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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11263/2022**

VIFOR INTERNATIONAL LTD.

..... Petitioner

Through: Mr. Pravin Anand, Mr. Vaibhav Gaggar, Ms. Vaishali Mittal, Mr. Rohin Koolwal, Mr. Sidhant Chamola, Ms. Sumedha Dang, Ms. Kokila Kumar and Mr. Ketan Sarraf, Advs.

versus

COMPETITION COMMISSION OF INDIA Respondent

Through: Mr. Manish Vashisht, Sr. Adv. with Mr. Samar Bansal, Mr. Aditya Kumar, Ms. Shreya Gupta, Mr. Shaurea Tyagi and Mr. Shubham Agrawal, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% **28.07.2022**

CM APPL. 33072/2022 (for exemption)

Allowed, subject to all just exceptions.

The application shall stand disposed of.

W.P.(C) 11263/2022 and CM APPL. 33071/2022 (Stay)

1. This writ petition lays challenge to the orders dated 15 February 2022, 29 March 2022 and 13 July 2022 passed by the Competition Commission of India ['Commission'] in the case of **XYZ (confidential) v. Vifor International (AG) [Case No. 05 of 2022]**. It appears that the Commission

received information which was taken cognisance of under Section 19 of the Competition Act, 2002 [‘the Act’]. Since the informant had submitted a confidentiality request as contemplated under Section 57 of the Act, the Commission directed that the confidentiality application be treated as being part of the information received for all future purposes.

2. By its order of 15 February 2022, the Commission called upon the petitioner here to submit its responses on the issues delineated and which are extracted hereinbelow:-

“a) Details of the patent granted to Vifor in India with regard to Ferric Carboxymaltose (‘FCM’).

b) How many manufacturing/import licenses for FCM have been issued by Vifor in India till date? Copy of license agreement(s) which Vifor has entered into with each of its licensees in India?

c) Apart from the aforesaid licensees, has Vifor been approached by any company for any license/permission with regard to FCM in India? If yes, provide details thereof.

d) Has the permission/license been denied by Vifor to any of the applications? If, yes provide the reasons for such denial. What criteria is followed by Vifor for granting license in India.

e) Details of the litigations/disputes, if any, involving Vifor in India, in relation to FCM.”

3. The non-confidential version of the information was also communicated to the petitioner and a response elicited. Since the petitioner had not submitted a response within the timeline(s) prescribed in the initial order of 15 February 2022, the Commission addressed another communication of 29 March 2022 and granted four weeks’ further time to

file its reply.

4. On 9 June 2022, the petitioner filed a reply in response to the orders noticed hereinabove. In that reply, the petitioner also raised various preliminary objections including with respect to the assumption of jurisdiction by the Commission itself. The Commission while taking note of those objections on 13 July 2022, granted the petitioner a last opportunity to comply with its earlier directions within a period of two weeks therefrom. It is aggrieved by the aforesaid proceedings as drawn by the Commission that the instant writ petition has come to be preferred.

5. Mr. Pravin Anand, learned counsel appearing in support of the petition, has submitted that a reading of the information sought would establish that the Commission requires the petitioner to disclose information which would be commercially sensitive and, in any case, evidences a roving enquiry having been initiated by the Commission. It was submitted that the issues which are raised in the information clearly touch upon and relate to the rights of a patent holder as enshrined in the Patents Act, 1970 and it is thus manifest that the Commission has exceeded its jurisdiction in taking cognisance of the information received and initiating an enquiry. It was also contended that the disclosure of information as sought by the Commission will result in exposing the petitioner to criminal proceedings under Article 271 of the Swiss Criminal Code [‘SCC’]. Mr. Anand has further placed reliance upon the judgment rendered by the Supreme Court in **Competition Commission of India v. Bharti Airtel Ltd. and Ors.**¹ and more particularly to the following observations as appearing in that decision: -

¹ (2019) 2 SCC 521

“113. The conclusion of the aforesaid discussion is to give primacy to the respective objections (sic objectives) of the two regulators under the two Acts. At the same time, since the matter pertains to the telecom sector which is specifically regulated by the TRAI Act, balance is maintained by permitting TRAI in the first instance to deal with and decide the jurisdictional aspects which can be more competently handled by it. Once that exercise is done and there are findings returned by TRAI which lead to the prima facie conclusion that the IDOs have indulged in anti-competitive practices, CCI can be activated to investigate the matter going by the criteria laid down in the relevant provisions of the Competition Act and take it to its logical conclusion. This balanced approach in construing the two Acts would take care of Section 60 of the Competition Act as well.

