

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 4766-4767 OF 2013

ULTRA TECH CEMENT LTD.

Appellant

VERSUS

COMPETITION COMMISSION OF  
INDIA & ORS.

Respondents

WITH

Civil Appeal No. 4768 of 2013  
Civil Appeal No. 4770 of 2013  
Civil Appeal Nos. 4771-4772 of 2013  
Civil Appeal Nos. 4774-4775 of 2013  
Civil Appeal Nos. 4776-4779 of 2013  
Civil Appeal Nos. 4782-4784 of 2013  
Civil Appeal Nos. 4789-4792 of 2013  
Civil Appeal Nos. 4785-4788 of 2013

O R D E R

All these appeals preferred by the Appellants are statutory in nature as they have been filed under Section 53T of the Competition Act, 2002 and arise out of a consolidated order passed by the Competition Appellate Tribunal (hereinafter referred to as the 'Tribunal') dated 17.5.2013 holding therein that there is a prima facie case for granting stay in respect of the penalty which has been imposed on the appellants in view of the allegation that the appellants who are cement manufacturing companies had indulged in the offence of 'cartelisation' by creating artificial scarcity of cement in the market in spite of their gross production in the years spanning between 2009 to 2011, giving rise to artificial increase of price with a sole intention to gain undue profit which is known as 'cartelisation' in corporate jargon and is admittedly an offence, liable to imposition of monetary penalty which has been saddled on the appellants by the Competition Commission. The appellants challenged the same by way of appeals before the Competition Appellate Tribunal where the appeals are subjudice & the Tribunal

while granting stay of payment of penalty imposed a condition that the appellants shall pay 10% of the penalty to be deposited in the Consolidated Fund of India & in the event of non-payment by any appellant, the appeal of such appellants shall stand dismissed.

Since the controversy in these appeals is confined to the question as to whether the order of the Tribunal is justified while issuing a direction to the appellants to deposit 10% of the amount of the penalty imposed by the Competition Commission of India (CCI), it is not quite essential to go into the merits of the appeal which is subjudice before the Tribunal. At this stage, the limited question is whether the Tribunal was justified in directing the appellants to deposit even 10% of the penalty imposed on the appellants by the CCI against which they have preferred an appeal before the Tribunal as already indicated hereinbefore.

The Tribunal although has admitted the appeal, it has passed an order to the effect that the appellants should pay 10% of the penalty imposed by the CCI in the nature of a pre-deposit which is normally provided under several Acts, which are statutory in nature under the relevant Acts but is not provided in the Act applicable to these matters. However, insofar as the nature of the allegation that has been levelled against the appellants, it is in regard to the charge/allegation that they have indulged in cartelisation of the commodity which they were manufacturing - which is cement and they increased their margin of profit by increasing the prices artificially and unreasonably in the year spanning between 2009 to 2011. Since the Tribunal thought it proper to direct the appellant companies to deposit the 10% of the penalty, the Tribunal thought it appropriate to assign reasons in this regard and, therefore, passed a detailed order which is under challenge in these appeals, holding therein finally that 10% payment of penalty imposed would be justified in the facts and circumstances of the case.

As already stated earlier, all the appellants have assailed that order stating that even 10% payment by way of penalty would result into huge amount running into several crores of rupees which will be an unnecessary and a grave financial burden on the companies' turnover as the Tribunal itself has recorded a finding that they have a strong prima facie case in their favour against the allegation of cartelisation. In this view of the matter, all these appeals have been filed where the prayer essentially is to the effect that this Court should stay the order of imposition of even 10% of the penalty in view of the fact that the appeals are listed for hearing on 21.08.2013 and in view of the said fact, there was no necessity of directing the appellants to deposit this 10% by way of the penalty, the justification of which is yet to be gone into by the Tribunal.

Learned counsels representing the appellants have sincerely made an endeavour to impress upon this Court that the imposition of 10% penalty is neither in pursuance of any provision under the Competition Act, 2002 as there is no provision of pre-deposit under the Competition Act, 2002 in order to entertain appeal nor the Tribunal was justified in imposing this rider directing the parties to deposit 10% by way of penalty as it is yet to examine the reasonableness and justification of the order under appeal. In addition, it was submitted that in view of the observation of the Tribunal to the effect that there is a strong prima facie case in their favour against the allegation of cartelisation, it was absolutely not essential to saddle the appellants with this huge financial liability.

