**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 3100 OF 2020**

**SAMIR AGRAWAL ...APPELLANT**

**VERSUS**

**COMPETITION COMMISSION OF INDIA & ORS ....RESPONDENTS**

**JUDGMENT**

**R.F. Nariman, J.**

1. The present appeal is at the instance of an Informant who describes himself as an independent practitioner of the law. The Appellant/Informant, by an Information filed on 13.08.2018 ["**the Information**"], sought that the Competition Commission of India ["**CCI**"] initiate an inquiry, under section 26(2) of the Competition Act, 2002 ["**the Act**"], into the alleged anti-competitive conduct of ANI Technologies Pvt. Ltd. ["**Ola**"], and Uber India Systems Pvt. Ltd., Uber B.V. and Uber Technologies Inc. [together referred to as "**Uber**"], alleging that they entered into price-fixing agreements in contravention of section 3(1) read with section 3(3)(a) of the Act, and engaged in resale price maintenance in contravention of section 3(1)

read with section 3(4)(e) of the Act. According to the Informant, Uber and Ola provide radio taxi services and essentially operate as platforms through mobile applications ["**apps**"] which allow riders and drivers, that is, two sides of the platform, to interact. A trip's fare is calculated by an algorithm based on many factors. The apps that are downloaded facilitate payment of the fare by various modes.

2. The Informant alleged that due to algorithmic pricing, neither are riders able to negotiate fares with individual drivers for rides that are booked through the apps, nor are the drivers able to offer any discounts. Thus, the pricing algorithm takes away the freedom of riders and drivers to choose the best price on the basis of competition, as both have to accept the price set by the pricing algorithm. As per the terms and conditions agreed upon between Ola and Uber with their respective drivers, despite the fact that the drivers are independent entities who are not employees or agents of Ola or Uber, the driver is bound to accept the trip fare reflected in the app at the end of the trip, without having any discretion insofar as the same is concerned. The drivers receive their share of the fare only after the deduction of a commission by Ola and Uber for the services offered to the rider. Therefore, the Informant alleged that the pricing algorithm used by Ola and Uber artificially manipulates supply and demand, guaranteeing higher fares to drivers who would

otherwise compete against one and another. Cooperation between drivers, through the Ola and Uber apps, results in concerted action under section 3(3)(a) read with section 3(1) of the Act. Thus, the Informant submitted that the Ola and Uber apps function akin to a trade association, facilitating the operation of a cartel. Further, since Ola and Uber have greater bargaining power than riders in the determination of price, they are able to implement price discrimination, whereby riders are charged on the basis of their willingness to pay and as a result, artificially inflated fares are paid. Various other averments *qua* resale price maintenance were also made, alleging a contravention of section 3(4)(e) of the Act.

3. The CCI by its Order dated 06.11.2018, under section 26(2) of the Act, discussed the Information provided by the Appellant/Informant and held:

> "**13.** At the outset, it is highlighted that though the Commission has dealt with few cases in this sector, the allegations in the present case are different from those earlier cases. The present case alleges that Cab Aggregators have used their respective algorithms to facilitate price-fixing between drivers. The Informant has not alleged collusion between the Cab Aggregators i.e. Ola and Uber through their algorithms; rather collusion has been alleged on the part of drivers through the platform of these Cab Aggregators, who purportedly use algorithms to fix prices which the drivers are bound to accept.
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> **15.** In the conventional sense, hub and spoke arrangement refers to exchange of sensitive information between

competitors through a third party that facilitates the cartelistic behaviour of such competitors. The same does not seem to apply to the facts of the present case. In case of Cab Aggregators model, the estimation of fare through App is done by the algorithm on the basis of large data sets, popularly referred to as 'big data'. Such algorithm seemingly takes into account personalised information of riders along with other factors e.g. time of the day, traffic situation, special conditions/events, festival, weekday/weekend which all determine the demand-supply situation etc. Resultantly, the algorithmically determined pricing for each rider and each trip tends to be different owing to the interplay of large data sets. Such pricing does not appear to be similar to the 'hub and spoke' arrangement as understood in the traditional competition parlance. A hub and spoke arrangement generally requires the spokes to use a third party platform (hub) for exchange of sensitive information, including information on prices which can facilitate price fixing. For a cartel to operate as a hub and spoke, there needs to be a conspiracy to fix prices, which requires existence of collusion in the first place. In the present case, the drivers may have acceded to the algorithmically determined prices by the platform (Ola/Uber), this cannot be said to be amounting to collusion between the drivers. In the case of ride-sourcing and ride-sharing services, a hub- and-spoke cartel would require an agreement between all drivers to set prices through the platform, or an agreement for the platform to coordinate prices between them. There does not appear to be any such agreement between drivers inter-se to delegate this pricing power to the platform/Cab Aggregators. Thus, the Commission finds no substance in the first allegation raised by the Informant.

