CORRECTED

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.13578 OF 2015

COMPETITION COMMISSION OF INDIA ...APPELLANT(S)

VERSUS

THOMAS COOK (INDIA) LTD. & ANR. ...RESPONDENT(S)

J U D G M E N T

ARUN MISHRA, J.

1. The Competition Commission of India (in short, "the Commission") is in appeal aggrieved by the order passed by the Competition Appellate Tribunal (in short, "the Tribunal") setting aside the order passed by the Competition Commission under section 43A of the Competition Act, 2002 (in short, referred to as "the Act") whereby penalty of Rupees One Crore

was imposed on the respondents on the ground of non-compliance of provisions contained in section 6(2) of the Act.

2. The Thomas Cook India Ltd (for short, "the TCIL") – respondent No.1, Thomas Cook Insurance Services India Limited, (for short, "the TCISIL") – respondent No.2 and Sterling Holiday and Resorts India Limited (for short, "the SHRIL") – respondent No.3 is the companies registered under the Companies Act, 1956. The TCIL is engaged in travel and travel related services. The TCISIL is also engaged in travel and travel related services and is a subsidiary of the TCIL and is also a registered corporate agent of Bajaj Allianz General Insurance Company Limited, which is engaged in the business of selling insurance to outbound travelers, as well as health insurance, motor insurance, personal accident insurance etc. SHRIL is engaged in the business of providing premium hotel services, vacation ownership services, normal hotel services like renting of rooms, restaurants, holiday activities etc. It also arranges meetings, incentives, conference and events for its corporate clients. The Board of Directors of the aforesaid three companies on 7.2.2014 approved a Scheme for demerger/amalgamation, (referred to as the 'Scheme'). The said Scheme contemplated the following:

(a) Demerger: *i.e.* Resorts and timeshare business of SHRIL were to be transferred by way of demerger from SHRIL to TCISIL in lieu of which equity shares of TCIL would be issued to shareholders of SHRIL as per the ratio in the 'Scheme'; and

(b) Amalgamation: SHRIL with its residual business would be amalgamated into TCIL in lieu of equity shares to be issued to the shareholders of SHRIL as per the ratio in the Scheme.

3. For the purpose of implementing the above transactions, the Respondents entered into a Merger Cooperation Agreement (for short, 'the MCA') on the same day *i.e.* on 07.2.2014.

4. On the very same day *i.e.* 07.2.2014, by another resolution of the Boards of Directors of the respondents, the following transactions were approved and executed -

(i) Share Subscription Agreement (SSA): TCISIL was to subscribe 2,06,50,000 shares of SHRIL pursuant to a preferential allotment (amounting to 22.86% of SHRIL of equity share capital of SHRIL on fully diluted basis);

(ii) Share Purchase Agreement (SPA): TCISIL was to acquire 19.94% of equity share capital of SHRIL on the fully diluted basis from certain existing shareholders and promoters of SHRIL.

(iii) Open Offer by TCIL and TCISIL to purchase 26% of the equity share capital from public shareholders of SHRIL, in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (in short, “the SEBI’s Regulations”).

5. In addition to the above, TCISIL acquired 90,26,794 equity shares of SHRIL through purchase on the Bombay Stock Exchange. These purchases (hereinafter referred to as "market purchases") amounted to 9.93% of the equity share capital of SHRIL on the fully diluted basis. The market purchases were made between 10.2.2014 and 12.2.2014.

6. On 14.2.2014, the respondents sent a notice under section 6(2) of the Act to the Appellant – Commission, notifying only the ‘Demerger' and ‘Amalgamation'. Other transactions were, however, disclosed, while claiming exemption from section 5 of the Act.

7. On 20.02.2014, the Commission asked the Respondents to remove certain defects in their application and provide further information, *inter*

alia on, whether the notified and non-notified transactions were interrelated.

8. On 5.3.2014, the Commission passed an approval order under section 31(1) of the Act. However, it observed that the same would not affect the action proposed under section 43(A) of the Act for imposition of penalty in separate proceedings.

9. On 10.3.2014, the Commission issued a show cause notice asking the respondents as to why they should not be penalized under section 43A for failing in notifying the 'market purchase' under section 6(2) of the Act.

10. On 25.3.2014, the respondents filed their reply to the show cause. After hearing the respondents, on 21.5.2014, the Commission imposed a penalty of Rupees One crore under section 43A of the Act. As against the same the appeal was preferred. The Tribunal has allowed the appeal filed under section 53 B of the Act and has set aside the order passed by the Commission. Aggrieved thereby, the appeal has been preferred by the Commission under section 53 B of the Act.