114. We, thus, do not agree with the appellants that CCI could have dealt with this matter at this stage itself without availing the inquiry by TRAI. We also do not agree with the respondents that insofar as the telecom sector is concerned, jurisdiction of CCI under the Competition Act is totally ousted. In a nutshell, that leads to the conclusion that the view taken by the High Court is perfectly justified. Even the argument of the learned ASG is that the exercise of jurisdiction by CCI to investigate an alleged cartel does not impinge upon TRAI's jurisdiction to regulate the industry in any way. It was submitted that the promotion of competition and prevention of competitive behaviour may not be high on the change of sectoral regulator which makes it prone to “regulatory capture” and, therefore, CCI is competent to exercise its jurisdiction from the standpoint of the Competition Act. However, having taken note of the skilful exercise which TRAI is supposed to carry out, such a comment vis-à-vis TRAI may not be appropriate. No doubt, as commented by the Planning Commission in its report of February 2007, a sectoral regulator, may not have an overall view of the economy as a whole, which CCI is able to fathom. Therefore, our analysis does not bar the jurisdiction of CCI altogether but only pushes it to a later stage, after TRAI has undertaken necessary exercise in the first place, which it is more suitable to carry out.”

6. Referring to the provisions made in the Act, Mr. Anand pointed out that Section 3(5) of the Act in unambiguous terms protects the rights of any person in respect of action which may be initiated to restrain any infringement or to impose reasonable conditions as may be necessary for protecting any of his rights which may have been conferred upon him under statutes enumerated in that sub-section including the Patents Act, 1970. Mr.

Anand submitted that Sections 85, 90, 102, 107 and other allied provisions of the Patents Act, 1970, create salutary safeguards with respect to the rights which may be claimed by a patent holder and viewed in that light it is evident that the entire complaint would, if at all, warrant enquiry and examination by authorities conferred that authority under the Patents Act, 1970.

7. Rebutting those contentions, Mr. Manish Vashisht, learned Senior Counsel appearing for the Commission, has taken the Court in detail through the information on which it has initiated the enquiry. It was submitted that the Commission is sufficiently empowered by the Act to deal with allegations relating to anti-competitive agreements, unfair trade practices, abuse of dominant position as well as combinations which may come into being by virtue of merger or amalgamation of enterprises. Taking the Court through the allegations which have been levelled by the informant, Mr. Vashisht pointed out that those clearly bear out that an enquiry is sought in respect of price of the drug licensed by the petitioner and sold and distributed within the country and which is likely to impact a large number of people. It was pointed out that the complaint alleges discriminatory pricing with the drug being offered at a relatively lower price to public procurers and at a much higher price to individual consumers. It is pointed out that the information received alleged that anti-competitive practices had been adopted causing substantial harm not just to competition but also to consumers as well. Mr. Vashisht referred to the specific allegations made by the informant with respect to the alleged excessive and unfair prices being foisted on patients and consumers as also the alleged refusal to deal with a view to foreclose competition. Mr. Vashisht would contend that

based on the information which was received, the Commission was clearly justified in initiating an enquiry in terms of the powers conferred by Section 19 of the Act. It was then submitted that the Commission is yet to take a final view in the matter and that all contentions which are being addressed before this Court are open to be urged and voiced before the Commission itself. Mr. Vashisht submitted that the petition proceeds on the unfounded apprehension that the objections as taken in the response dated 09 June 2022 would not be considered or evaluated by the Commission. It was argued that the proceedings before the Commission presently stand at a nascent stage and consequently there exists no justification for this Court to either interdict the proceedings or to entertain the challenge as raised at the present stage. Mr. Vashisht drew the attention of the Court to the decision rendered in **Monsanto Holdings Pvt. Ltd. and Ors. v. Competition Commission of India & Ors.**² to submit that merely because the information relates to a patent, that alone cannot oust the jurisdiction of the Commission as long as it is dealing with aspects and subjects covered by Section 3, 4, 5 and other provisions of the Act. It was submitted that neither the decision of the Supreme Court in **Bharti Airtel** nor that of this Court in **Monsanto** have found that the jurisdiction of the Commission would stand ousted completely merely because the information may relate to a patent. Mr. Vashisht drew the attention of the Court to the following pertinent observations as were made by the Court in **Monsanto**:-