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**17.** …In case of app-based taxi services, the dynamic pricing can and does on many occasions drive the prices to levels much lower than the fares that would have been charged by independent taxi drivers. Thus, there does not seem to be any fixed floor price that is set and maintained by the aggregators for all drivers and the centralized pricing mechanism cannot be viewed as a vertical instrument

employed to orchestrate price-fixing cartel amongst the drivers…

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**18.** Based on the foregoing discussion, the allegations raised by the Informant with regard to price fixing under section 3(3)(a) read with section 3(1), resale price maintenance agreement under section 3(4)(e) read with section 3(1). Moreover, the Commission observes that existence of an agreement, understanding or arrangement, demonstrating/indicating meeting of minds, is a sine qua non for establishing a contravention under Section 3 of the Act. In the present case neither there appears to be any such agreement or meeting of minds between the Cab Aggregators and their respective drivers nor between the drivers inter-se. In result thereof, no contravention of the provisions of Section 3 of the Act appears to be made out given the facts of the present case.

**19.** Further, the allegation as regards price discrimination also seems to be misplaced and unsupported by any evidence on record. Price discrimination can perhaps be scrutinised under Section 4 of the Act, which has not been alleged by the Informant. Imposition of discriminatory price is prohibited under Section 4(2)(a)(ii) of the Act only when indulged in by a dominant enterprise. It is not the Informant's case that any of the OPs is dominant in the app-based taxi services market. Given this, the Commission does not find it appropriate to delve into such analysis given that the market in question features two players, Ola as well as Uber, none of which is alleged to be dominant. Further, the provisions of the Act clearly stipulate dominant position by only one enterprise or one group and does not recognise collective dominance. This position was amply made clear in Case Nos. 6 & 74 of 2015 and later reiterated in Case Nos. 25, 26, 27 & 28 of 2017, both matters pertaining to the Cab Aggregators market. Thus, given these facts and legal position, the Commission rejects the allegation of the Informant with regard to price discrimination.

**20.** …The situation of cement manufacturers colluding through a trade association is different from an App

providing taxi/cab services. If drivers were colluding using an App as a platform, the said arrangement would have amounted to cartelisation; however, this cannot be equated with the facts of the present cases as demanded by the Informant. Ola and Uber are not an association of drivers, rather they act as separate entities from their respective drivers. In the present situation, a rider books his/her ride at any given time which is accepted by an anonymous driver available in the area, and there is no opportunity for such driver to coordinate its action with other drivers. This cannot be termed as a cartel activity/conduct through Ola/Uber's platform. Thus, the present case is different from the Cement case, not only with regard to adoption of digital App but also with regard to other relevant aspects as elucidated hereinbefore.

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**23.** Based on the foregoing, the Commission is of the view that no case of contravention of the provisions of Section 3 has been made out and the matter is accordingly closed herewith under Section 26(2) of the Act."

4. The Appellant/Informant, being aggrieved by the Order of the CCI, filed an appeal before the National Company Law Appellate Tribunal ["**NCLAT**"] which resulted in the impugned judgment dated 29.05.2020. This judgment recorded that the point as to resale price maintenance was not pressed before it, after which it delved into the *locus standi* of the Appellant to move the CCI. After setting out section 19 of the Act, the NCLAT held:

"**16. It is true that the concept of locus standi has been diluted to some extent by allowing public interest litigation, class action and actions initiated at the hands of consumer and trade associations. Even the whistle blowers have been clothed with the right to seek redressal of grievances affecting public interest by enacting a proper legal framework. However, the**

