause Notice to HNG vitiates the order of approval granted by the Commission under Section 31, sub-section (1)?

(IV) Whether after formation of prima-facie opinion that combination is likely to cause an appreciable adverse effect on competition by the CCI under Section 29, sub-section (1), there was no occasion to form again a prima facie opinion under

Section 29(2) after receipt of response to the Show Cause Notice and the CCI was required to complete the further process under Section 29(2) including direction to the parties to the combination to publish details of combination?

(V) Whether the process as contemplated under Section 29, sub-section (2) having not been completed by the CCI before passing the order dated 15.03.2023, the order passed by the CCI is against the procedure prescribed under Section 29 and deserved to be set aside?

(VI) Whether inspite of Respondent No.2 along with response to Show Cause Notice having offered modification to address the prima facie concern expressed in the said Show Cause Notice as per Regulation 25 (1) (a) of 2011 Regulations, the CCI was obliged to direct the parties to publish details of the combination?

(VII) Whether the modifications suggested by Respondent No.2 in its reply to Show Cause Notice, adequately addressed the AAEC as expressed in the Show Cause Notice under Section 29, sub-section (1)?

(VIII) Whether the Commission in the impugned order has examined the relevant aspects as contained in Section 20, sub-section (4) of the Act or the impugned order suffers from non-application of mind?

(IX) Whether order of the Commission dated 15.3.2023 can be said to have been passed in violation of principles of natural justice

since the objections filed by Appellant the U.P. Glass Manufacturers Syndicate even after the order dated 22.02.2023 were not duly considered?

Point No. I

22. The Respondents have challenged the locus of the Appellants to file the present Appeals. It is submitted that under Section 53B of the Competition Act, 2002, Appeal can be filed only by "any aggrieved person". The Appellants cannot be said to be person aggrieved by the Order dated 15th March, 2023 for being neither party to the combination nor has any legal injury by virtue of the order dated 15th March, 2023. The Appellant on the other hand have refuted the submissions of the Respondents and contends that ambit and scope of "any person aggrieved" under Section 53B has to be widely interpreted looking to the nature and purpose of the Competition Act, 2002. The object of the Competition Act is to eliminate practices having adverse effect on the competition. The Order impugned adversely affects the competition in the relevant market which shall affect the Appellant hence it cannot be said that Appellant has no locus to file the Appeal. For considering the above objection taken by Respondents, we may first examine the locus of the Appellant who has filed Competition Appeal No. 07 of 2023 i.e. UP Glass Manufacturer Syndicate. Whether the Appellant, UP Glass Manufacturer Syndicate has any locus to challenge the Impugned Order needs to be considered first.

23. We may notice the credentials of the Appellants and pleadings in the Appeal. For considering the objections raised by the Respondents, in paragraph 7 of the Appeal, under heading: facts of the case, in sub-paragraph (iv), following has been pleaded:

> *"(iv) As prefaced above, the Appellant herein is an industry body of micro, small and medium scale manufacturers of glass based out of Uttar Pradesh representing the interests of such MSME Glass Manufacturers in Uttar Pradesh. The constituent members of the Appellant operate with at least 35 furnaces installed with currently 27 furnaces operational in Firozabad cluster and 5 lacs people are directly and indirectly involved in the business of the members whose livelihood depend on such employment. The Appellant's business turnover in aggregate stands at Rs. 3000 Crore approx. and annual GST contribution is Rs. 550 Crore. The Appellant shall submit relevant documents in support of this data and information, as and when directed by this Hon'ble Appellate Tribunal."*

24. In sub-paragraph 7(vi), the Appellants have further elaborated the consequences of acquisition of HNG by AGI. 7(vi)(h) states as follows:

> *"(h) Merger of Respondent No. 3 with Respondent No. 2 being the largest players in the relevant market would affect product pricing, encourage predatory pricing, encourage cartelisation and severely affect the business of several industries that are dependent on the container glass industry including the food, liquor, pharma and home décor industry, amongst others,*

and adversely affect smaller plyers like the members of the Appellant in the same and different fields that entirely depend on the larger companies for pricing and raw material."

25. We now need to notice the Judgments relied upon by both the parties where expression 'aggrieved person' came for consideration.

26. Respondents have placed reliance on Judgment of Hon'ble Supreme Court in "**Adi Pherozshah Gandhi Vs. H.M. Seervai, AG of Mahrashtra"**, 1970 2 SCCC 484. Hidayatullah, C.J. speaking for the Court in paragraph 11 of the Judgment laid down following:

"From these cases it is apparent that any person who feels disappointed with the result of the case is not a 'Person aggrieved'. He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no, doubt a legal grievance and not a grievance about material matters but his, legal grievance must be a tendency to injure That the order is wrong or that it acquits someone who he thinks ought to be convicted does not by itself give rise to a legal grievance. These principles are gathered from the cases cited and do not, as I shall show later, do violence to the context in which the phrase occurs in the Advocates' Act. Although I am aware that in Seven Oaks Urban District Council v. Twynham Lord Hewart C.J., uttered words of caution, again emphasised by Lord Parker C.J., in Ealing Corporation v. Jones, in applying too readily the definitions given in relation to other statutes but I do

not think I am going beyond what Lord Hewart C.J., said and what Lord Parker C.J., did in the case. Lord Parker observed:

> *".... As Lord Hewart C.J. pointed out in Seven Oaks Urban District Council v. Twynam: 'But as has been said again and again there is often little utility in seeking to interpret particular expressions in one statute by reference to decisions given upon similar expressions in different statutes which have been enacted alio intuitu. The problem with which we are concerned is not, what is the meaning of the expression 'aggrieved' in any one of a dozen other statutes, but what is its meaning in this part of this statute?' Accordingly, I only look at the cases to which we have been referred to see if there are general-principles which can be extracted which will guide the court in approaching the question as to what the words 'person aggrieved' mean in any particular statute."*

If I may say respectfully I fully endorse this approach. I am now in a position to examine the Advocates' Act but before so I must refer to a case near in point to this case, than any considered before."

27. Another Judgment relied upon by Respondent is AIR 1976 SC 578, "**Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed & Ors".** wherein paragraph 48, Hon'ble Supreme Court while considering the

entitlement of Appellant in that case to file an Appeal made following observations:

> *"48. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore, he is not a 'person aggrieved' and has no locus standi to challenge the grant of the no-objection certificate."*

28. Another Judgment relied upon by Respondent is "**A. Subash Babu vs. State of Andhra Pradesh**", (2011) 7 SCC 616. Hon'ble Supreme Court in the said Judgment laid down that the expression "aggrieved person" denotes an elastic and elusive concept. Supreme Court held that its scope and meaning depends on diverse variable factors such as the content and intent of the statute. In paragraph 25, following has been laid down:

> *"25. Even otherwise, as explained earlier, she suffers several legal wrongs and/or legal injuries when second marriage is treated as a nullity by the husband arbitrarily, without recourse to the Court or where declaration sought is granted by a competent Court. The expression "aggrieved person" denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive*

> *definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. Section 494 does not restrict right of filing complaint to the first wife and and there is no reason to read the said Section in a restricted manner as is suggested by the learned Counsel for the appellant. Section 494 does not say that the complaint for commission of offence under the said section can be filed only by wife living and not by the woman with whom subsequent marriage takes place during the life time of the wife living and which marriage is void by reason of its taking place during the life of such wife. The complaint can also be filed by the person with whom second marriage takes place which is void by reason of its taking place during the life of first wife."*