11. It was urged by the learned senior counsel appearing on behalf of appellants that on 7.2.2014, the Board of Directors of the three

respondent companies have decided about the de-merger/ amalgamation, Share Subscription Agreement (SSA), Share Purchase Agreement (SPA), Open Offer by TCIL and the TCISIL to purchase 26% of the equity shares capital from the public shareholders of SHRIL in terms of the SEBI's Regulations and market purchases were also part of the same transaction. TCISIL acquired 90,26,794 equity shares of SHRIL through purchase on Bombay Stock Exchange between 10.2.2014 and 12.2.2014. These market purchases amounted to 9.93% of the equity share capital of SHRIL on the fully diluted basis. Out of the aforesaid transactions, the respondent notified only the "De-merger" and "Amalgamation" in terms of section 6(2) of the Act. The Share Subscription Agreement (SSA), Share Purchase agreement (SPA), Open Offer and Market Purchases were not notified and the exemption was claimed under notification S.O. 482 (E), dated 4.3.2011, on the premise that turnover of the company of which shares have been acquired *i.e.* SHRIL did not have turn over in excess of Rs.750/- crores whereas the other transactions were at the proposal/ agreement stage only. The transaction 6 (Market Purchases) has already been consummated prior to filing of the notice under section 6(2) of the Act on 14.2.2014. As such the Commission has rightly taken the view that all the above transaction

being interconnected transactions or steps with the same ultimate effect were part of the single composite combination, therefore, non-notification of the part of the said combination, particularly, the consummation of market purchases was a violation of the Act. Thus, a penalty of Rupees One crore was rightly imposed by the Commission under section 43 A of the Act.

12. It was further urged that the Tribunal erred in holding that said transactions were not inter-dependent on each other. Tribunal also erred in holding that market purchases fell within the ambit of exemption notification *i.e.* S.O. 482 (E). The Tribunal has committed a gross error while not correctly identifying the issue as to combination. The combination was clearly a composite one, comprised of entire series of transaction/ steps and not any one transaction on a stand-alone basis. The penalty was rightly levied on the respondents for their failure to notify the entire combination and avoiding regulatory scrutiny by notifying only a part thereof. Even if the market purchases could be said to be exempted, if taken in isolation, the entire composite combination could never be stated to be exempted, as the whole of it had to be notified in terms of section 6(2). The violations were not purely technical, thus, the order passed by the tribunal be set aside.

13. *Per contra*, on behalf of the respondents learned senior counsel contended that section 5 of the Act defines the combination especially in terms of providing asset and turnover thresholds, is to ensure that the only transaction between enterprises or groups of enterprise above a specified critical size are scrutinized by the Commission, as these transactions are more likely to have a measurable market effect or an AAEC factors in the relevant market, therefore, may be required to be preempted and corrected by the Commission. It was further contended that a target based exemptions exempt certain transactions from the purview of the term 'combination' as defined under section 5 of the Act. Under the Ministry of Corporate Affairs Notification S.O. 482 (E) dated 4.3.2011, certain transactions (in the nature of 'acquisition') are exempted from a requirement to mandatorily notify to the Commission. If the value of the assets or turnover of the target enterprise does not exceed a specified *de minimis* threshold, the transaction which qualifies under the Target Based Exemption are exempt from the purview of the "combination" under section 5 of the Act. Therefore, the Share Subscription Agreement (SSA), Share Purchase Agreement (SPA) and open offer are exempted under the Target Based Exemption on account of being "acquisition" of shares, are also eligible for the Target Based

Exemption as admittedly the turnover of SHRIL was below the *de minimis* threshold. It was also contended that market purchases of 9.94% by TCISIL on the stock exchange were not interdependent on the main Merger Scheme. Merely because they were contemplated contemporaneously, did not mean that all the transactions were "inter-dependent". The said 'market purchase' finds no mention in either the merger scheme or the joint press release issued by respondent No.7 on 7.2.2014. The reference to part equity, part merger deal means the reference to merger scheme and acquisition of shares by way of Share Subscription Agreement, Share Purchase Agreement and open offer and not market purchases which were completely a separate and distinct acquisition. The Commission in the case of *Vedanta Aluminium Limited* held that transactions in a series of transactions which are inter-related and inter-dependent shall be considered as a composite whole if the "ultimate objective" can be achieved only on the successful completion of all such transactions in a series of transactions which are interrelated or interdependent. In the instant case, the Market Purchases do not satisfy this fundamental tenet established by the Commission as the Merger Scheme was in no way dependent upon the market purchases and would have been implemented irrespective of the market purchases.