**fact remains that when a statute like the Competition Act specifically provides for the mode of taking cognizance of allegations regarding contravention of provisions relating to certain anti-competitive agreement and abuse of dominant position by an enterprise in a particular manner and at the instance of a person apart from other modes viz. suo motu or upon a reference from the competitive government or authority, reference to receipt of any information from any person in section 19(1) (a) of the Act has necessarily to be construed as a reference to a person who has suffered invasion of his legal rights as a consumer or beneficiary of healthy competitive practices. Any other interpretation would make room for unscrupulous people to rake issues of anti-competitive agreements or abuse of dominant position targeting some enterprises with oblique motives.** In the instant case, the Informant claims to be an Independent Law-Practitioner. There is nothing on the record to show that he has suffered a legal injury at the hands of Ola and Uber as a consumer or as a member of any consumer or trade association. Not even a solitary event of the Informant of being a victim of unfair price fixation mechanism at the hands of Ola and Uber or having suffered on account of abuse of dominant position of either of the two enterprises have been brought to the notice of this Appellate Tribunal. We are, therefore, constrained to hold that the Informant has no *locus standi* to maintain an action qua the alleged contravention of Act."

(emphasis in original)

5. Despite having held that the Informant had no *locus standi* to move the CCI, the NCLAT went into the merits of the case and held:

"**17.** Assuming though not accepting the proposition that the Informant has locus to lodge information qua alleged contravention of the Act and appeal at his instance is maintainable, on merits also we are of the considered opinion that business model of Ola and Uber does not support the allegation of Informant as regards price discrimination. According to Informant, the Cab Aggregators used their respective algorithms to facilitate price fixing between drivers. It is significant to notice that

there is no allegation of collusion between the Cab Aggregators through their algorithms which necessarily implies an admission on the part of Informant that the two taxi service providers are operating independent of each other. It is also not disputed that besides Ola and Uber there are other players also in the field who offer their services to commuters/ riders in lieu of consideration. It emerges from the record that both Ola and Uber provide radio taxi services on demand. A consumer is required to download the app before he is able to avail the services of the Cab Aggregators. A cab is booked by a rider using the respective App of the Cab Aggregators which connects the rider with the driver and provides an estimate of fare using an algorithm. The allegation of Informant that the drivers attached to Cab Aggregators are independent third party service provider and not in their employment, thereby price determination by Cab Aggregators amounts to price fixing on behalf of drivers, has to be outrightly rejected as no collusion inter se the Cab Aggregators has been forthcoming from the Informant. **The concept of hub and spoke cartel stated to be applicable to the business model of Ola and Uber as a hub with their platforms acting as a hub for collusion inter se the spokes i.e. drivers resting upon US Class Action Suit titled "Spencer Meyer v. Travis Kalanick" has no application as the business model of Ola and Uber (as it operates in India) does not manifest in restricting price competition among drivers to the detriment of its riders. The matter relates to foreign antitrust jurisdiction with different connotation and cannot be imported to operate within the ambit and scope of the mechanism dealing with redressal of competition concerns under the Act.** It is significant to note that the Informant in the instant case has alleged collusion on the part of drivers through the platform of the Cab Aggregators who are stated to be using their algorithms to fix prices which are imposed on the drivers. In view of allegation of collusion *inter se* the drivers through the platform of Ola and Uber, it is ridiculous on the part of Informant to harp on the tune of hub and spoke raised on the basis of law operating in a foreign jurisdiction which cannot be countenanced. The argument in this core is repelled.

Admittedly, under the business model of Ola, there is no exchange of information amongst the drivers and Ola. The taxi drivers connected with Ola platform have no *inter se* connectivity and lack the possibility of sharing information with regard to the commuters and the earnings they make out of the rides provided. This excludes the probability of collusion inter se the drivers through the platform of Ola. In so far as Uber is concerned, it provides a technology service to its driver partners and riders through the Uber App and assist them in finding a potential ride and also recommends a fare for the same. However, the driver partners as also the riders are free to accept such ride or choose the App of competing service, including choosing alternative modes of transport. Even with regard to fare though Uber App would recommend a fare, the driver partners have liberty to negotiate a lower fare. It is, therefore, evident that the Cab Aggregators do not function as an association of its driver partners. Thus, the allegation of their facilitating a cartel defies the logic and has to be repelled.