29. Respondents have also placed reliance on Judgment of the Supreme Court in **"Northern Plastics Limited Vs. Hindustan Photo Films Mfg. Co. Ltd. and Ors"**. (1997) 4 SCC 452, where Hon'ble Supreme Court while considering the provisions of the Customs Act, 1962 to file an Appeal to CEGAT, Supreme Court while dealing with Section 129A made following observations:

> *"In the light of this statutory scheme, therefore, it is not possible to agree with the contention of learned counsel for the contesting respondents that sub-section*

(1) of Section 129-A entitles any and every person feeling aggrieved by the decision or order of the Collector of Customs as an adjudicating authority, to prefer statutory appeal to the Appellate Tribunal. Neither the Central Government, through Industries Department, nor the rival company or industry operating in the same field as the importer can as a matter or right prefer an appeal as 'person aggrieved' is wider than the phrase 'party aggrieved'. But in the entire context of the statutory scheme especially sub-section (3) of Section 129-A it has to be held that only the parties to the proceedings before the adjudicating authority Collector of Customs could prefer such an appeal to the CEGAT and the adjudicating authority under S.122 can prefer such an appeal only when directed by the Board under Section 129-D(1) and not otherwise. It is easy to visualise that even a third party may get legitimately aggrieved by the order of the Collector of Customs being the adjudicating authority if it is contended by such a third party that the goods imported really belonged to it and not to the purported importer or that he had financed the same and, therefore, in substance he was interested in the goods and consequently the release order in favour of the purported importer was prone to create a legal injury to such a third party which is not actually arraigned as a party before the adjudicating authority and was not heard by it. Under such circumstances such a third party might perhaps be treated to be legally aggrieved by the order of the Collector of Customs as an adjudicating authority and may legitimately prefer an appeal to the CEGAT as a 'person aggrieved'. That is the reason why the Legislature in its wisdom has used

the phrase 'any person aggrieved' by the order of Collector of Customs as adjudicating authority in Section 129-A(1). But in order to earn a locus standi as 'person aggrieved' other than the arraigned party before the Collector of Customs as an adjudicating authority it must be shown that such a person aggrieved being third party has a direct legal interest in the goods involved in the adjudication process. It cannot be a general public interest or interest of a business rival as is being projected by the contesting respondents before us."

30. Another Judgment relied upon by Respondent is **"Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra"**, AIR 2013 SC 58, wherein paragraph 9 dealing with "person aggrieved" following has been laid down;

"Person aggrieved

9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ

> *jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide State of Orissa v. Madan Gopal Rungta, Saghir Ahmad & Anr. v. State of U.P., Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., Rajendra Singh v. State of Madhya Pradesh and Tamilnad Mercantile Bank Shareholders Welfare Association v. S.C. Sekar & Ors.).”*

31. The above judgements in different context had occasion to examine the expression “aggrieved person”. Respondents relying upon the said judgements have contended that since the Appellant has not suffered any legal injury, they have no right to challenge the order of the Competition Commission of India.

32. One more Judgment which has been relied upon by CCI is judgement of Competition Appellate Tribunal in **“Jitender Bhargava vs. CCI and Ors”**. dealing with locus standi where the Competition Commission has granted approval to a combination of two Airlines namely Etihad Airways PJSC and Jet Airways (India) Ltd. which was challenged claiming to be

public spirited person, following observations were made in paragraph 10, 11 and 12:

> *"10. Since we are not expressing any opinion on the correctness or otherwise of either procedure taken or the reasoning by the CCI we desist from expressing anything on those aspects. However, in our opinion there was no locus standi whatsoever in the Appellant for the following reasons:-*
>
> *Section 53(B) is in the following terms:-*
>
> > *(1) The Central Government or the State Government or a local authority or enterprise or <u>any person aggrieved</u> by any direction, decision or order referred to in clause (a) of Section 53(A) may prefer an appeal to the Appellate Tribunal.*
>
> *Section 53A provides for establishment of an Appellant Tribunal, sub clause (1) runs as under:-*
>
> > *a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of this Act.*
> >
> > *b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal etc.*

> *11. It is therefore axiomatic that in order to be able to file an appeal by any person he has to be an aggrieved person. Inspite of lengthy arguments we are not convinced that Shri Jitender Bhargava, the Appellant can be in any manner be an aggrieved person, particularly, by the approval of the combination.*
>
> *12. Learned Senior Counsel very seriously argued that as the Combination has been approved of on an incorrect appreciation of facts and law, the Appellant feels aggrieved. We do not see any reason firstly to discuss the merit or demerits of the logic and rational in the order of CCI, particularly because that could have been questioned by the person really aggrieved. Since we do not see the Appellant as an aggrieved person we do not wish to go into that aspect. Shri Ramji Srinivasan also did not press this point further."*

33. Refuting the submissions of the Respondents, Appellant has placed reliance on the judgement of the Hon'ble Supreme Court in **"Samir Agarwal Vs. CCI & Ors."**, 2021 3 SCC 136. Judgment of the Samir Aggarwal was delivered by the Hon'ble Supreme Court in reference to information submitted by the Appellant to initiate an enquiry under Section 26(2) of the Competition Act, 2002 into the alleged anti-competitive conduct of ANI Technologies Pvt. Ltd. (OLA) and Uber India Systems Pvt. Ltd. where Hon'ble Supreme Court has occasion to consider the locus standi. Hon'ble Supreme Court in the case of Samir Agarwal has held that in the context of the Competition Act, the expression a 'person aggrieved' has to be understood widely and not be constructed narrowly as was done in Adi

Pherozshah Gandhi. Following observation was made in paragraph 21 and 23:

> *"21. Clearly, therefore, given the context of the Act in which the CCI and the NCLAT deal with practices which have an adverse effect on 27 competition in derogation of the interest of consumers, it is clear that the Act vests powers in the CCI and enables it to act in rem, in public interest. This would make it clear that a "person aggrieved" must, in the context of the Act, be understood widely and not be constructed narrowly, as was done in Adi Pherozshah Gandhi (supra). Further, it is not without significance that the expressions used in sections 53B and 53T of the Act are "any person", thereby signifying that all persons who bring to the CCI information of practices that are contrary to the provisions of the Act, could be said to be aggrieved by an adverse order of the CCI in case it refuses to act upon the information supplied. By way of contrast, section 53-N(3) speaks of making payment to an applicant as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II of the Act, having been committed by an enterprise. By this sub-section, clearly, therefore, "any person" who makes an application for compensation, under sub-section (1) of section 53N of the Act, would refer only to persons who have suffered loss or damage, thereby, qualifying the expression "any person" as being a person who has suffered loss or damage. Thus, the preliminary objections against the Informant/Appellant filing Information before the CCI and filing an appeal before the NCLAT are rejected.*
>
> *.....*

> *23. Obviously, when the CCI performs inquisitorial, as opposed to adjudicatory functions, the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to subserve the high public purpose of the Act."*

34. In the Judgment of the Hon'ble Supreme Court in **Samir Aggarwal** where Hon'ble Supreme Court was considering the expression 'person aggrieved' in context of the Competition Act it was categorically held by Hon'ble Supreme Court that the expression person aggrieved has to be understood widely and not be constructed narrowly. The construction of the "person aggrieved" in Adi Pherozshah Gandhi was clearly departed.

35. In this context, we may also notice duties and function entrusted to the Commission. Section 18 of the Act provides as follows:

> *"18. Duties and functions 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:*
>
> *Provided further 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 any statutory authority or department of Government."