“38. In *Telefonaktiebolaget L.M. Ericsson* (supra), this Court had elaborately dealt with the question whether the jurisdiction of the CCI to examine matters, which involve one of the parties exercising rights as a Patentee, is excluded. In the present case, the principal contention

² 2020 SCC OnLine Del 598

advanced on behalf of the petitioners is that there is an implicit repugnancy between provisions of the Competition Act and the Patents Act and, therefore, the applicability of the Competition Act is excluded. It is contended that the Patents Act occupies the entire field in respect of not only the grant of patents but also exercise of rights granted to a patentee. And, this includes provisions regarding abuse of Patent rights. Therefore, it is implicit that the Competition Act would have no applicability to agreements that are related to exercise of rights by a Patentee.

39. The above contention was also elaborately dealt with by this Court in *Telefonaktiebolaget L.M. Ericsson (supra)*. This Court had also noted that in conformity with the TRIPS Agreement, the Patents Act was amended and now contains provisions for grant of compulsory licenses in certain cases. Further, Section 140 of the Patents Act also proscribes inclusion of certain restrictive conditions in certain contracts - contracts relating to sale or lease of a patented article, license to manufacture a patented article or to work any patented process. The specified restrictive conditions are statutorily declared to be void by virtue of Section 140 of the Patents Act. However, this Court did not accept that the jurisdiction of the CCI to examine matters relating to certain rights granted under the Patents Act or to examine any alleged anticompetitive conduct of any enterprise including abuse of its dominant position, is excluded.

40. The Court also referred to Section 62 and Section 60 of the Competition Act. Section 60 of the Competition Act contains a non obstante provision and expressly provides that the provisions of the Competition Act would have effect notwithstanding anything inconsistent contained in any other law for the time being in force. This Court held that although Section 60 of the Competition Act expressly provided that the Competition Act would be given an overriding effect, the same would not whittle down the provisions of the Patents Act. This Court is of the view that Section 62 of the Competition Act which expressly provides that the Competition Act would be in addition to and not in derogation of the provisions of any other law for the time being in force, clearly expresses the legislative intent that the Competition Act is in addition to other laws and not in substitution thereof.

41. This Court next examined the issue whether there was any irreconcilable conflict between the Competition Act and the Patents Act and whether both the enactments could be construed harmoniously. This Court had noticed that Chapter XVI and Section 140 of the Patents Act contained provisions the subject matter of which may be common with the Competition Act. Section 84 of the Patents Act provides for grant of compulsory licenses in certain cases where reasonable requirement of public in respect of patented inventions has not been satisfied. Section 85

of the Patents Act provides for revocation of patents if after expiry of two years from the date of grant of compulsory license, the patented invention has not been worked in the territory of India and the reasonable requirements of public with respect to the patent have not been satisfied. The instances listed out in Section 84(7) of the Patents Act can in certain circumstances be considered as an abuse of dominance if the patentee is dominant in the relevant market. Section 4 of the Competition Act contains provisions, which indicate abuse of a dominant position by an enterprise. And, Section 27 of the Competition Act provides for orders that can be passed by the CCI in cases where it finds that any enterprise has violated provisions of Section 3 and Section 4 of the Competition Act. This Court had after examining the various provisions of the two enactments, concluded that the orders that can be passed by the CCI under Section 27 of the Competition Act in respect of abuse of dominant position by any enterprise are materially different from the remedies that are available under Section 84 of the Patents Act. This court also observed that in certain case it may be open for a prospective licensee to approach the Controller for grant of a compulsory license. However, the same would not be inconsistent with the CCI passing an appropriate order under Section 27 of the Competition Act.