**18.** Now coming to the issue of abuse of dominant position, be it seen that the Commission, having been equipped with the necessary wherewithal and having dealt with allegations of similar nature in a number of cases as also based on information in public domain found that there are other players offering taxi service/ transportation service/ service providers in transport sector and the Cab Aggregators in the instant case distinctly do not hold dominant position in the relevant market. Admittedly, these two Cab Aggregators are not operating as a joint venture or a group, thus both enterprises taken together cannot be deemed to be holding a dominant position within the ambit of Section 4 of the Act. Even otherwise, none of the two enterprises is independently alleged to be holding a dominant position in the relevant market of providing services. This proposition of fact being an admitted position in the case, question of abuse of dominant position has to be outrightly rejected."

(emphasis in original)

Based on these findings, the appeal was accordingly dismissed.

6. The Appellant/Informant, who appeared in person before this Court, referred to a Services Agreement between Uber and its drivers, updated on 08.09.2015, and an Agreement between Ola and its transport service providers, dated 01.11.2016. He reiterated the submissions made before the CCI and the NCLAT. In particular, he attacked the finding of the NCLAT as to *locus standi* and referred us to various provisions of the Act, including, in particular, sections 19 and 35, arguing that the amendments made in the sections would show that any person can be an informant who can approach the CCI, as one does not have to be a "consumer" or a "complainant", which was the position before the Competition (Amendment) Act, 2007 ["**2007 Amendment**"]. He contrasted these provisions with sections 53B and 53T of the Act, where the expression used is "person aggrieved", but hastened to add that once an informant had moved the CCI, for the purposes of filing an appeal, such informant would certainly be a "person aggrieved", howsoever restricted the expression "person aggrieved" may be in law.

7. The Appellant then argued substantially what was submitted before the CCI and NCLAT on the merits, stating that the arrangements in the present case amounted to "hub and spoke" arrangements and referred us to a particular diagram depicting Ola and Uber as the "hub" and drivers as "spokes" (at page 263 of the paper book of the

Civil Appeal), which indicated that the provisions of section 3 of the Act had clearly been violated.

8. As against this, Dr. Abhishek Manu Singhvi, learned senior advocate appearing on behalf of Uber, took us through the concurrent findings of fact of the CCI and the NCLAT, and stated that they could not be said to be, in any sense, even remotely perverse and would therefore have to be upheld. He was at pains to stress that every driver of a taxi cab, who uses the Ola or Uber app, can have several such apps including both Ola, Uber and the apps of some of their competitors, and can take private rides *de hors* these apps as well. There is, therefore, complete discretion with the drivers to negotiate fares with riders, not only insofar as Ola and Uber are concerned, but also otherwise, there being nothing in either the agreements or practice, which prevents them from doing so. Furthermore, there would be no question of any anti-competitive practice in the form of cartelization, as there are thousands of drivers, none of whom have anything to do with each other, there being no common meeting of minds as far as they are concerned. On the contrary, the apps allow drivers to negotiate fares that are below what is quoted in the app, thereby increasing competition and giving riders greater flexibility to take rides with those drivers who offer the most competitive fares.

9. Shri Rajshekhar Rao, learned advocate appearing on behalf of Ola, also supported Dr. Singhvi's submissions on merits, but went on to add that even if the Appellant could be said to be an informant for the purposes of section 19 of the Act, he could not be said to be a "person, aggrieved" for the purposes of filing an appeal under section 53B under the Act, and referred to the judgment in **Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, (1970) 2 SCC 484**, ["**Adi Pherozshah Gandhi**"]. He also went on to argue that information can be provided by persons like the Appellant at the behest of competitors, which will have a deleterious effect on persons like Ola and Uber, as the value of their shares in the share market would instantly drop the moment the factum of the filing of such information before the CCI would be advertised. In any event, he exhorted us to lay down that in such cases heavy costs should be imposed to deter such persons from approaching the CCI with frivolous and/or *mala fide* information, filed at the behest of competitors.

10. The learned ASG, Shri Balbir Singh, appearing on behalf of the CCI, took us through the provisions of the Act together with the regulations made under it, and stated that though he would support the CCI's Order closing the case, he would also support the right of the Appellant to approach the CCI with information.