36. The present is a case where Appellants are challenging the order passed by the Commission approving the combination of two biggest market players in container glass industry. It is contended in the Appeal that approval of the combination has been done in breach of the procedure prescribed in the Competition Act. We have noticed the pleading in C.A. (AT) No. 7/2023 where it is specifically pleaded that Appellant is also a body of micro and small manufacturers of glass based in UP which represent the interest of MSME Glass Manufacturer. The Appellant in the Appeal pleads and has enumerated various consequences of combination of two largest players in market. The Appellant expresses apprehension and filed objection before the CCI even before the approval of the combination and the Commission vide its letter dated 23.02.2023 has noted the concern raised by the Appellant and Appellant was communicated that their concerns shall be noted at the relevant time. Letter dated 23rd February, 2023 by which order passed by the Commission dated 22.02.2023 was communicated to the Appellant, has been filed as Annexure 11 to the Appeal. Order dated 22.02.2023 of Commission which was in response to the reference made by UP Glass Manufacturer Syndicate, in the combination registration number C-2022/11983, wherein paragraph 6, following has been observed:

"6. As regards the concerns expressed relating to the competition assessment of the Proposed Combination, the Commission has noted the same. The Proposed

Combination is presently under review of the Commission and, needless to add, the submissions shall be duly considered while assessing the effect or likely effect of the Proposed Combination on competition, in accordance with law, at the appropriate stage."

37. We have noticed above the Judgment of the Hon'ble Supreme Court in 'A. Subash Bhai Vs. State of AP' where Hon'ble Supreme Court has held that expression "aggrieved person" denotes elastic and elusive concept which cannot be confined within the bounds of a rigid, exact and comprehensive definition. It was held that **"its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged"**. The emphasis by the Hon'ble Supreme Court is that while considering the concept of aggrieved person, content and intent of the statute has to be looked into. Thus while considering the locus of the Appellant, we have to consider the content and intent of the Competition Act, 2002 while answering the issue.

38. Hon'ble Supreme Court in **'Samir Aggarwal vs CCI'** as noted above has categorically held that expression "an aggrieved person" must in the context of the Competition Act be understood widely and not be constructed narrowly. It is further observed that CCI performs inquisitorial, as opposed to adjudicatory functions, the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to subserve the high public purpose of the Act. The Judgment of the Hon'ble Court in **'Samir Aggarwal'** was delivered in context of Competition Act, 2002 and in view of the law laid down in **'Samir**

Aggarwal' and the pleadings of the Appellant (UP Glass Manufacturer Syndicate), we are satisfied that the Appeal filed by the Appellant cannot be thrown out on the ground of locus. Appellant who had filed Letters before the CCI beginning from 07.10.2022 and have been expressing their apprehension of appreciable adverse effect on competition, was also found true by the Commission while issuing show cause notice under Section 29(1). It is appropriate that pleas raised by the Appellant in the Appeal questioning the order of the commission, be considered on merits and answered, instead of throwing the appeal on the ground of locus. We thus reject the objection of the Respondents that none of the Appellants have locus to file the Appeal. We having found the Appellant-UP Glass Manufacturer Syndicate having locus to challenge the order, and having decided to proceed to examine the challenge on merits it is unnecessary to deal with the locus of other three Appellants in Competition Appeal (AT) No. 08 of 2023, 09 of 2023 and 10 of 2023. In result, we reject the objections of the Respondents regarding locus and proceed to decide the Appeals on merits.

Point No.II

39. Section 29(1) of the Competition Commission Act provides as follows:

> *"(1) Where the Commission is of the [1] [prima facie] opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to*

why investigation in respect of such combination should not be conducted."

40. Combination Regulation, 2011, Regulation 2(f) defines the parties to the combination in following words:

"(f) Parties to the combination" means persons or enterprises entering into the combination and shall include the combined entity if the combination has come into effect;"

41. Under Combination Regulation, 2011, notice has to be given in Form II. A perusal of the Form-II indicate that the parties have to give notice. The definition of parties as contained in the Regulation makes it clear that parties to the combination means person or enterprise entering into the combination and shall include the combined entity if the combination has come into effect. The word 'combination' itself contemplates combination of two entities or more. Section 29(1) contemplates that show cause notice has to be issued to the parties to combination. The expression has to be read to mean that notice has to be issued to parties to the combination. Parties to the combination clearly means the acquirer and the target entity. It may so happen that notice under Regulation 5 of 2011 has been given by only one party but Section 29(1) contemplates notice to parties to the combination. There is purpose and object in Section 29(1) for providing show cause notice to parties to the combination calling upon them to response. The use of the expression "them" itself indicate that both the parties to the combination have to be noticed.

42. Learned Counsel for the Competition Commission of India has relied on General Clauses Act, Section 13 which provides as follows:

> *"13. Gender and number.—In all 2 [Central Acts] and Regulations, unless there is anything repugnant in the subject or context,— (1) words importing the masculine gender shall be taken to include females; and (2) words in the singular shall include the plural, and vice versa."*

43. It is true that as per General Clauses Act words in the singular shall include the plural, and vice versa. There can be no quarrel to the provision of General Clauses Act that words in singular includes plural and vice versa but when we look into the specific purpose and object which is delineated by Section 29(1), in show cause notice to both the parties, we cannot agree with the submission of the CCI that parties in the present case shall only be the AGI who has given notice under Section 6(2). There can be no doubt that Respondent No. 2-AGI who has given notice under Section 6(2) is included within the definition of parties. The show cause notice specifically required to be given to both of them. The statute clearly contemplates issuance of show cause notice to both the parties of the combination.

44. We thus answer Point No. II holding that Section 29(1) of the Act, contemplates that show cause notice has to be issued to both parties to the combination i.e. acquirer and target entity.

Point No.III

45. We having found that show cause notice was required to be issued to both the Acquirer and Target Entity and in the present case shows cause

notice by the Competition Commission has been issued only to Acquirer i.e. AGI. What is the consequence of non-issuance of notice to Respondent No. 3 need to be answered?

46. As noted above, insolvency proceedings has been initiated against the Respondent No. 3, HNG by Order dated 21.10.2021 passed by NCLT, Kolkata Bench. Resolution Professional was appointed to represent the Respondent No. 3. In the present case, the Respondent No. 2, Acquirer has submitted a Resolution Plan for acquiring Respondent No. 3 which Resolution Plan was placed by the Resolution Professional before the Committee of Creditors for consideration after being satisfied that Resolution Plan is compliant of I&B Code, 2016. All information with regard to Respondent No. 3 i.e. Corporate Debtor who is in insolvency have been put in the Information Memorandum by the Resolution Professional. The Information pertaining to Respondent No. 3 submitted by Resolution Professional are based on financial statements of the Corporate Debtor which are submitted to the Ministry of Corporate Affairs. It is also on record that Resolution Plan which was submitted by Respondent No. 2 AGI for acquiring the Respondent No. 3 has also received the approval of the Committee of Creditors on 28.10.2022 i.e. before notice in Form II was submitted by the Respondent No. 2 before the CCI. The Resolution Professional has also appeared in these Appeals and submitted that Resolution Professional does not have any objection against the Order dated 15th March, 2023 passed by the Competition Commission of India and accepting the said order, Resolution Professional has also filed an

Application before the Adjudicating Authority to take the order on record as compliance of the provision of Section 31(4) of I&B Code, 2016. In the facts of the present case, especially that Respondent No. 3 is in insolvency and the Resolution Professional himself has placed proposal for acquisition of Respondent No. 2 which has been approved by the Committee of Creditors and all details and information have been given by Respondent No. 2 in its notice under Section 6(2) of Competition Act which relate both to Respondent No. 2 and Respondent No. 3, non-issuance of notice to target entity i.e. Respondent No. 3 is not to *ipso facto* vitiate the order of the Commission when Respondent No. 3 has neither any objection nor grievance regarding non-service of notice to Respondent No. 3 and information regarding Respondent No. 3 are all in public domain which has been used by Respondent No. 2 in submitting the notice. We are of the view that by mere non-issuance of notice to Respondent No. 3, the proceedings before the CCI need not be annulled. We thus answer Point No. III, accordingly.