The learned counsel further pointed out that there is a subsequent change in law with effect from March 28, 2014, after show cause notice but before passing the penalty order, the Commission introduced a new provision in the Combination Regulations. Regulation 9(5) which provides that requirement of filing notice shall be determined with respect to the substance of the transactions and any structure of the transaction(s) comprising a combination that has the effect of avoiding notice in respect of whole or part of the combination shall be disregarded. Thus, it was incumbent upon the Commission to look into the substance of the transaction.

14. Lastly, it was contended that there were no *malafides* on the part of the respondents. Notification to the Commission filed by the respondents on 14.2.2014, did contain information about the market purchases under the heading “Exempt Transactions” on the basis that the Target Based Exemptions covered the market purchases. Thus, imposing a penalty on the respondents for not having specifically identified the market purchases has been part of "Notifiable Transaction" is nothing more than a mere technicality. The respondent was under a *bona fide* and genuine belief that market purchases were unconnected and moreover, exempt. Further, no malafides have been attributed to the

respondents even in the penalty order passed by the Commission on 21.05.2014 and when Commission had passed the Approval Order on 6.5.2014 and observed that market purchases would not result in an appreciable adverse effect on competition in the market, penalty ought not to have been imposed by the Commission. The Tribunal has rightly set it aside.

15. Before proceeding to deal with the rival submissions, it is necessary to note the statutory framework of the Act. Section 5 of the Act defines the combination for the purposes of Act. Section 5 is extracted hereunder.

> "5. The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—
>
> (a) any acquisition where—
>
> (i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—
>
> (A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
>
> (B) [in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]
>
> (ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being

acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) [in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) [in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores or

(B) [in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]

(c) any merger or amalgamation in which—

(i) the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) [in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—

(A) either in India, the assets of the value of more than rupees four-thousand crores or turnover more than rupees twelve thousand crores; or

(B) [in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees Fifteen Hundred Crores in India"

16. Under section 5(a), a combination is formed if the acquisition by one person or enterprise of control, shares, voting rights or assets of another person or enterprise subject to certain threshold requirement that is minimum asset valuation or turn over within or outside India.

17. Under Section 5(b) of the Act the combination is formed if the acquisition of control by a person over enterprise when such person has already acquired direct or indirect control over another enterprise

engaged in the production, distribution or payment of a similar or identical or substitutable good provided that the exigencies provided in section 5(b) in terms of asset or turnover are met.

18. Under section 5(c) merger and amalgamation are also within the ambit of combination. The enterprise remaining after merger or amalgamation subject to a minimum threshold requirement in terms of assets or turnover is covered within the purview of section 5(c).

19. Once a particular transaction or a series of transactions falls within the purview of combination, it is obligatory to report the same to the Commission under section 6 of the Act. Section 6(1) prohibits combinations which cause or likely to cause an adverse effect on the competition and such a combination shall be void. Section 6(2) of the Act requires that advance notice has to be given of the proposal to enter into a combination and that has to be given within 30 days of approval of the proposal relating to merger or amalgamation, execution of any agreement or other document or acquisition referred to in section 5(a). Section 6 (2) makes it clear that no combination shall come into effect until 210 days have elapsed from the date on which notice has been given to the Commission under section 6(2) and the Commission has passed orders under section 30(1), whichever is earlier. And once

mandatory notice is given under section 6(2), the Commission has to deal with the same in accordance with the provisions contained in sections 29, 30 and 31. Certain exceptions are carved out as to Public Financial Institutions, Foreign Investment Institutions, Banks or Public Venture Funds etc. funds under section 6(4) of the Act.

20. On 4.3.2011, Central Government in the exercise of its powers under section 54(a) of the Act issued notification No. SO. 482 E dated 4.3.2011, commonly known as target-based exemptions, which reads as under:

> "In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 (12 of 2003) the Central Government, in public interest hereby exempt an enterprise, whose control, shares, voting rights or assets are being acquired has assets of the value of not more than INR 250 crores in India or turnover of not more than INR 750 crores in India from the provisions of Section 5 of the said Act for a period of 5 years."

21. Section 64 of the Act confers upon the Commission power to make Regulations. Under section 64(3), the Regulations are to be placed before the Houses of Parliament. On 11.5.2011, the Commission framed the Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011 (for

short, "the Regulations, 2011"). Regulation 9(4) as it stood at the relevant time, is as under:-

> 9(4). Where the ultimate intended effect of a business transaction is achieved by way of a series of a steps or smaller individual transactions which are inter-connected or inter-dependent on each other, one or more of which may amount to a combination, a single notice, covering all these transactions, may be filed by the parties to the combination."

22. It is relevant to note here that the Act and Regulations, 2011 clearly envisage that a combination can consist of one or more transactions. Under Regulation 9(4) of the Regulations, 2011, the parties have an option of giving either a single notice or multiple notices in respect of all the transactions. On 30.5.2011, sections 5 and 6 of the Act were brought into force.