42. This Court had also examined the provisions of Section 21A and Section 21 of the Competition Act. In terms of section 21A of the Competition Act, CCI can make a reference to any regulator where in course of proceedings the CCI proposes to take any decision which may be contrary to provisions of any statute, the implementation of which has been entrusted to any statutory authority. Similarly, Section 21 of the Competition Act enables any statutory authority, which is charged with administration of any statute to make a reference to CCI if it proposes to take any decision, which may be contrary to the provisions of the Competition Act.

43. This Court concluded that these provisions of the Competition Act clearly indicate that the intention of the Parliament was not to repeal any other statute by enacting the Competition Act but on the contrary the legislative intent was to ensure that the provisions of the Competition Act are implemented in addition to the provisions of other statutes. After elaborately discussing the various provisions of both the enactments (Patents Act and the Competition Act), this Court concluded that there was no irreconcilable repugnancy or conflict between the Competition Act and the Patents Act and, therefore, the jurisdiction of the CCI to entertain complaints regarding abuse of dominance in respect to patent rights could not be excluded. The decision of this Court in *Telefonaktiebolaget L.M. Ericsson (supra)* squarely covers the principal contention advanced on behalf of the petitioners that the CCI has no jurisdiction to entertain any

complaint against an enterprise in respect of matters which relate to exercise of its patent rights.

44. It is also material to note that in *Bharti Airtel Ltd.* (supra) - which is relied upon by the petitioner - the Supreme Court did not accept the contention that the jurisdiction of the CCI was ousted by virtue of the telecom industry being regulated by a statutory body (TRAI). Although the functions of TRAI include regulation of the telecom industry and would encompass all aspects of the telecom industry, the Supreme Court, nonetheless, held that the focus of the Competition Act was different and was restricted to regulating and promoting a free market. The Supreme Court noticed that the Competition Act dealt with three kinds of practices, which are treated as anti-competitive and are prohibited : (a) where agreements are entered into by certain persons with a view to cause an appreciable adverse effect on competition; (b) where an enterprise or group of enterprises, which enjoys dominant position abuses the said dominant position; and (c) regulating the combination of enterprises by means of mergers or amalgamations to ensure that such mergers or amalgamations are not anti-competitive or result in an abuse of the dominant position, which may be resultantly attained. The Court noticed that the CCI has been entrusted with a function to deal with the aforesaid kind of anti-competitive conduct and to the aforesaid extent, the functions assigned to the CCI were distinct from the function of TRAI under the TRAI Act. In this view, the Supreme Court did not accept the contention that the jurisdiction of the CCI in respect of matters, which are regulated by a specialised statutory body, were excluded from the applicability of the Competition Act. Thus, this decision does not support the petitioner's contention that the Patents Act being a special act in respect of patents excludes the applicability of the Competition Act in respect of the matters that relate to patents on account of any implicit repugnancy. As noticed by this Court in *Telefonaktiebolaget L.M. Ericsson* (supra), the focus of the Patents Act and the Competition Act are different and there is no irreconcilable repugnancy between the two enactments.

45. It was also contended by the petitioners that Section 3(5) of the Competition Act excludes the applicability of the Competition Act in respect of any agreement, which relates to restraining infringement of any patent rights.

46. The aforementioned contention was also examined by this Court in *Telefonaktiebolaget L.M. Ericsson* (supra) and it was held that while an agreement, which imposes reasonable condition for protecting patent rights is permissible any anticompetitive agreement which imposes unreasonable conditions would not enjoy the safe harbor of Section 3(5) of the Competition Act. Mr. Lal contended that a Patentee could include

any condition/obligation in an agreement for restraining infringement of a patent and examination of such clause including the question whether such clause is reasonable or not, is expressly excluded by virtue of sub-section (5) of Section 3 of the Competition Act. He contended that the clause (i) of sub-section (5) of Section 3 of the Competition Act has two limbs. The first limb expressly recognizes the right of a Patentee to restrain any infringement of any right granted under the Patents Act and excludes the same from the application of the Competition Act. Resultantly, any agreement for achieving the same is also excluded from the purview of any examination by the CCI. He submitted that the question whether any agreement or any clause in the agreement is reasonable or unreasonable, would also stand excluded from the purview of any examination by the CCI. He submitted that the second limb of the clause(i) of subsection (5) of section 3 of the Competition Act permitted imposition of reasonable conditions for protecting rights granted under the Patents Act and the word 'reasonable' qualified only such other conditions. Therefore, the issue whether any the condition imposed by a patentee is reasonable or not could only be examined in respect of conditions other than those that relate to restraining infringement of any rights granted under the Patents Act.