Point Nos. IV, V and VI

47. The learned Counsel for both the parties have addressed elaborate submissions on interpretation of Section 29, 30 and 31 as well as Combination Regulations 2011. Before we enter into respective submissions of learned Counsel for the parties, we need to notice relevant provisions of the Act in the above reference. Section 6 deals with 'Regulation of combinations'. Section 6, sub-section (2) oblige any person or enterprise, who purposes to enter into a combination to give a notice to

the Commission in the form as may be specified. Section 29 deals with 'Procedure for investigation and combination'. Section 29 provides as follows:

"***Procedure for investigation of combination***

29. (1) Where the Commission is of the prima facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

1(A) After receipt of the response of the parties to the combination under subsection (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.

(2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, or the receipt of the report from Director General called under sub section (1A), whichever is later] direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public

and persons affected or likely to be affected by such combination.

(3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under sub-section (2).

(4) The Commission may, within fifteen working days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.

(5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within fifteen days from the expiry of the period specified in sub-section (4).

(6) After receipt of all information and within a period of forty-five working days from the expiry of the period specified in sub-section (5), the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31."

48. Section 30 deals with 'Procedure in case of notice under sub-section (2) of section 6, which is to the following effect:

*"**Procedure in case of notice under sub-section (2) of section 6***

30. Where any person or enterprises has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its prima facie

opinion as provided in sub-section (1) of section 29 and proceed as per provisions contained in that section."

49. Section 31 deals with 'Orders of Commission on certain combinations' is as follows:

"***Orders of Commission on certain combinations***

31. (1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6.

(2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

(3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination.

(4) The parties, who accept the modification proposed by the Commission under subsection (3), shall carry out such modification within the period specified by the Commission.

(5) If the parties to the combination, who have accepted the modification under subsection (4), fail to carry out the modification within the period specified by

the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act.

(6) If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that subsection.

(7) If the Commission agrees with the amendment submitted by the parties under subsection (6), it shall, by order, approve the combination.

(8) If the Commission does not accept the amendment submitted under subsection (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3).

(9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.

(10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then,

without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that –

(a) the acquisition referred to in clause (a) of section 5; or

(b) the acquiring of control referred to in clause (b) of section 5; or

(c) the merger or amalgamation referred to in clause (c) of section 5, shall not be given effect to:

Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section.

(11) If the Commission does not, on the expiry of a period of 54[two hundred and ten days from the date of notice given to the Commission under subsection (2) of section 6], pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.

Explanation - For the purposes of determining the period of 55[two hundred and ten] days specified in this subsection, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub- section (8) shall be excluded.

(12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties.

(13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.

(14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force."

50. Regulation 5 of the Combination Regulations, 2011 deals with 'Form of notice for the proposed combination'. Regulation 19 deals with 'Prima facie opinion on the combination'. Regulation 19, which is relevant is as follows:

*"**19. Prima facie opinion on the combination.** – (1) The Commission shall form its prima facie opinion under sub-section (1) of section 29 of the Act, on the notice filed in Form I or Form II, as the case may be, as to whether the combination is likely to cause or has caused an appreciable adverse effect on competition within the relevant market in India, within thirty working days of receipt of the said notice.*

(2) Before the Commission forming an opinion under sub-section (1) of section 29 of the Act, the parties to the combination may offer modification to the combination and on that basis, the Commission may approve the proposed combination under sub-section (1) of section 31 of the Act:

Provided that where modification is offered by the parties to the combination, the additional time, not exceeding fifteen days, needed for evaluation of the offered modification, shall be excluded from the period provided in sub-regulation (1) of this regulation, sub-section (2A) of section 6 of the Act and sub-section (11) of section 31 of the Act.]

(3) Where the Commission deems it necessary, it may call for information from any other enterprise while inquiring as to whether a combination has caused or is likely to cause an appreciable adverse effect on competition in India.

Provided that the time taken in obtaining the information from such enterprise(s) shall be excluded from the time, not exceeding fifteen working days, provided in sub-regulation (1) of this regulation."

51. Regulation 25 deals with 'Modification to the proposed combination', which also contains an amendment inserted by the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2018, w.e.f. 09.10.2018. Regulation 25 as amended is as follows:

*"**25. Modification to the proposed combination.-** (1) Where the Commission is of the opinion that combination has or is likely to have appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination to the parties to such combination.*

(1A) Along with their response to the notice issued under sub-section (1) of section 29 of the Act, the parties to the combination may offer modification to address the prima facie concerns in the said notice and on that basis, the Commission may approve the proposed combination under sub-section (1) of section 31 of the Act:

Provided that in such a case, the additional time, not exceeding fifteen days, needed for evaluation of the modification offered, shall be excluded from the period provided in sub-section (2A) of section 6 of the Act, sub-section (2) of section 29 of the Act and subsection (11) of section 31 of the Act.

(2) Where the parties to the combination have accepted the modification proposed by the Commission under sub-section (3) of the section 31 of the Act or the Commission agrees with the amendment to the proposed modification by the parties and approves the combination under sub-section (7) of section 31 of the Act or the parties, in terms of the provisions of subsection (8) of section 31 of the Act, accept the modification proposed by the Commission under sub-section (3) of section 31 of the Act, the parties to the combination shall carry out such modification as per the terms and conditions and within the period as may be specified by the Commission and submit an affidavit to that effect.

(3) Where the parties accept the modification proposed by the Commission under subsection (3) of section 31 of the Act or the Commission agrees with the amendment submitted by the parties under sub-section (6) of section 31 of the Act, it shall by order, approve the combination.

> *(4) If the parties to the combination fail to accept the modification proposed by the Commission within the time referred to in sub-section (6) of section 31 of the Act or within a further period referred to in sub-section (8) of section 31 of the Act, the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of the Act."*

52. Section 29, sub-section (1) provides for formation of the *prima facie* opinion by the Commission that a combination is likely to cause, or has caused an appreciable adverse effect on competition and on formation of such opinion, the Commission is to issue a show cause notice to the parties to combination calling upon them to respond within thirty days from the receipt of the notice. In the present case, it is on the record that in the Meeting dated 09.02.2023, the Commission deliberated over the notice given under Section 29, sub-section (1) and other information and documents submitted by Respondent No.2 subsequently. After considering the entire materials on record, the Commission formed a *prima facie* opinion that combination is likely to cause an AAEC. Consequently, notice under Section 29, sub-section (1) was issued on 10.02.2023. The bone of contention of the parties is as to whether after formation of *prima facie* opinion under Section 29(1), whether there was any requirement of formation of *prima facie* opinion at the second time under sub-section (2) of Section 29. Whereas the Appellant(s) pleads that there is no requirement of formation of *prima facie* opinion at the second time and when notice under Section 29, sub-section (1) has been issued, even after response to

the notice, the Commission is required to direct the parties to the combination to publish the details of the combination. The Appellants' contention is that Section 29, sub-section (2), insofar as it directs for publishing the details of the combination having not been complied, the statutory procedure has not been complied by the Commission, resulting in vitiation of the order approving the combination dated 15.03.2023. The contention of the CCI and other Respondents is that formation of *prima facie* opinion is required at the second stage as per Section 29 sub-section (2), when response is received to the notice and the requirement of publication of details of the combination comes into play only when *prima facie* opinion is formed at the second time.