11. Having heard the learned counsel appearing on behalf of the various parties, it is necessary to first set out the sections of the Act which have a bearing on the matter before us:

> "**Definitions**
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> **2.** In this Act, unless the context otherwise requires,—
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> (c) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;
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> (f) "consumer" means any person who—
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> (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
>
> (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

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(l) “person” includes—

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm;

(v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(vii) any body corporate incorporated by or under the laws of a country outside India;

(viii) a co-operative society registered under any law relating to co-operative societies;

(ix) a local authority;

(x) every artificial juridical person, not falling within any of the preceding sub-clauses;”

“**Anti-competitive agreements**

**3.** (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

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(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) directly or indirectly determines purchase or sale prices;...

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(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

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(e) resale price maintenance"

"**Duties of Commission**

**18.** Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India:

**Provided** that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country."

"**Inquiry into certain agreements and dominant position of enterprise**

**19.** (1) The Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or sub-section (1) of section 4 either on its own motion or on—

(a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

(b) a reference made to it by the Central Government or a State Government or a statutory authority… "

"**Procedure for inquiry under section 19**

**26.** (1) On receipt of a reference from the Central Government or a State Government or a statutory authority

or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:

**Provided** that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be…."

"**Appearance before Commission**

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

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

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

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

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of

1959) and who has obtained a certificate of practice under sub- section (1) of section 6 of that Act;

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

"**Penalty for offences in relation to furnishing of information**

**45.** (1) Without prejudice to the provisions of section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—

(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or

(b) omits to state any material fact knowing it to be material; or

(c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, such person shall be punishable with fine which may extend to rupees one crore as may be determined by the Commission.

(2) Without prejudice to the provisions of sub-section (1), the Commission may also pass such other order as it deems fit."

"**Appeal to Appellate Tribunal**

**53B.** (1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

**Provided** that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal."

"**Awarding compensation**

**53N.** (1) Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any findings of the Commission or under section 42A or under sub-section(2) of section 53Q of the Act, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by enterprise.

(2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission, if any, and also be accompanied with such fees as may be prescribed.

(3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise: Provided that the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

(4) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Appellate Tribunal, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Appellate Tribunal and the order of the Appellate Tribunal thereon.

*Explanation*.—For the removal of doubts, it is hereby declared that—

(a) an application may be made for compensation before the Appellate Tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (a) of sub-section(1) of section 53A of the Act, has determined in a proceeding before it that violation of the provisions of the Act has taken place, or if provisions of section 42A or sub-section(2) of section 53Q of the Act are attracted.

(b) enquiry to be conducted under sub-section(3) shall be for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal on whether any violation of the Act has taken place."

"**Right to legal representation**

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(3) The Commission may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal.

*Explanation* – The expressions "chartered accountant" or "company secretary" or "cost accountant" or "legal practitioner" shall have the meanings respectively assigned to them in the *Explanation* to section 35.

**Appeal to Supreme Court**

**53T.** The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them;

**Provided** that the Supreme court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days."

12. The relevant regulations that are contained in the Competition Commission of India (General) Regulations, 2009 ["**2009 Regulations**"] are set out as under:

"**2. Definitions.** –

(1) In these regulations, unless the context otherwise requires, –

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(i) "Party" includes a consumer or an enterprise or a person defined in clauses (f), (h) and (l) of section 2

of the Act respectively, or an information provider, or a consumer association or a trade association or the Director General defined in clause (g) of section 2 of the Act, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise against whom any inquiry or proceeding is instituted and shall also include any person permitted to join the proceedings or an intervener;..."

"**10. Contents of information or the reference.** –

(1) The information or reference (except a reference under sub-section (1) of section 49 of the Act) shall, *inter alia*, separately and categorically state the following *seriatum*-

(a) legal name of the person or the enterprise giving the information or the reference;

(b) complete postal address in India for delivery of summons or notice by the Commission, with Postal Index Number (PIN) code;

(c) telephone number, fax number and also electronic mail address, if available;

(d) mode of service of notice or documents preferred;

(e) legal name and address(es) of the enterprise(s) alleged to have contravened the provisions of the Act; and

(f) legal name and address of the counsel or other authorized representative, if any;

(2) The information or reference referred to in sub-regulation (1) shall contain –

(a) a statement of facts;

(b) details of the alleged contraventions of the Act together with a list enlisting all documents, affidavits and evidence, as the case may be, in support of each of the alleged contraventions;

(c) a succinct narrative in support of the alleged contraventions;

(d) relief sought, if any;

(da) Details of litigation or dispute pending between the informant and parties before any court, tribunal, statutory authority or arbitrator in respect of the subject matter of information;

(e) Such other particulars as may be required by the Commission.