47. This Court finds the aforesaid contention bereft of any merit. Clause (i) of sub-section (5) of Section 3 of the Competition Act cannot be dissected in the manner as suggested on behalf of the petitioners. Clause (i) of Subsection (5) of section 3 must be read in a meaningful manner. Sub section (5) of section 3 is set out below:

“(5) Nothing contained in this section shall restrict-

(i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under-

(a) the Copyright Act, 1957 (14 of 1957);

(b) the Patents Act, 1970 (39 of 1970);

(c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);

(d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);

(e) the Designs Act, 2000 (16 of 2000);

(f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

(ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.”

48. As is apparent from the plain language of sub-section (5) of Section 3 that nothing contained in Section 3 of the Competition Act would restrict the right of a person to restrain any infringement of his IPR or to impose reasonable conditions for protecting them. It recognizes that a person has a right to restrain infringement of IPR granted under the specified statutes and any agreement entered for the aforesaid purpose would fall outside rigors of Section 3 of the Competition Act. However, such rights are not unqualified. Only such agreements that are “necessary for protecting any of his rights which have been or may be conferred upon him under” the specified statutes are provided the safe harbor under Sub-section (5) of Section 3 of the Competition Act and only to such extent. This also entails right to impose reasonable conditions. The words “or to impose reasonable conditions” are placed between two commas and thus must be interpreted as being placed in parenthesis that explains and qualifies the safe harbor of Sub-section (5) of Section 3 of the Competition Act. Plainly, the exclusionary provision to restrain infringement cannot be read to mean a right to include unreasonable conditions that far exceed those that are necessary, for the aforesaid purpose.”

8. Mr. Vashisht further submitted that the apprehension of the petitioner with respect to the disclosure of commercially sensitive information is clearly misplaced bearing in mind the provisions made in Section 57 of the Act and contended that it was and is open to the petitioner to claim confidentiality with respect to any disclosure that it may make before the Commission in the course of the enquiry. He also drew the attention of the Court to the significant amendments introduced on 08 April 2022 and the recast Regulation 35 of the Competition Commission of India (General Regulations), 2009. The substituted Regulation 35 is extracted hereinbelow:-

“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 necessary or expedient to disclose the identity of the Informant for the purposes of the Act, the Commission may do so after

providing a reasonable opportunity to the Informant, to represent its case before the Commission

(2) A party seeking confidentiality over the information or the documents furnished by it shall set out cogent reasons for such treatment and shall self-certify that making the document or documents or information or a part or parts thereof public will result in disclosure of trade secrets or destruction or appreciable diminution of the commercial value of any information or can be reasonably expected to cause serious injury. Further, the party shall confirm the following, along with the date on which such confidential treatment shall expire, on self-certification basis:

- (a) that the information is not available in the public domain;
- (b) that the information is known only to limited employees, suppliers, distributors and others involved in the party's business;
- (c) that adequate measures have been taken by the party to guard the secrecy of the information;
- (d) that the information cannot be acquired or duplicated by others.

The party claiming confidentiality shall provide an undertaking certifying the claims in terms of the requirements as above and such undertaking shall be filed by either the party itself or any of its employee, who has been authorised by the Board or any other equivalent body to issue such authorisation on behalf of the party concerned:

Provided that the parties furnishing false undertaking shall be liable to be proceeded against, as per the provisions of the Act.

(3) The party claiming confidentiality shall file a complete version of such document(s) with the words 'restriction of publication claimed' in red ink on top of the first page and the word 'confidential' clearly and legibly marked in red ink near the top on each page together with a non-confidential version thereof, which shall redact/ not contain such information(s) or document(s) or part(s) thereof upon which confidentiality has been claimed.

(4) The non-confidential version of such document(s) shall be an exact copy of the confidential version with the omissions of the confidential information being indicated in a conspicuous manner, as stipulated in sub-regulation (3).