53. We have pondered upon the rival submissions of both the parties. The plain reading of Section 29, sub-section (2) indicates that the Commission, if it is *prima facie* of the opinion that combination is likely to have an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, or the receipt of the report from Director General called under sub-section (1A), whichever is later, direct the parties to the said combination to publish details of the combination. The *prima facie* opinion as contemplated under sub-section (2) of Section 29 is required to be formed after receipt of the response of the parties to the combination or receipt of the report from the Director General. Section 29, sub-section (2) indicates that the Commission has to apply its mind to the response received or the report of the Director General and if it is *prima facie* of the opinion that the

combination is likely to have an appreciable adverse effect on competition, it shall direct within seven working days to the parties to the combination to publish details of the combination. The stage of forming *prima facie* opinion under Section 29, sub-section (2) arises only after response is received or a report of Director General is received. The legislative intent is clear by sub-section (2) of Section 29 that there may be cases where the Commission is satisfied after response of the notice or the report of the Director General that there is no appreciable adverse effect on competition, it may decide not to proceed further under Section 29, sub-section (2) and approve the combination. The submission of the Appellant(s) that *prima facie* opinion at the second stage is not required to be formed does not commend us.

54. Regulation 19 of Combination Regulations, 2011 deals with formation of *prima facie* opinion under sub-section (1) of Section 29. Sub-regulation (2) of Regulation 19 also contains a provision that before the Commission forming an opinion under sub-section (1) of Section 29, the parties to the combination may offer modification to the combination and on that basis, the Commission may approve the proposed combination under sub-section (1) of Section 31 of the Act. The above Regulation clearly contemplates that even before forming opinion under Section 29, sub-section (1), if the parties submit a modification and the Commission is satisfied, combination can be approved under Section 31, sub-section (1), without proceeding any further.

55. We have looked into the cases decided by the Competition Commission of India to find out the procedure, which was adopted by the

Commission to decide cases by the Competition Commission of India, which indicate that after issuance of show-cause notice under Section 29, sub-section (1), the Commission has proceeded to form a *prima facie* opinion at the second stage as contemplated under Section 29, sub-section (2). We may refer to Combination Registration No.C-2016/05/400 decided on 8th June, 2017, where after issuance of a show-cause notice under Section 29, sub-section (1), the Commission formed a *prima facie* opinion under Section 29, sub-section (2) and thereafter directed the parties to publish details of the combination. Paragraph 21 of the judgment is referred in this context:

> *"21. The response to the SCN was received on 20th February, 2017, which was subsequently amended vide letters dated 1st March, 2017 and 2nd March, 2017 ("Response to SCN"). The Commission, in its meeting held on 3rd March, 2017, considered Response to SCN, and formed a prima facie opinion, under sub-section (2) of Section 29 of the Act, that the proposed combination is likely to cause AAEC in markets in India. Accordingly, under sub-section (2) of Section 29 of the Act read with Regulation 22 of the Combination Regulations, the Commission directed the Parties to publish details of the proposed combination, within ten working days of the said direction, for bringing the proposed combination to the knowledge or information of the public and persons affected or likely to be affected by such combination. The said direction was*

communicated to the Parties vide letter dated 6th March, 2017."

56. In the above case, after forming *prima facie* opinion under Section 29, sub-section (2), the Commission suggested modification to the combination and thereafter proceeded to approve combination.

57. In Combination Registration No.C-2018/01/545, decided on 06.09.2018, a show-cause notice was issued by the Commission under Section 29, sub-section (1) in response to which parties filed a reply on 01.03.2018 and the Commission after considering the reply came to the *prima facie* opinion that combination is likely to cause an appreciable adverse effect on competition. Even after receiving the response of the noticee, *prima facie* opinion was made under Section 29 sub-section (2). Paragraph 10, 12 and 13 of the order is relevant in this context, which is to the following effect:

"10. The Commission, in its meeting held on 10.04.2018, considered the facts on record, details provided in the notice and the responses filed by the Parties, and formed a prima facie opinion that the Proposed Combination is likely to cause an appreciable adverse effect on competition ("AAEC") in several relevant markets in India. Accordingly, in terms of Section 29(1) of the Act, a show cause notice dated 11.04.2018 ("SCN") was issued to the Parties wherein the Parties were directed to respond, in writing, within thirty days of the receipt of the SCN, as to why investigation in

respect of the Proposed Combination should not be conducted.

12. *The Commission, in its meeting held on 17.05.2018, considered and assessed the Response to SCN, third party responses received in terms of communication under Regulation 19(3) of the Combination Regulations and noted that submissions of the Parties, contesting the AAEC concerns expressed by the Commission in SCN, do not allay the said concerns. The Parties also proposed certain divestments in relation to helium and bulk markets along with the Response to SCN and submitted that the same would eliminate all the primary concerns raised by the Commission. In this regard, the Commission noted that the divestments relating to helium market were offered by the Parties in other jurisdictions and the same were yet to be accepted by said authorities. The divestment related to the bulk markets, prima facie, did not address all the AAEC concerns raised by the Commission in the SCN. Accordingly, the Commission was of the view that the divestments proposed in the Response to SCN cannot be accepted and competition concerns, as raised in SCN, continue to exist.*

13. *In view of the above, in accordance with Section 29(2) of the Act read with Regulation 22 of the Combination Regulations, the Commission decided to issue a direction to the Parties to publish details of the Proposed Combination within ten working days of the said direction for bringing the Proposed Combination to the knowledge or information of the*

public and persons affected or likely to be affected by such Proposed Combination. The said direction was communicated to the Parties vide letter dated 17.05.2018."

58. To the similar effect, we find another order of the Commission dated 14.06.2018 in Combination Registration No.C-2017/08/523.

59. The decided cases of the Commission, thus, clearly indicate that *prima facie* opinion at the second stage, i.e., at the stage of Section 29 sub-section (2) is formed by the Commission and in event the *prima facie* opinion is formed at the second stage, only then the Commission proceeded to direct the publication of details. In this context, reference to Combination Registration No.C-2018/07/586 is made, where the Commission after receipt of the response, formed second *prima facie* opinion under Section 29, sub-section (2). Paragraphs 70 and 71 of the order, which are relevant is reproduced below:

"70. In this regard, it is observed that Section 29 of the Act provides the procedure for investigation into combinations and Section 31 deals with orders that could be passed by the Commission thereon. If the Commission is of the prima facie view that the proposed combination is likely to cause an appreciable adverse effect on competition, it shall issue a notice to the parties under Section 29(1) of the Act to show cause in writing, as to why investigation should not be conducted in the matter. Subsequently, the parties may provide their response along with such evidence /

material, which in their view demonstrates that investigation is not required. Even after considering the response of the parties, if the Commission is still of the prima facie view that the proposed combination is likely to cause an appreciable adverse effect on competition, it would direct the parties to publish the details of the combination under Section 29(2) of the Act. Section 29(3) of the Act provides for Commission calling the public to file their written objections, regarding the proposed combination. After receipt of such objections, the Commission may ask the parties to furnish such information as may be required by the Commission under Section 29(4) of the Act. After this stage, the Commission has been provided a period of 45 days under Section 29(6) of the Act to deal with the case in accordance with Section 31 of the Act.