In response to the show cause notice, counsel for the CCI and the Builders Association of India are also present before us, who obviously supported the order passed by the Tribunal imposing the penalty of 10% but the counsel for the appellants assailed the order for the reasons referred to hereinabove.

Having heard them at some length, we are of the view that

it would not be appropriate for us to make any observation or express any opinion insofar as the merit of the allegation levelled against the appellants are concerned as the same is subjudice before the Tribunal. But we are surely concerned with the order of penalty imposed on the appellants by the CCI which, for the time being, has been limited for payment to the extent of 10% of the amount which has been determined by the CCI. Having heard them we are further of the view that if the penalty order made by the CCI is not given effect to in a blanket way by exempting the appellants from making the payment, it might practically amount to allowing their appeals by the Tribunal. Besides this, it is common practice in the legal arena that a decree, penalty or any order which is in the nature of payment in terms of money, the same is rarely interfered with and obviously so as in case of setting aside such order, the affected party can always be adequately compensated. At this stage, therefore, if the Tribunal thought it proper to take an equitable view of the matter by directing the appellants to pay only 10% of the amount to be paid by them, the same in our view is not fit to be interfered with by way of an interim measure. The concern of this Court, however, is if the appeal is finally allowed by the Tribunal then what exactly would be the way out to pass on the amount of penalty to the benefit of the consumers, if the same is transferred to the State exchequer through the Consolidated Fund of India.

Therefore, we deem it appropriate to modify the order of the Tribunal to the extent that 10% amount towards penalty be deposited with the Tribunal by each company and the Tribunal will ensure that a separate account is opened in a nationalised bank with a provision that the said amount is kept in a short term fixed deposit in the name of a company which will be initially for a period of six months renewable after the end of its expiry, if necessary. It goes without saying that the principal amount and the interest which is fetched by the account holders will be dealt with in the manner which would be considered appropriate by the Tribunal at the relevant stage of disposal of the appeals pending before it.

At one stage it did strike us that in the wake of allegations levelled against the appellants alleging cartelisation at their instance and in the event the allegation being proved, why the profit should not be passed on to the consumers who in fact would have benefited in case the cartelisation had not been done and we also thought it appropriate to direct the appellant companies to make arrangements for depositing the penalty or passing on the benefit so that it can pass to the consumers; but in view of the practical fall out and implication of such a move which could give rise to some confusion or even chaos while implementing it, we have restrained ourselves from taking recourse to such remedy. But surely we leave it open to the affected parties including the contesting respondent to raise this aspect of the matter before the Tribunal which obviously would arise only in the event of the Tribunal holding that the penalty was justified. In case the penalties were not justified, this question would not arise at all.

However, before we close this order, we deem it appropriate to address the plea raised by Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the Appellant, Jai Prakash Associates in C.A. No. 4768 of 2013, who submitted that the penalty calculated by the Tribunal/Commission is based on the profit generated by several companies owned by the appellant company. What is sought to be impressed upon is that even if the 10% penalty is to be paid by the appellant, the same should be based only on the profit generated out of the cement manufacturing company as the other companies owned by the Appellant would not be liable to pay this penalty. For this purpose, we leave it open to the appellant in C.A. No. 4768 of 2013 to move an application before the Tribunal for rectification/clarification on this issue and the amount of 10%

penalty shall be based on the said calculation. However, it should not be construed that the appellant at this stage will be exempted from making the payment of 10% penalty. The payment of 10% towards penalty shall have to be made by the appellant in this appeal as calculated in the impugned order of the Tribunal. However, if the appellant succeeds at any stage, that 10% penalty determined by the Tribunal is based on the profit of all the companies and not calculated on the basis of the profit of the cement manufacturing company, the amount after its rectification shall be refunded to the appellant.

Similarly, all the appellants who might have any issue in regard to the wrong determination of 10% penalty calculated by the Tribunal, will be at liberty to approach the Tribunal in this regard and the issue will be taken care of by the Tribunal at the appropriate stage. Insofar as the present stage is concerned, 10% penalty shall be deposited on the basis of the amount which has been calculated by the Tribunal/Commission and rectification/refund, if any, will be made at a later stage.

Learned counsels for the appellants have finally requested that the time to deposit the penalty was fixed by the Tribunal up till 16th June, 2013 but in view of the fact that this Court entertained the appeals, the time fixed by the Tribunal be extended by a further period of one week. In view of the request which appears to be reasonable, all the appellants shall deposit the 10% penalty by June 24, 2013. It goes without saying that if the deposit is made by June 24, 2013 by the appellants, the appeals before the Tribunal shall survive and should not be dismissed.