(3) The contents of the information or the reference mentioned under sub- regulations (1) and (2), alongwith the appendices and attachments thereto, shall be complete and duly verified by the person submitting it."

"**14. Powers and functions of the Secretary. –**

xxx xxx xxx

(4) The Commission may sue or be sued in the name of the Secretary and the Commission shall be represented in the name of the Secretary in all legal proceedings, including appeals before the Tribunal."

"**25. Power of Commission to permit a person or enterprise to take part in proceedings.**

(1) While considering a matter in an ordinary meeting, the Commission, on an application made to it in writing, if satisfied, that a person or enterprise has substantial interest in the outcome of proceedings and that it is necessary in the public interest to allow such person or enterprise to present his or its opinion on that matter, may permit that person or enterprise to present such opinion and to take part in further proceedings of the matter, as the Commission may specify…."

"**35. Confidentiality**. –

(1) The Commission shall maintain confidentiality of the identity of an informant on a request made to it in writing.

**Provided** that where it is expedient to disclose the identity of the informant for the purposes of the Act, the Commission shall do so after giving an opportunity to the informant of being heard…."

"**51. Empanelment of special counsel by Commission.–**

(1) The Commission may draw up a panel of legal practitioners or chartered accountants or company secretaries or cost accountants to assist in proceedings

before the Competition Appellate Tribunal or any other quasi-judicial body or Court.

(2) The Director General may call upon the legal practitioners or chartered accountants or company secretaries or cost accountants from the panel for assistance in the proceedings before the Commission, if so required.

(3) The remuneration payable and other allowances and compensation admissible to counsel shall be specified in consultation with the Commission."

13. A reading of the provisions of the Act and the 2009 Regulations would show that "any person" may provide information to the CCI, which may then act upon it in accordance with the provisions of the Act. In this regard, the definition of "person" in section 2(l) of the Act, set out hereinabove, is an inclusive one and is extremely wide, including individuals of all kinds and every artificial juridical person. This may be contrasted with the definition of "consumer" in section 2(f) of the Act, which makes it clear that only persons who buy goods for consideration, or hire or avail of services for a consideration, are recognised as consumers.

14. A look at section 19(1) of the Act would show that the Act originally provided for the "receipt of a complaint" from any person, consumer or their association, or trade association. This expression was then substituted with the expression "receipt of any information in such manner and" by the 2007 Amendment. This substitution is not without significance. Whereas, a *complaint* could be filed only from a person who was aggrieved by a particular action, *information* may

be received from any person, obviously whether such person is or is not personally affected. This is for the reason that the proceedings under the Act are proceedings *in rem* which affect the public interest. That the CCI may inquire into any alleged contravention of the provisions of the Act on its own motion, is also laid down in section 19(1) of the Act. Further, even while exercising *suo motu* powers, the CCI may receive information from any person and not merely from a person who is aggrieved by the conduct that is alleged to have occurred. This also follows from a reading of section 35 of the Act, in which the earlier expression "complainant or defendant" has been substituted by the expression, "person or an enterprise," setting out that the informant may appear either in person, or through one or more agents, before the CCI to present the information that he has gathered.

15. Section 45 of the Act is a deterrent against persons who provide information to the CCI, *mala fide* or recklessly, inasmuch as false statements and omissions of material facts are punishable with a penalty which may extend to the hefty amount of rupees one crore, with the CCI being empowered to pass other such orders as it deems fit. This, and the judicious use of heavy costs being imposed when the information supplied is either frivolous or *mala fide*, can

keep in check what is described as the growing tendency of persons being “set up” by rivals in the trade.

16. The 2009 Regulations also point in the same direction inasmuch as regulation 10, which has been set out hereinabove, does not require the informant to state how he is personally aggrieved by the contravention of the Act, but only requires a statement of facts and details of the alleged contravention to be set out in the information filed. Also, regulation 25 shows that public interest must be foremost in the consideration of the CCI when an application is made to it in writing that a person or enterprise has substantial interest in the outcome of the proceedings, and such person may therefore be allowed to take part in the proceedings. What is also extremely important is regulation 35, by which the CCI must maintain confidentiality of the identity of an informant on a request made to it in writing, so that such informant be free from harassment by persons involved in contravening the Act.