71. A combined reading of the procedure under Section 29 of the Act, the orders and modifications that could be ordered / accepted under Section 31 of the Act and the statutory time period provided for inquiry, suggest that it would not be appropriate for the parties to the combination to submit new evidences after the stage contemplated under Section 29(5) of the Act, particularly after the issuance of proposal for modifications under Section 31(3) of the Act. The period of 45 days provided under Section 29(6) of the Act, is to assess the material on record including the submissions already given by parties, competitors and other stakeholders regarding the proposed

> *combination. If the parties or other stakeholders fail to provide their views / objections within the respective stages under Section 29(1), (3), (4) and (5) of the Act, it is not open for them to adduce new material / evidence during the 45 days given to the Commission under Section 29(6) of the Act. If one contemplates otherwise, the combination inquiry would be a never ending process without any finality."*

60. On the other hand, there are cases of the Commission, where the Commission after receiving the response to the show-cause notice under Section 29, sub-section (1), wherein modifications were suggested, accepted the modification and proceeded to approve the combination under Section 31, sub-section (1) without proceeding further under Section 29, sub-section (2). In this context, reference is made to Combination Registration No.C-2020/03/735 decided on 18.06.2020 where the show-cause notice under Section 29, sub-section (1) was issued by the Commission on 22.05.2023 and thereafter response was given to the show-cause notice and along with the response, voluntary remedies proposal was given under Regulation 25(1A). In paragraphs 13 and 15, following have been noted:

> *"13. Accordingly, a show cause notice, in terms of sub-section (1) of Section 29 of the Act ("SCN") dated 22nd May 2020, was issued to the Parties. The Parties were directed to respond, in writing, within thirty days of the receipt of SCN, as to why investigation in respect of the proposed combination should not be conducted.*

> *15. The response to the SCN was received on 17th June, 2020 ("**Response to SCN**"). Along with the Response to SCN, Parties also submitted voluntary remedies proposal ('**VRP**') under regulation 25 (1A) of the Combination Regulations. Response to the SCN and VRP are discussed in subsequent sections."*

61. After noticing the voluntary remedies proposal under Regulation 25(1A), the Commission held that appreciable adverse effect on competition is effectively eliminated. In paragraphs 37 and 38, following have been observed:

> *"37. In response to the SCN, the Parties have submitted voluntary remedy proposal under Regulation 25 (1A) of the Combination Regulation.*
>
> *38. The Commission notes that the VRP submitted effectively eliminates the overlap between the Parties in the IOP segment in India and would effectively transfer Metso Minerals's Indian Straight Grate (SG) IOP capital equipment business to a suitable buyer, thereby preserving the competition. Thus, the Commission considers such divestment to be proportional to address the competition concerns that would result otherwise from the Proposed Combination. (Hereinafter, 'India SG IOP capital equipment business' and 'Indian Divestment Business' is used interchangeably)."*

62. The Commission thereafter proceeded to approve the combination.

63. Another judgment in this context is – Combination Registration No.C-2016/08/424 decided on 16.05.2017, where a show-cause notice was issued on 14.04.2017. Along with response, the Acquirer filed a voluntary remedy proposal and after considering the remedy addressed by the notice, the Commission approved the combination without proceeding any further under Section 29, sub-section (2). In paragraph 9, the facts have been noted to the following effect:

> *"9. Based on assessment of information available on record, the Commission, in its meeting held on 21st April, 2017, observed that there are prima facie competition concerns, as discussed in subsequent paragraphs, in relation to the Proposed Combination and therefore, decided to issue a show cause notice ("SCN"), under sub-section (1) of Section 29 of the Act, to the Acquirer. Accordingly, SCN dated 24th April, 2017 was issued to the Acquirer, directing it to respond, in writing, within thirty days, as to why investigation in respect of the Proposed Combination should not be conducted. The Acquirer filed response to the SCN on 13th May, 2017 ("Response to SCN"), along with a voluntary remedy proposal ("Remedy Proposal")."*

64. The above judgments clearly indicate that the Commission has followed the procedure of considering the reply to show-cause notice and in event a remedial proposal/ modification submitted by noticee and the same was found adequate to address the AAEC, the Commission proceeded to

approve the combination without proceeding further under Section 29, sub-section (2).

65. In the present case, we are of the view that as per the statutory provisions contained in Section 29 and the Regulations 2011, after receipt of the response to show-cause notice, the Commission has to form *prima facie* opinion at the second stage as required by Section 29, sub-section (2) and in cases where *prima facie* opinion at the second stage under Section 29, sub-section (2) has not been formed and the Commission is satisfied that the response received in the modification, if any, submitted by the Party does not meet the requirements of law, the Commission directed publication of details of combination in such cases. Direction to publish details of the combination is contemplated only when after the response received from the notice or from the report received from the Director General, the Commission forms a *prima facie* opinion at the second stage under Section 29, sub-section (2) that combination has an appreciable adverse effect on competition. In the present case, it is clear that the Commission issued notice on 10.02.2023 and on the submissions of the response submitted by Respondent No.2 on 10.03.2023 along with modification, i.e. divesture of Rishikesh Plan, certain further clarification was given by Respondent No.2 on 14.03.2023 and the Commission in its Meeting held on 15.03.2023 considered the modification proposed and came to the conclusion that modification proposed by Respondent No.2, fully address the AAEC. Hence, the Commission proceeded to approve the combination under Section 31 sub-section (1). We, thus, are of the view that the Commission proceeded

to approve the combination by following the statutory procedure prescribed under Section 29 as well as Regulations 2011. Further, in the facts of the present case, under sub-section (2) of Section 29, the publication of details of combination was not required to be directed, since at the second stage, the Commission did not form any *prima facie* opinion of AAEC.

66. The learned Counsel for the Respondent, relying on Section 30 of the act contended that Section 30 requires that after any person or enterprise has given a notice under sub-section (2) of Section 6, the Commission shall examine such notice and form its *prima facie* opinion as provided in sub-section (1) of 29, the Commission is to proceed as per the provisions contained in Section 30. It cannot be read to mean that after forming *prima facie* opinion under Section 29, sub-section (1), the Commission has to necessarily complete all process required under Section 29, i.e., under Section 29, sub-section (2) and other sub-sections. Section 30 and Section 29 have to be read harmoniously to give effect the provisions of the Act. Section 30 cannot be read to mean that even if, *prima facie* opinion at the second stage is not formed by the Commission, the Commission should direct publication of details of the combination. The submission of the Appellant on the strength of Section 30, thus, cannot be accepted.

Point Nos. VII and VIII

67. The contentions advanced by the learned Counsel for the Appellant is that even the modification suggested by Respondent No.2 do not

adequately address the AAEC and the Commission has not adequately examined the said submission.

68. The Commission has given a detailed analysis of modification proposed by AGI from paragraph 89 onward. The submission of the Appellant that modification proposed has not been adequately considered by the Commission cannot be accepted in view of the consideration in detail given by the Commission. It is useful to extract paragraphs 99, 100 and 101 of the order of the Commission, which is to the following effect:

> *"99. The voluntary modification proposed by the Acquirer has been considered and accepted by the Commission while undertaking a holistic assessment of the transaction. All things considered, including the presence of limited competitive constraints from other competitors, imports, buyer power, the operational conditional of other plants and the financial and operational situation of HNG; together with the proposed modification has led the Commission to the conclusion that the transaction is not likely to have an AAEC.*
>
> *100. Considering the material on record, details provided in the Notice, Response to SCN and factors provided under sub-section (4) of Section 20 of the Act and the modifications proposed by the Acquirer, the prima facie concerns of a likely AAEC as laid down in the SCN have been addressed by the Acquirer and the Commission, thus, decided not to proceed further with the investigation.*

> *101. The Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act, subject to compliance of Modification offered by AGI under Regulation 25(1A) of the Combination Regulations as a part of Response to SCN."*

69. The above shows that the Commission has come to the conclusion after detailed consideration of modification proposed by the AGI. We, thus, are fully satisfied that the Commission had duly considered the modification submitted by AGI in response to the show-cause notice and after accepting the modification, proceeded to approve the combination under Section 31, sub-section (1).