23. It is apparent that between the three respondent companies de-merger of the resort of SHRIL on time-share basis took place. It was to be transferred to TCISIL in view of the equity shares of TCIL were to be issued to shareholders of SHRIL as per the ratio provided in the scheme. There was an amalgamation of SHRIL with its residual business into TCIL. There was shares subsequent transfer agreement. The TCISIL was to subscribe 2,06,50,000 shares of SHRIL to preferential allotment amounting to 22.86 of the equity share capital.

24. TCISIL was to acquire 19.94% of equity share capital of SHRIL. 'Open Offer' by TCIL and TCISIL was to purchase 26% of the equity share capital from public shareholders of SHRIL in terms of SEBI's regulations and market purchases. TCISIL acquired 90,26,794 equity shares of SHRIL through purchase in Bombay Stock Exchange amount to 9.93% of equity share capital on the fully diluted basis. Public notice was published to the following effect:

> "Sterling Holiday Resort (India) Limited
>
> Thomas Cook (India) Limited & Sterling Holiday Resort (India) Limited, announce merger
>
> - *Merger focused on synergies and jointly leveraging growing Domestic & Inbound travel, Vacation Ownership & Hospitality opportunities.*
> - *Post-merger, Sterling Holiday Resorts to continue operations under the leadership of Ramesh Ramanathan with an independent Board*
> - *Based on equity investments and merger ratios the aggregate value of the two companies is approximately Rs.3000 Cr.*
>
> Mumbai, February 7, 2014
>
> Thomas Cook (India) Ltd. (TCIL) – India's leading integrated travel and travel related financial services company, and the 27-year-old vacation ownership pioneer, Sterling Holiday Resorts India Limited announced a merger between the companies today. The transaction is expected to close by the fourth quarter of 2014, subject to customary closing conditions and regulatory approval as required.
>
> The part equity, part merger deal – estimated to be valued at Rs.870 Cr., is structured as a multi-stage process:

- ➔ TCIL Group will make a Preferential Allotment Investment for approximately 23.24% of approximately Rs.190 Cr. into Sterling.
- ➔ TCIL Group purchases 23.63% stake from Sterling shareholders for Rs.207 Cr.
- ➔ TCIL Group will make a mandatory open offer for buying up to 26% stake in Sterling for Rs.230 Cr.
- ➔ TCIL Group has an option to buy an additional 7.22% stake from shareholders for Rs.63 Cr.
- ➔ The merger will involve shares of TCIL being issued to Sterling shareholders at a defined swap ratio or 120:100

The merger brings significant synergies to both partners – with Thomas Cook India gaining access to Sterling Resorts' network of 19 resorts in 16-holiday destinations across India.

The company also has 15 additional sites where it plans to add new resorts in the coming years.

Serling's affiliation with Resort Condominiums International (RCI)- the global expert in exchange vacations, also allows its members to vacation in over 4000 RCI affiliated resorts all over the world."

25. The resolution passed by the Board of Director of TCIL on 7.02.2014. Share Subscription Agreement etc. and similar resolutions were passed by TCISIL and SHRIL.

26. It is apparent that in the notification made under section 6(2) on 14.2.2014 notifiable transactions were shown regarding merger and amalgamation. It was also mentioned that parties have also contemplated certain other transactions in view of the notifiable transactions, they were the subscription of equity shares, SPA, open offer

and market purchase. It is crystal clear from the aforesaid application itself that all these transactions were part of the same transactions and even before notifying the transactions of purchase from the market on 14.2.2014, it was consummated between 10.2.2014 to 12.2.2014. It is crystal clear that market purchases being a part of the composite combination was consummated before giving notice to the Commission. Joint Press Release dated 7.2.2014 clearly indicated SPA as an open offer. The Board of Directors of the respective parties authorized market purchases on the same day. All the said transactions are intrinsically connected and interdependent with each other and form part of one viable business transaction.

27. Though market purchases have no references in MCA, SA, SPA and the scheme, the facts, and circumstances of the case, as the scheme was prepared on the same day and the three companies passed the resolution on the same day. All other acquisitions were made on the same day. Market purchases having been consummated between 10.2.2014 to 12.2.2014, which is almost after finalizing the composite combination clearly suggested that market purchases would not have taken place in the absence of scheme and the other acquisitions. In case they were not part of the same scheme that would not have been referred to in the

notice filed by them with the Commission on 14.2.2014. Thus, in our considered opinion market purchases were not independent and were intrinsically related to the scheme and other acquisitions.