(5) The document(s) or part(s) thereof that have been claimed to be confidential under this regulation shall be segregated from the non-confidential record and kept securely, bearing the title, the docket number

of the proceeding, the notation 'confidential' and the date on which confidential treatment expires:

Provided that the following shall be marked 'confidential (search and seizure/ e-mail dumps/ call detail records etc.)', as the case may be, and shall be kept separately:

- (a) documents/ material obtained through search and seizure operations;
- (b) e-mail dumps;
- (c) call detail records; or
- (d) any other document/ material in the nature of personal information.

(6) The Commission may, if considered necessary or expedient, set up Confidentiality Ring(s) comprising of such authorised representatives of the parties, including, but not limited to, the authorised representatives specified under Section 35 of the Act, who would be able to access the information as mentioned in sub regulation (5), as required, in unredacted form in terms of Regulation 37 of these regulations:

Provided that the Commission, while setting up a Confidentiality Ring, may decide the extent of information to be made accessible, as well as the parties and their members to be included, in the Confidentiality Ring, as deemed appropriate, for the purpose:

Provided further that the documents/ material mentioned in proviso to sub-regulation (5) which have been relied upon in the confidential version of the report of the Director General, shall be made accessible to the members of the Confidentiality Ring.

(7) Access to unredacted information in terms of sub-regulation (6) shall be provided on filing of undertakings by the parties to be included in the Confidentiality Ring stating that the information accessed by their members pursuant to such ring, shall not be shared and/ or disclosed by them, to any other person including to any official and/ or other employee of enterprise concerned or to any official and/ or employee of any joint-venture, subsidiary, group entity of the concerned enterprise, or to any other person, whatsoever, and that they shall use such information and documents only for the purposes of the proceedings under the Act, and shall keep such information and documents within their sole custody, and shall destroy the same at the culmination of the present proceedings:

Provided that separate undertaking(s) on aforesaid terms shall also be provided by each party included in the Confidentiality Ring, to the other parties in the matter, whose confidential information is being accessed by its members, and the parties shall have the liberty to avail suitable remedies as per law, in case of any breach of such undertaking(s):

Provided further that the representatives of the parties concerned forming part of Confidentiality Ring shall be liable to be proceeded against as per the provisions of the Act for breach of undertakings.

(8) The Informant shall not be part of Confidentiality Ring and shall have access to non-confidential records only:

Provided that the Commission may include the Informant in the Confidentiality Ring in appropriate cases, if the inclusion of the Informant in the ring is considered necessary or expedient for effective inquiry.

(9) If the Commission includes in any order or decision or opinion, information that has been claimed confidential under this regulation, the Commission shall make two versions of the order or decision or opinion, as the case may be. The non-confidential version which omits the confidential information that appears in the complete version, shall be served upon the parties, and shall be included in the nonconfidential records. The complete version shall be placed in the confidential records as provided in sub regulation (4) and the same shall be shared with the members of the Confidentiality Ring.

(10) Any person or party, including any officer or employee appointed by the Commission under sub-section (1) of Section 17 of the Act or any officer appointed by the Central Government under sub-section (1) of Section 16 of the Act or any expert or professional engaged by the Commission under sub-section (3) of Section 17 of the Act or any expert called upon to assist the Commission under sub-section (3) of Section 36 of the Act privy to the contents of the document(s) or part(s) thereof that have been claimed confidential under this regulation, shall maintain confidentiality of the same and shall not use or disclose or deal with such confidential information for any purpose other than the purposes of the Act or any other law for the time being in force:

Provided that breach of confidentiality by any officer or employee of the Commission/ Office of the DG shall constitute a ground for initiation of disciplinary proceedings under the relevant rules or regulations, as the case may be:

Provided further that breach of confidentiality by any expert or professional engaged by the Commission under sub-section (3) of Section 17 of the Act or any expert called upon to assist the Commission under sub-section (3) of Section 36 of the Act shall be sufficient ground for termination of the engagement or contract, as the case may be.”