17. This being the case, it is difficult to agree with the impugned judgment of the NCLAT in its narrow construction of section 19 of the Act, which therefore stands set aside.

18. With the question of the Informant’s *locus standi* out of the way, one more important aspect needs to be decided, and that is the submission of Shri Rao, that in any case, a person like the Informant

cannot be said to be a "person aggrieved" for the purpose of sections 53B and 53T of the Act. Shri Rao relies heavily upon **Adi Pherozshah Gandhi** (supra), in which section 37 of the Advocates Act, 1961 came up for consideration, which spoke of the right of appeal of "any person aggrieved" by an order of the disciplinary committee of a State Bar Council. It was held that since the Advocate General could not be said to be a person aggrieved by an order made by the disciplinary committee of the State Bar Council against a particular advocate, he would have no *locus standi* to appeal to the Bar Council of India. In so saying, the Court held:

> "**11.** 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 him. That the order is wrong or that it acquits some one who he thinks ought to be convicted does not by itself give rise to a legal grievance…."
>
> (page 491)

19. It must immediately be pointed out that this provision of the Advocates Act, 1961 is in the context of a particular advocate being penalized for professional or other misconduct, which concerned itself with an action *in personam*, unlike the present case, which is concerned with an action *in rem*. In this context, it is useful to refer to the judgment in **A. Subash Babu v. State of A.P., (2011) 7 SCC**

**616**, in which the expression "person aggrieved" in section 198(1)(c) of the Code of Criminal Procedure, 1973, when it came to an offence punishable under section 494 of the Indian Penal Code, 1860 (being the offence of bigamy), was under consideration. It was held that a "person aggrieved" need not only be the first wife, but can also include a second "wife" who may complain of the same. In so saying, the Court held:

> "**25.** Even otherwise, as explained earlier, the second wife suffers several legal wrongs and/or legal injuries when the second marriage is treated as a nullity by the husband arbitrarily, without recourse to the court or where a 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 the 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 the right of filing complaint to the first wife 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 the wife living and not by the woman with whom the subsequent marriage takes place during the lifetime 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 the second marriage takes place which is void by reason of its taking place during the life of the first wife."
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> (page 628)

20. Clearly, therefore, given the context of the Act in which the CCI and the NCLAT deal with practices which have an adverse effect on

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 53N(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.

21. An instructive judgment of this Court reported as **Competition Commission of India v. Steel Authority of India, (2010) 10 SCC 744** dealt with the provisions of the Act in some detail and held:

> "**37.** As already noticed, in exercise of its powers, the Commission is expected to form its opinion as to the existence of a prima facie case for contravention of certain provisions of the Act and then pass a direction to the Director General to cause an investigation into the matter. These proceedings are initiated by the intimation or reference received by the Commission in any of the manners specified under Section 19 of the Act. At the very threshold, the Commission is to exercise its powers in passing the direction for investigation; or where it finds that there exists no prima facie case justifying passing of such a direction to the Director General, it can close the matter and/or pass such orders as it may deem fit and proper. In other words, the order passed by the Commission under Section 26(2) is a final order as it puts an end to the proceedings initiated upon receiving the information in one of the specified modes. This order has been specifically made appealable under Section 53-A of the Act.
>
> **38.** In contradistinction, the direction under Section 26(1) after formation of a prima facie opinion is a direction simpliciter to cause an investigation into the matter. Issuance of such a direction, at the face of it, is an administrative direction to one of its own wings departmentally and is without entering upon any adjudicatory process. It does not effectively determine any right or obligation of the parties to the lis. Closure of the case causes determination of rights and affects a party i.e. the informant; resultantly, the said party has a right to appeal against such closure of case under Section 26(2) of the Act. On the other hand, mere direction for investigation to one of the wings of the Commission is akin to a departmental proceeding which does not entail civil consequences for any person, particularly, in light of the strict confidentiality that is expected to be maintained by the Commission in terms of Section 57 of the Act and Regulation 35 of the Regulations."

"**101.** The right to prefer an appeal is available to the Central Government, the State Government or a local authority or enterprise or any person aggrieved by any direction, decision or order referred to in clause (*a*) of Section 53- A [ought to be printed as 53-A(1)(*a*)]. The appeal is to be filed within the period specified and Section 53-B(3) further requires that the Tribunal, after giving the parties to appeal an opportunity of being heard, to pass such orders, as it thinks fit, and send a copy of such order to the Commission and the parties to the appeal.