28. Coming to the question of the exemption that was claimed, the market purchases do not qualify as a combination in view of the target exemption notification which exempts an enterprise if 'assets' are of the value not more than INR Rs.250 crores in India or 'turnover' of not more than INR Rs.750 crores in India. When series of transactions is envisaged to accomplish a combination, all the transactions have to be taken into consideration by the Commission, not an isolated transaction. While it is open for the parties to structure their transactions in a particular way the substance of the transactions would be more relevant to assess the effect on competition irrespective of whether such transactions are pursued through one or more step/transactions. Structuring of transactions cannot be permitted in such a manner so as to avoid compliance with the mandatory provisions of the Act. For ensuring the compliance with the requirements of the Act it is open to considering whether the particular step was an individual transaction or part of the whole of the transaction. It was evident in the facts and circumstances of the case as TCISIL would not have made market

purchase in the absence of any one transaction. Thus, market purchases could not have been termed to be independent transaction.

29. Coming to the submission with respect to the effect of regulation 9(4) of the combination regulation. It is apparent that there is power under the Regulation 9(4) to consider the ultimate intended effect of transaction achieved by series of steps which are interconnected or inter-dependent on each other, it would depend upon the facts and circumstances of the case and a single notice may be filed by the parties to a combination. The Regulation envisages the possibility of a business transaction may be achieved by a combination by way of interconnected or interdependent steps/ transactions. Enabling provision to file single notice would not mean that in what particular manner transaction has taken place, same is to be determined on the facts and circumstances. The market purchases were not independent could not have been viewed in isolation for the purpose of the exemption.

30. The provision of Regulation 9(4) clearly acknowledges the possibility of the business transaction being interconnected or interdependent steps of such transactions. Technical interpretation to isolate two different steps of transactions of a composite combination would be against the spirit and provision of the Act. Market purchases

were not independent and could not be used in isolation for the purpose of any exemption. Regulation 9(4) cannot be interpreted to enable consummation by a composite combination before giving notice to the Commission. That would be defeating the intent and purpose of the Act and in particular section 5 and 6 thereof.

31. If the ultimate objective test is applied, it is apparent that market purchases were within view of the scheme that was framed. As such the subsequent change of law also did not come to the rescue of the respondents considering the substance of the transaction. The market purchases were part of the same transaction of the combination.

32. Lastly, the submission raised that there were no *malafides* on the part of the respondent as such penalty could not have been imposed. We are unable to accept the submission. The mens rea assumes importance in case of criminal and quasi criminal liability. For the imposition of penalty under section 43A, the action may not be mala fide in case there is a breach of the statutory provisions of the civil law, penalty is attracted simpliciter on its violation. The imposition of penalty was permissible and it was rightly imposed. There was no requirement of *mens rea* under section 43A or intentional breach as an essential element for levy of penalty. Section 43A of the Act does not use the expression "the failure

has to be willful or mala fide" for the purpose of imposition of penalty. The breach of the provision is punishable and considering the nature of the breach, it is open to impose the penalty.

In *Hindustan Steel Ltd. v. State of Orissa* AIR 1970 SC 253, with respect to imposition of penalty on failure to comply with the civil obligation this Court has laid down thus:

> "In our opinion, mens rea is not an essential ingredient for contravention of the provision of a civil act. In our view, the penalty is attracted as soon as the contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not. This apart that unless the language of the statute indicates the need to establish the element of mens rea. It is generally sufficient to prove that a default in complying with the statute has occurred. The penalty has to follow and only the quantum of penalty is discretionary.
> x x x
>
> In our considered opinion, a penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence intention of the parties committing such violation becomes wholly irrelevant.
> x x x
>
> We also further hold that unless the language of the

> statute indicates the need to establish the presence of *mens rea*, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D) (b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before a penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow."

33. The imposition of penalty under section 43A is on account of breach of a civil obligation, and the proceedings are neither criminal nor quasi-criminal; the penalty has to follow. Only discretion in the provision under section 43A is with respect to quantum of penalty.

34. We find that in the facts and circumstances of the case, the order passed by the Commission was just and proper and in accordance with law, which the Tribunal set aside on wrong premises. Thus, the order of the Tribunal cannot be said to be legally sustainable.

35. The nominal penalty has been imposed by the Commission of Rupees One crore only considering the facts and circumstances of the case and that there was a violation of the provision. Thus, we find no ground to interfere with the nominal penalty that has been imposed in the instant case.

36. Resultantly, the appeal filed by the Commission is allowed, the order passed by the Tribunal is set aside, and passed by the Commission imposing penalty of Rupees One crore is hereby restored. No costs.

.....J.
(ARUN MISHRA)

.....J.
(NAVIN SINHA)

APRIL 17, 2018
NEW DELHI.