9. Having noticed the rival submissions, this Court firstly bears in mind

the submission of Mr. Vashist who stated that the orders of the Commission are not liable to be viewed as the expression of an intent to not take note of or consider the objections raised by the petitioner. It was submitted that the Commission is not liable to be understood as not intending to deal with the preliminary objections that have been raised by the petitioner at all. In light of the submission noticed above, the Court finds that the apprehension that the Commission would not consider the objections raised is clearly unjustified. The Court is confident that the Commission would duly take into consideration the objections that have been raised by the petitioner and which include those relating to the assumption of jurisdiction by the Commission itself.

10. The Court also finds substance in the submission of Mr. Vashist who contended that the Commission is duly and statutorily empowered to deal with all information which it may receive with respect to actions that may impede competition, usher in an anti-competitive environment, relate to abuse of dominant position or the adoption of unfair trade practices. This Court is of the considered opinion that it is only when a complaint fails to raise the aforesaid issues and concerns itself solely or exclusively with violations of the Patent Act, 1970 or the infringement or enforcement of rights that may otherwise be conferred by that Act that it could be said that the information would fall outside the purview and power of enquiry of the Commission. To put it differently, it is only when the subject matter of information relates to rights and liabilities which rest solely upon the provisions of the Patent Act, 1970 and does not pertain to an issue which could be said to fall within the ambit of the Act and thus form subject matter of enquiry by the Commission that an objection of jurisdiction would

sustain.

11. The Court further notes that neither **Bharti Airtel** nor **Monsanto** advocate or hold that the jurisdiction of the Commission stands ousted the moment a complaint relates to the subject of patents. The Court finds itself unable to read Section 3(5) of the Act as excluding the jurisdiction of the Commission completely even though the information may relate to issues pertaining to an anti-competitive environment, abuse of dominant position or the adoption of an unfair trade practice. The learned Judge in **Monsanto** correctly observed that **Bharti Airtel** cannot be understood as an authority for the proposition that the jurisdiction of the Commission stands ousted by virtue of the Telecom Industry being regulated by a statutory body. The same tests *a fortiori* would apply to a case relating to the Patents Act, 1970. It is ultimately the substance of the complaint and whether the allegations relate to aspects which would fall within the province of the Commission under the Act which would truly determine whether the assumption of jurisdiction is sustainable in law.

12. Mr. Anand fairly stated that the petitioner would have been satisfied if the Commission had conveyed that the jurisdictional issues were open for consideration and that the cognizance taken was not a *fait accompli*. However, that apprehension is clearly allayed in light of the fair stand struck by Mr. Vashist who has unambiguously stated that the Commission would necessarily take the objections raised into consideration and proceed further in accordance with the mandate of Section 26 of the Act.

13. The apprehension with respect to exposure of confidential and sensitive commercial information is clearly belied in light of the robust and

substantial safeguards erected and put in place by Regulation 36. That provision deploys adequate measures to dispel and mitigate any apprehension that the petitioner may harbour with respect to the disclosures sought by the Commission.

14. It becomes imperative to observe that the initiation of an enquiry by the Commission based on information that may be received, is not liable to be either viewed or understood as the initiation of any coercive steps. In any case, entities whose operations transcend jurisdictions can neither assume nor claim immunity or exemption from laws or compliance with statutes which are promulgated and are not shown or established to fall foul of international or treaty obligations of nations.

15. In summation it may only be observed that the writ petition is premature and proceeds on apprehensions which are clearly if not unfounded, unsubstantiated. In light of the stand taken on behalf of the Commission, the Court finds no ground to presume that it while calling upon the petitioner to respond to the notices issued, would refuse to consider the objections raised. The Court is confident that the Commission would, as it is legally bound to do, duly consider all objections that have been raised while proceeding further in accordance with Section 26 of the Act.

16. Accordingly, and for the aforesaid reasons, the writ petition shall stand disposed of with the observation that the Commission shall while proceeding further duly consider the objections dated 09 June 2022 taken by the petitioner and dispose of the same in accordance with law. The Court takes on board the statement tendered on behalf of the petitioner that the notices issued by the Commission shall be duly attended to and disclosures

and compliances ensured as per the terms thereof within a period of 6 weeks from today. The Court leaves it open to the petitioner to invoke the provisions of Regulation 36, if so chosen and advised. All contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

JULY 28, 2022/bh