**102.** Section 53-S contemplates that before the Tribunal a person may either appear "in person" or authorise one or more chartered accountants or company secretaries, cost accountants or legal practitioners or any of its officers to present its case before the Tribunal. However, the Commission's right to legal representation in any appeal before the Tribunal has been specifically mentioned under Section 53-S(3). It provides that the Commission may authorise one or more of chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers before the Tribunal. Section 53-T grants a right in specific terms to the Commission to prefer an appeal before the Supreme Court within 60 days from the date of communication of the decision or order of the Tribunal to them.

**103.** The expression "any person" appearing in Section 53-B has to be construed liberally as the provision first mentions specific government bodies then local authorities and enterprises, which term, in any case, is of generic nature and then lastly mentions "any person". Obviously, it is intended that expanded meaning be given to the term "persons" i.e. persons or bodies who are entitled to appeal. The right of hearing is also available to the parties to appeal.

**104.** The above stated provisions clearly indicate that the Commission, a body corporate, is expected to be party in the proceedings before the Tribunal as it has a legal right of representation. Absence of the Commission before the

Tribunal will deprive it of presenting its views in the proceedings. Thus, it may not be able to effectively exercise its right to appeal in terms of Section 53 of the Act.

**105.** Furthermore, Regulations 14(4) and 51 support the view that the Commission can be a necessary or a proper party in the proceedings before the Tribunal. The Commission, in terms of Section 19 read with Section 26 of the Act, is entitled to commence proceedings suo motu and adopt its own procedure for completion of such proceedings. Thus, the principle of fairness would demand that such party should be heard by the Tribunal before any orders adverse to it are passed in such cases. The Tribunal has taken this view and we have no hesitation in accepting that in cases where proceedings initiated suo motu by the Commission, the Commission is a necessary party.

**106.** However, we are also of the view that in other cases the Commission would be a proper party. It would not only help in expeditious disposal, but the Commission, as an expert body, in any case, is entitled to participate in its proceedings in terms of Regulation 51. Thus, the assistance rendered by the Commission to the Tribunal could be useful in complete and effective adjudication of the issue before it."

(page 788)

"**125.** We have already noticed that the principal objects of the Act, in terms of its Preamble and the Statement of Objects and Reasons, are to eliminate practices having adverse effect on the competition, to promote and sustain competition in the market, to protect the interest of the consumers and ensure freedom of trade carried on by the participants in the market, in view of the economic developments in the country. In other words, the Act requires not only protection of free trade but also protection of consumer interest. The delay in disposal of cases, as well as undue continuation of interim restraint orders, can adversely and prejudicially affect the free economy of the country. Efforts to liberalise the Indian economy to bring it on a par with the best of the economies in this era of globalisation would be jeopardised if time-bound schedule and, in any case, expeditious disposal by the Commission is not adhered to. The scheme of various provisions of the Act

> which we have already referred to including Sections 26, 29, 30, 31, 53- B(5) and 53-T and Regulations 12, 15, 16, 22, 32, 48 and 31 clearly show the legislative intent to ensure time-bound disposal of such matters.
>
> **126.** The Commission performs various functions including regulatory, inquisitorial and adjudicatory. The powers conferred by the legislature upon the Commission under Sections 27(*d*) and 31(3) are of wide magnitude and of serious ramifications. The Commission has the jurisdiction even to direct that an agreement entered into between the parties shall stand modified to the extent and in the manner, as may be specified. Similarly, where it 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, the Commission is empowered to direct such modification."
>
> (page 794)

22. 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.

23. Coming now to the merits, we have already set out the concurrent findings of fact of the CCI and the NCLAT, wherein it has been found that Ola and Uber do not facilitate cartelization or anti-competitive practices between drivers, who are independent individuals, who act independently of each other, so as to attract the application of section 3 of the Act, as has been held by both the CCI and the NCLAT. We, therefore, see no reason to interfere with these

findings. Resultantly, the appeal is disposed of in terms of this judgment.

**…….....  J.**
**(ROHINTON FALI NARIMAN)**

**…….....  J.**
**(K.M. JOSEPH)**

**…….....  J.**
**(KRISHNA MURARI)**

**New Delhi;**
**December 15, 2020.**