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4. On the very same day *i.e.* 07.2.2014, by another resolution of the Boards of Directors of the respondents, the following transactions were approved and executed -

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(ii) Share Purchase Agreement (SPA): TCISIL was to acquire 19.94% of equity share capital of SHRIL on the fully diluted basis from certain existing shareholders and promoters of SHRIL.

(iii) Open Offer by TCIL and TCISIL to purchase 26% of the equity share capital from public shareholders of SHRIL, in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (in short, “the SEBI’s Regulations”).

5. In addition to the above, TCISIL acquired 90,26,794 equity shares of SHRIL through purchase on the Bombay Stock Exchange. These purchases (hereinafter referred to as "market purchases") amounted to 9.93% of the equity share capital of SHRIL on the fully diluted basis. The market purchases were made between 10.2.2014 and 12.2.2014.

6. On 14.2.2014, the respondents sent a notice under section 6(2) of the Act to the Appellant – Commission, notifying only the ‘Demerger' and ‘Amalgamation'. Other transactions were, however, disclosed, while claiming exemption from section 5 of the Act.

7. On 20.02.2014, the Commission asked the Respondents to remove certain defects in their application and provide further information, *inter*

alia on, whether the notified and non-notified transactions were interrelated.

8. On 5.3.2014, the Commission passed an approval order under section 31(1) of the Act. However, it observed that the same would not affect the action proposed under section 43(A) of the Act for imposition of penalty in separate proceedings.

9. On 10.3.2014, the Commission issued a show cause notice asking the respondents as to why they should not be penalized under section 43A for failing in notifying the 'market purchase' under section 6(2) of the Act.

10. On 25.3.2014, the respondents filed their reply to the show cause. After hearing the respondents, on 21.5.2014, the Commission imposed a penalty of Rupees One crore under section 43A of the Act. As against the same the appeal was preferred. The Tribunal has allowed the appeal filed under section 53 B of the Act and has set aside the order passed by the Commission. Aggrieved thereby, the appeal has been preferred by the Commission under section 53 B of the Act.

11. It was urged by the learned senior counsel appearing on behalf of appellants that on 7.2.2014, the Board of Directors of the three

respondent companies have decided about the de-merger/ amalgamation, Share Subscription Agreement (SSA), Share Purchase Agreement (SPA), Open Offer by TCIL and the TCISIL to purchase 26% of the equity shares capital from the public shareholders of SHRIL in terms of the SEBI's Regulations and market purchases were also part of the same transaction. TCISIL acquired 90,26,794 equity shares of SHRIL through purchase on Bombay Stock Exchange between 10.2.2014 and 12.2.2014. These market purchases amounted to 9.93% of the equity share capital of SHRIL on the fully diluted basis. Out of the aforesaid transactions, the respondent notified only the "De-merger" and "Amalgamation" in terms of section 6(2) of the Act. The Share Subscription Agreement (SSA), Share Purchase agreement (SPA), Open Offer and Market Purchases were not notified and the exemption was claimed under notification S.O. 482 (E), dated 4.3.2011, on the premise that turnover of the company of which shares have been acquired *i.e.* SHRIL did not have turn over in excess of Rs.750/- crores whereas the other transactions were at the proposal/ agreement stage only. The transaction 6 (Market Purchases) has already been consummated prior to filing of the notice under section 6(2) of the Act on 14.2.2014. As such the Tribunal has rightly taken the view that all the above transaction

being interconnected transactions or steps with the same ultimate effect were part of the single composite combination, therefore, non-notification of the part of the said combination, particularly, the consummation of market purchases was a violation of the Act. Thus, a penalty of Rupees One crore was rightly imposed by the Commission under section 43 A of the Act.

12. It was further urged that the Tribunal erred in holding that said transactions were not inter-dependent on each other. Tribunal also erred in holding that market purchases fell within the ambit of exemption notification *i.e.* S.O. 482 (E). The Tribunal has committed a gross error while not correctly identifying the issue as to combination. The combination was clearly a composite one, comprised of entire series of transaction/ steps and not any one transaction on a stand-alone basis. The penalty was rightly levied on the respondents for their failure to notify the entire combination and avoiding regulatory scrutiny by notifying only a part thereof. Even if the market purchases could be said to be exempted, if taken in isolation, the entire composite combination could never be stated to be exempted, as the whole of it had to be notified in terms of section 6(2). The violations were not purely technical, thus, the order passed by the tribunal be set aside.