70. Shri Mukul Rohatgi, learned Senior Counsel appearing for Respondent No.2 has drawn attention of this Appellate Tribunal to large number of cases of Hon'ble Supreme Court, where Hon'ble Supreme Court has taken the view that decision of Expert Bodies are not to be readily interfered with by the Courts, in exercise of judicial review and appellate jurisdiction. The Commission is a Statutory Body, which in the present case is performing not an adjudicatory function, rather, is exercising inquisitorial function. The Hon'ble Supreme Court in ***Competition Commission of India vs. Steel Authority of India Limited and Anr.*** has held that the Competition Commission of India performs various functions including regulatory, inquisitorial and adjudicatory. The functions, which have been exercised by the Commission in the present case are clearly inquisitorial functions. The decision of the Expert Body is not lightly to be

interfered by the Courts and the Appellate Authorities is a well-established principle. We may refer to the judgment of the Hon'ble Supreme Court in ***(2017) 5 SCC 262 - Union of India and Ors. vs. Cipla Limited and Ors.***, where the Hon'ble Supreme Court relied on the conclusions by a Constitution Bench of the Hon'ble Supreme Court and observed that when a power is given to an Expert Body to determine a question of law and fact, the same is generally treated as final. In paragraph 104 and 105, following was laid down:

> *"**104.** Be that as it may, our conclusion on this aspect of the matter is that the antecedent materials (the Reports) on the basis of which the norms were recommended and then prescribed under Para 7 of the DPCO 1995 are subject to lesser judicial scrutiny, limited perhaps only to the application of completely erroneous principles. The burden for demonstrating the application of completely erroneous principles is heavy as it is and it is heavier still if the antecedent material is prepared by experts. The onus of discharging the heavy burden must necessarily fall on the challenger, and Cipla has not been able to sustain the challenge. There can be and are differences of opinion but we cannot and will not reconsider the opinion of experts, particularly in matters of economic affairs or other economy-related issues unless there is extremely strong reason to do so.*
>
> ***105.** We end this discussion with a conclusion arrived at by the Constitution Bench in Shri Sitaram Sugar Co. Ltd. [Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223] in para 49 of the Report: (SCC p. 252)*

"49. Where a question of law is at issue, the court may determine the rightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the court would have come to as a trier of fact. Whether an order is characterised as legislative or administrative or quasi-judicial, or, whether it is a determination of law or fact, the judgment of the expert body, entrusted with power, is generally treated as final and the judicial function is exhausted when it is found to have "warrant in the record" and a rational basis in law (see Rochester Telephone Corpn. v. United States [Rochester Telephone Corpn. v. United States, 307 US 125 (1939) : 83 L Ed 1147 : 1939 SCC OnLine US SC 79]). (See also Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)])"

(emphasis supplied)

This view was reaffirmed in para 58 of the Report in the following words: (SCC p. 256)

"58. Price fixation is not within the province of the courts. Judicial function in respect of such matters is

exhausted when there is found to be a rational basis for the conclusions reached by the authority concerned. As stated by Justice Cardozo in Mississippi Valley Barge Line Co. v. United States [Mississippi Valley Barge Line Co. v. United States, 292 US 282 at pp. 286-87 (1934) : 78 L Ed 1260 : 1934 SCC OnLine US SC 103] : (SCC OnLine US SC para 6)

'6. ... The structure of a rate schedule calls in peculiar measure for the use of that enlightened judgment which the commission by training and experience is qualified to form. ... It is not the province of a court to absorb this function to itself. ... The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.'"

(emphasis supplied)"

71. The above is also another reason, which does not warrant any interference in the decision of the Expert Body, i.e., the Competition Commission of India, more so, when it has been given after following the procedure prescribed in the Act and the Regulations.

Point No. IX

72. The Appellant - The U.P. Glass Manufacturers Syndicate has questioned the impugned order dated 15.03.2023 also on the ground that it has been passed in violation of principles of natural justice. It is contended that even though the Appellant had filed the objections to combination notice on 07.10.2022, which was acknowledged by the CCI (reliance has been placed on the letter dated 23.02.2023 along with which the order dated 22.02.2023 of the CCI was forwarded to the Appellant),

where it was communicated that objection raised by the Appellant shall be duly considered at the appropriate time. The Appellant further submits that on the same day when the order dated 15.03.2023 was passed, a letter dated 15.03.2023 was forwarded to the Appellant, where it was communicated that the Commission has noted the concerns highlighted by the UPGMS relating to the competition assessment of the proposed combination and opined that the same would be duly considered while assessing the effect or likely effect of the proposed competition on competition, in accordance with law, at the appropriate stage. The submission is that since on 15.03.2023, it was communicated that the concern shall be considered at the appropriate stage, it means that there was no consideration on 15.03.2023 of the concerns raised by the Appellant at the time when the order was passed on 15.03.2023. It is submitted that principles of natural justice have been violated. The learned Counsel for the CCI, refuting the submission of the Appellant had contended that the Commission has proceeded to examine the combination notice given by Respondent No.2 in accordance with the procedure prescribed. The Appellant UPGMS had no locus to file any objection or participate in the proceedings.

73. We have considered the submissions of learned Counsel for the parties and have perused the record. The principles of natural justice are generally to be followed when a decision is taken, which has civil consequence on any person or entity. The Competition Act, 2002 and the Regulations framed thereunder, specially Combination Regulations 2011

provides a detailed procedure and manner in which participation of others including Members of the pubic and other parties have to be allowed. We have noticed that Regulation 19, sub-regulation (3) empowers the Commission to call for information from any other enterprise while inquiring as to whether a combination has caused or is likely to cause an appreciable adverse effect on competition in India. Thus, although the Commission is empowered to invite information, the scheme does not entitle any other person other than those who have given notice to participate in the proceedings. The right of participation of public in general and other entities arises when under Section 29, sub-section (2) of the Act, the Commission directed the parties to the combination to publish the details of the combination within seven days from of such direction, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected. The stage for filing any objection or giving any information by public in general including the Appellant – UPGMS can arise only when details of the combination are published under Section 29, sub-section (2). We have already noticed that in the present case, stage of direction to publish details of combination had not arisen, since there was no *prima facie* opinion formed at the second stage under Section 29, sub-section (2). The Appellant itself had brought on record the letter dated 23.02.2023 written by the CCI to the Appellant annexed therewith the order dated 22.02.2023 of the CCI. In the order dated 22.02.2023, the Commission noticed the letters sent by the Appellant. The Appellant was communicated that proceedings before the Commission are not open to public. Paragraphs 5 to 9 of the order dated 22.02.2023 is as follows:

*"5. It is also important to note that by virtue of the provisions contained in Regulation 47 of The Competition Commission of India (General) Regulations, 2009 ('**General Regulations**'), the proceedings before the Commission are not open to public. However, if required, as a part of the review process of a combination, the Commission does reach out to stakeholders under Regulation 19(3) of the Competition Commission of India (Procedure in regard to transaction of business relating to combination) Regulations, 2011 ('**Combination Regulations**') and also affords an opportunity to the public to offer their comments under Section 29(3) of the Act.*

6. *As regards the concerns expressed relating to the competition assessment of the Proposed Combination, the Commission has noted the same. The Proposed Combination is presently under review of the Commission and, needless to add, the submissions shall be duly considered while assessing the effect or likely effect of the Proposed Combination on competition, in accordance with law, at the appropriate stage.*

7. *As regards the request for grant of access to notice and an opportunity for oral hearing, it is reiterated that, by virtue of the provisions contained in Regulation 47 of the General Regulations, the proceedings before the Commission are not open to public. Further, the information provided in the notice by the parties to a combination may include competitively sensitive information, the disclosure of which to third parties may harm their competitive position. Given the foregoing, UPGMS's submissions for access to the notice filed by the AGI do not warrant a grant of its request. Further, considering that the concerns pointed out by*

UPGMS have already been noted, the Commission is of the opinion that no hearing may be required in the matter.