In view of the aforesaid treatment of these appeals and directions, these appeals stand disposed of.

.....J.  
(GYAN SUDHA MISRA)

.....J.  
(SUDHANSU JYOTI MUKHOPADHAYA)

NEW DELHI  
JUNE 12, 2013

ITEM NO.301 COURT NO.2 SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 4766-4767 OF 2013

ULTRA TECH CEMENT LTD. Appellant (s)

VERSUS

COMPETITION COMM. OF INDIA & ORS. Respondent(s)

(With appln(s) for stay)  
WITH Civil Appeal NO. 4768 of 2013  
(With appln(s) for stay , deletion of proforma respondents and office report)  
Civil Appeal NO. 4770 of 2013  
(With appln(s) for stay , permission to place addl. documents on record and office report)  
Civil Appeal NO. 4771-4772 of 2013  
(With appln(s) for stay and office report)  
Civil Appeal NO. 4774-4775 of 2013  
(With appln(s) for stay and office report)  
Civil Appeal NO. 4776-4779 of 2013  
(With appln(s) for stay and office report)  
Civil Appeal NO. 4782-4784 of 2013  
(With appln(s) for ex-parte stay and office report)  
Civil Appeal NO. 4789-4792 of 2013  
(With appln(s) for ex-parte stay and office report)  
Civil Appeal NO. 4785-4788 of 2013  
(With appln(s) for ex-parte stay and office report)

Date: 12/06/2013 These Appeals were called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE GYAN SUDHA MISRA  
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA  
(VACATION BENCH)

For Appellant(s) Dr. Abhishek Manu Singhvi, Sr.Adv.  
C.A. 4766-67/13 Mr. Pravin H. Parekh, Sr.Adv.  
Mr. Amit Bhandari, Adv.  
Mr. Vishal Prasad, Adv.  
Mr. Utsav Trivedi, Adv.  
Mr. Aditya Sharma, Adv.  
M/S. Parekh & Co.

C.A. 4771-72/13 Mr. Rakesh Dwivedi, Sr.Adv.  
Mr. T. Srinivasa Murthy, Adv.  
Mr. Rahul Balaji, Adv.  
Mr. Senthil Jagadeesan, Adv.

C.A. 4785-88/13 Mr. Ramji Srinivasan, Sr.Adv.  
C.A. 4789-92/13 Ms. Shweta Shroff Chopra, Adv.  
Mr. Anuj Berry, Adv.  
Ms. Sangeetha Mugurthan, Adv.  
Mr. Nikhil Parikshit, Adv.

C.A. 4768/13 Mr. Ranjit Kumar, Sr.Adv.  
Mr. Subramonium Prasad, Adv.  
Mr. G.R. Bhatia, Adv.  
Ms. Kanika Chaudhary Nayar, Adv.  
Ms. Nidhi Singh, Adv.  
Mr. Vikram Sobti, Adv.

C.A. 4776-79/13 Mr. C.S. Vaidyanathan, Sr.Adv.  
Mr. Vikas Singh Jangra, Adv.

C.A. 4770/13 Mr. Shyam Divan, Sr.Adv.  
Mr. Pramod B. Agarwala

C.A. 4782-84/13 Mr. Rajiv Nayar, Sr.Adv.  
Mr. N. Ganpathy, Adv.  
Mr. Manpreet Lamba, Adv.  
Mr. Kartik Yadav, Adv.  
Ms. Hemangini Dadwal, Adv.  
Mr. Karan Vir Khosla, Adv.

C.A. 4774-75/13 Mr. Sudhir Gupta, Sr.Adv.  
Mr. Amarjit Singh Bedi, Adv.  
Md. Asfar Heyat Warsi, Adv.  
Mr. Abhinay, Adv.

For Respondent(s) Caveator-In-Person  
Mr. Balbir Singh, Adv.  
Mr. Rupender Sinhmar, Adv.  
Mr. Abhishek Singh Baghel, Adv.

Mr. N. Ganpathy ,Adv

R.2 Mr. O.P. Dua, Sr.Adv.  
Mr. Aditya Garg, Adv.  
Mr. R. Chandrachud, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeals are disposed of in terms of the signed order.

(NAVEEN KUMAR)  
COURT MASTER

(S.S.R. KRISHNA)  
COURT MASTER

(Signed order is placed on the file)