13. *Per contra*, on behalf of the respondents learned senior counsel contended that section 5 of the Act defines the combination especially in terms of providing asset and turnover thresholds, is to ensure that the only transaction between enterprises or groups of enterprise above a specified critical size are scrutinized by the Commission, as these transactions are more likely to have a measurable market effect or an AAEC factors in the relevant market, therefore, may be required to be preempted and corrected by the Commission. It was further contended that a target based exemptions exempt certain transactions from the purview of the term 'combination' as defined under section 5 of the Act. Under the Ministry of Corporate Affairs Notification S.O. 482 (E) dated 4.3.2011, certain transactions (in the nature of 'acquisition') are exempted from a requirement to mandatorily notify to the Commission. If the value of the assets or turnover of the target enterprise does not exceed a specified *de minimis* threshold, the transaction which qualifies under the Target Based Exemption are exempt from the purview of the "combination" under section 5 of the Act. Therefore, the Share Subscription Agreement (SSA), Share Purchase Agreement (SPA) and open offer are exempted under the Target Based Exemption on account of being "acquisition" of shares, are also eligible for the Target Based

Exemption as admittedly the turnover of SHRIL was below the *de minimis* threshold. It was also contended that market purchases of 9.94% by TCISIL on the stock exchange were not interdependent on the main Merger Scheme. Merely because they were contemplated contemporaneously, did not mean that all the transactions were "inter-dependent". The said 'market purchase' finds no mention in either the merger scheme or the joint press release issued by respondent No.7 on 7.2.2014. The reference to part equity, part merger deal means the reference to merger scheme and acquisition of shares by way of Share Subscription Agreement, Share Purchase Agreement and open offer and not market purchases which were completely a separate and distinct acquisition. The Commission in the case of *Vedanta Aluminium Limited* held that transactions in a series of transactions which are inter-related and inter-dependent shall be considered as a composite whole if the "ultimate objective" can be achieved only on the successful completion of all such transactions in a series of transactions which are interrelated or interdependent. In the instant case, the Market Purchases do not satisfy this fundamental tenet established by the Commission as the Merger Scheme was in no way dependent upon the market purchases and would have been implemented irrespective of the market purchases.

The learned counsel further pointed out that there is a subsequent change in law with effect from March 28, 2014, after show cause notice but before passing the penalty order, the Commission introduced a new provision in the Combination Regulations. Regulation 9(5) which provides that requirement of filing notice shall be determined with respect to the substance of the transactions and any structure of the transaction(s) comprising a combination that has the effect of avoiding notice in respect of whole or part of the combination shall be disregarded. Thus, it was incumbent upon the Commission to look into the substance of the transaction.

14. Lastly, it was contended that there were no *malafides* on the part of the respondents. Notification to the Commission filed by the respondents on 14.2.2014, did contain information about the market purchases under the heading “Exempt Transactions” on the basis that the Target Based Exemptions covered the market purchases. Thus, imposing a penalty on the respondents for not having specifically identified the market purchases has been part of "Notifiable Transaction" is nothing more than a mere technicality. The respondent was under a *bona fide* and genuine belief that market purchases were unconnected and moreover, exempt. Further, no malafides have been attributed to the

respondents even in the penalty order passed by the Commission on 21.05.2014 and when Commission had passed the Approval Order on 6.5.2014 and observed that market purchases would not result in an appreciable adverse effect on competition in the market, penalty ought not to have been imposed by the Commission. The Tribunal has rightly set it aside.

15. Before proceedings to deal with the rival submissions, it is necessary to note the statutory framework of the Act. Section 5 of the Act defines the combination for the purposes of Act. Section 5 is extracted hereunder.

> "5. The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—
>
> (a) any acquisition where—
>
> (i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—
>
> (A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
>
> (B) [in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]
>
> (ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being

acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) [in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) [in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores or

(B) [in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]

(c) any merger or amalgamation in which—

(i) the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) [in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—

(A) either in India, the assets of the value of more than rupees four-thousand crores or turnover more than rupees twelve thousand crores; or

(B) [in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees Fifteen Hundred Crores in India"

16. Under section 5(a), a combination is formed if the acquisition by one person or enterprise of control, shares, voting rights or assets of another person or enterprise subject to certain threshold requirement that is minimum asset valuation or turn over within or outside India.

17. Under Section 5(b) of the Act the combination is formed if the acquisition of control by a person over enterprise when such person has already acquired direct or indirect control over another enterprise

engaged in the production, distribution or payment of a similar or identical or substitutable good provided that the exigencies provided in section 5(b) in terms of asset or turnover are met.

18. Under section 5(c) merger and amalgamation are also within the ambit of combination. The enterprise remaining after merger or amalgamation subject to a minimum threshold requirement in terms of assets or turnover is covered within the purview of section 5(c).