8. *As regards the request to not consider, deliberate, accept, and admit any application or notice or documents filed by AGI until adjudication of the applications filed in the Hon'ble NCLT/Appellate Tribunal, it is noted that the subject matter of the references filed with the Hon'ble NCLT/ Appellate Tribunal relate to resolution proceedings and do not have any bearing on competition assessment. Further, as stated above, the review of combinations is strictly time bound exercise and accordingly no matter can be kept in abeyance for reasons of any parallel proceedings before other authorities. Accordingly, this request of UPGMS cannot be acceded to.*

9. *As regards the request to initiate Section 39 proceedings against AGI and afford an opportunity to UPGMS to file objections under Section 29(3) of the Act and treat the letter filed as an application under Section 29 of the Act read with Sections 19 and 35 of the Act, it may be noted that the initiation of proceedings under Section 29 of the Act is to be based on the Commission's own assessment. The submissions of objections under Section 29(3) is to be preceded by the Commission's directions to the parties to publish details of the proposed combination. In the absence of any such directions, the submissions under Section 29(3) are premature at this stage."*

74. The Appellant, thus, was appropriately communicated that they cannot be allowed to participate as noted above under the scheme of the Act. The right to third parties to submit objections arises when the

Commission issues direction to the parties to publish the details of the proposed combination, which stage never arose in the present case.

75. The Hon'ble Supreme Court in ***(2010) 10 SCC 744 - Competition Commission of India vs. Steel Authority of India Limited and Anr.*** had occasion to consider the principles of natural justice in reference to Competition Act, 2002. The Hon'ble Supreme Court noticed the cases where principles of natural justice can be excluded by legislature. In paragraph 68, following has been laid down:

> *"**68.** Generally, we can classify compliance or otherwise, with these principles mainly under three categories. First, where application of principles of natural justice is excluded by specific legislation; second, where the law contemplates strict compliance with the provisions of the principles of natural justice and default in compliance therewith can result in vitiating not only the orders but even the proceedings taken against the delinquent; and third, where the law requires compliance with these principles of natural justice, but an irresistible conclusion is drawn by the competent court or forum that no prejudice has been caused to the delinquent and the non-compliance is with regard to an action of directory nature. The cases may fall in any of these categories and therefore, the court has to examine the facts of each case in light of the Act or the rules and regulations in force in relation to such a case. It is not only difficult but also not advisable to spell out any straitjacket formula which can be applied universally to all cases without variation."*

76. The Hon'ble Supreme Court also noted the scheme of Section 26 and the Regulations and noticed the stage when notice is to be issued. In paragraph 72 and 78, following has been laid down:

> *"**72.** Some of the Regulations also throw light as to when and how notice is required to be served upon the parties including the affected party. Regulation 14(7) states the powers and functions, which are vested with the Secretary of the Commission to ensure timely and efficient disposal of the matter and for achieving the objectives of the Act. Under Regulation 14(7)(f) the Secretary of the Commission is required to serve notice of the date of ordinary meeting of the Commission to consider the information or reference or document to decide if there exists a prima facie case and to convey the directions of the Commission for investigation, or to issue notice of an inquiry after receipt and consideration of the report of the Director General. In other words, this provision talks of issuing a notice for holding an ordinary meeting of the Commission. This notice is intended to be issued only to the members of the Commission who constitute "preliminary conference" as they alone have to decide about the existence of a prima facie case. Then, it has to convey the direction of the Commission to the Director General. After the receipt of the report of the Director General, it has to issue notice to the parties concerned."*
>
> ***78.** Cumulative reading of these provisions, in conjunction with the scheme of the Act and the object sought to be achieved, suggests that it will not be in consonance with the settled rules of interpretation that a statutory notice or an absolute right to claim notice and hearing can be read into the provisions of Section 26(1) of the Act. Discretion to invite, has been vested in the Commission, by virtue of the Regulations,*

which must be construed in their plain language and without giving it undue expansion."

77. We, thus, are of the considered opinion that in the procedure adopted by the Commission in inquiring the notice under Section 6, sub-section (2), there is no violation of principles of natural justice, which can be attributed to the Commission.

78. The learned Counsel for the Appellant(s) have also submitted that the Commission hurriedly proceeded to approve the combination by order dated 15.03.2023, whereas modifications were submitted on 10.03.2023 and with some clarifications on 14.03.2023. The learned Counsel for the CCI has brought to the notice of this Appellate Tribunal the details of order passed by the CCI on combination notice, where after examining the modification submitted by the Acquirer the time within which the order was passed. The details of 12 Combination Registration have been submitted by the learned Counsel for the CCI by a chart where details with regard to 12 cases were given. In the seven cases, orders were passed on the same day, when modification was submitted; in three cases, orders were passed one day after modification was submitted; and in two cases, after two days of submission of modification. The Commission, thus, has adopted the practice, which was throughout followed by the Commission in taking a decision after receipt of the modification proposal from the Acquirer. We, thus, are of the view that submission of the Appellant(s) that Commission has hurriedly proceeded to approve the combination cannot be accepted.

79. Coming to the submission of the Appellant on the decision dated 15.03.2023 as communicated to UPGMS, where reliance have been placed in paragraph 2, which is to the following effect:

> *"2. In this regard, the Commission noted that previously also, UPGMS filed various letters with the Commission in respect of the Proposed Combination, which were considered by the Commission and disposed of by Order dated 22 February 2023. Vide the said order, the Commission, while considering the request of UPGMS seeking access to combination notice filed by AGI, noted that by virtue of the provisions contained in Regulation 47 of the General Regulations, the proceedings before the Commission are not open to public. It was also highlighted therein that the information provided in the combination notice by the parties include competitively sensitive information, the disclosure thereof to third parties may harm their competitive position. Accordingly, the request of UPGMS for seeking access to the combination notice filed by AGI, was not acceded to by the Commission. The Commission also noted the concerns highlighted by UPGMS relating to the competition assessment of the Proposed Combination and opined that the same would be duly considered while assessing the effect or likely effect of the Proposed Combination on competition, in accordance with law, at the appropriate stage."*

80. While noticing the averments in context of paragraph 2, it is clear that the contents of paragraph 2 were nothing but reiteration of the contents of the earlier order dated 22.02.2023. The submission of the Appellant that its concern was not addressed by the Commission is also not correct, since

the Commission by detailed order considered all aspects, facts and figures of the combination. The submission that order dated 15.03.2023 did not address the concern of the Appellant regarding AAEC also cannot be accepted.

81. In view of the foregoing discussion and conclusions arrived by us, we are satisfied that the order of the Competition Commission of India dated 15.03.2023 has been passed in accordance with the procedure prescribed under the Act and the Regulations. The Commission in its order has considered all relevant aspects and the materials on the record and has not committed any error in approving the combination in exercise of its power under Section 31, sub-section (1). No grounds have been made out to interfere with the order dated 15.03.2023. All the Appeal(s) are dismissed. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

NEW DELHI

28th July, 2023

Ashwani/BB