19. Once a particular transaction or a series of transactions falls within the purview of combination, it is obligatory to report the same to the Commission under section 6 of the Act. Section 6(1) prohibits combinations which cause or likely to cause an adverse effect on the competition and such a combination shall be void. Section 6(2) of the Act requires that advance notice has to be given of the proposal to enter into a combination and that has to be given within 30 days of approval of the proposal relating to merger or amalgamation, execution of any agreement or other document or acquisition referred to in section 5(a). Section 6 (2) makes it clear that no combination shall come into effect until 210 days have elapsed from the date on which notice has been given to the Commission under section 6(2) and the Commission has passed orders under section 30(1), whichever is earlier. And once

mandatory notice is given under section 6(2), the Commission has to deal with the same in accordance with the provisions contained in sections 29, 30 and 31. Certain exceptions are carved out as to Public Financial Institutions, Foreign Investment Institutions, Banks or Public Venture Funds etc. funds under section 6(4) of the Act.

20. On 4.3.2011, Central Government in the exercise of its powers under section 54(a) of the Act issued notification No. SO. 482 E dated 4.3.2011, commonly known as target-based exemptions, which reads as under:

> "In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 (12 of 2003) the Central Government, in public interest hereby exempt an enterprise, whose control, shares, voting rights or assets are being acquired has assets of the value of not more than INR 250 crores in India or turnover of not more than INR 750 crores in India from the provisions of Section 5 of the said Act for a period of 5 years."

21. Section 64 of the Act confers upon the Commission power to make Regulations. Under section 64(3), the Regulations are to be placed before the Houses of Parliament. On 11.5.2011, the Commission framed the Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011 (for

short, "the Regulations, 2011"). Regulation 9(4) as it stood at the relevant time, is as under:-

> 9(4). Where the ultimate intended effect of a business transaction is achieved by way of a series of a steps or smaller individual transactions which are inter-connected or inter-dependent on each other, one or more of which may amount to a combination, a single notice, covering all these transactions, may be filed by the parties to the combination."

22. It is relevant to note here that the Act and Regulations, 2011 clearly envisage that a combination can consist of one or more transactions. Under Regulation 9(4) of the Regulations, 2011, the parties have an option of giving either a single notice or multiple notices in respect of all the transactions. On 30.5.2011, sections 5 and 6 of the Act were brought into force.

23. It is apparent that between the three respondent companies de-merger of the resort of SHRIL on time-share basis took place. It was to be transferred to TCISIL in view of the equity shares of TCIL were to be issued to shareholders of SHRIL as per the ratio provided in the scheme. There was an amalgamation of SHRIL with its residual business into TCIL. There was shares subsequent transfer agreement. The TCISIL was to subscribe 2,06,50,000 shares of SHRIL to preferential allotment amounting to 22.86 of the equity share capital.

24. TCISIL was to acquire 19.94% of equity share capital of SHRIL. 'Open Offer' by TCIL and TCISIL was to purchase 26% of the equity share capital from public shareholders of SHRIL in terms of SEBI's regulations and market purchases. TCISIL acquired 90,26,794 equity shares of SHRIL through purchase in Bombay Stock Exchange amount to 9.93% of equity share capital on the fully diluted basis. Public notice was published to the following effect:

> "Sterling Holiday Resort (India) Limited
>
> Thomas Cook (India) Limited & Sterling Holiday Resort (India) Limited, announce merger
>
> - *Merger focused on synergies and jointly leveraging growing Domestic & Inbound travel, Vacation Ownership & Hospitality opportunities.*
> - *Post-merger, Sterling Holiday Resorts to continue operations under the leadership of Ramesh Ramanathan with an independent Board*
> - *Based on equity investments and merger ratios the aggregate value of the two companies is approximately Rs.3000 Cr.*
>
> Mumbai, February 7, 2014
>
> Thomas Cook (India) Ltd. (TCIL) – India's leading integrated travel and travel related financial services company, and the 27-year-old vacation ownership pioneer, Sterling Holiday Resorts India Limited announced a merger between the companies today. The transaction is expected to close by the fourth quarter of 2014, subject to customary closing conditions and regulatory approval as required.
>
> The part equity, part merger deal – estimated to be valued at Rs.870 Cr., is structured as a multi-stage process:

- ➔ TCIL Group will make a Preferential Allotment Investment for approximately 23.24% of approximately Rs.190 Cr. into Sterling.
- ➔ TCIL Group purchases 23.63% stake from Sterling shareholders for Rs.207 Cr.
- ➔ TCIL Group will make a mandatory open offer for buying up to 26% stake in Sterling for Rs.230 Cr.
- ➔ TCIL Group has an option to buy an additional 7.22% stake from shareholders for Rs.63 Cr.
- ➔ The merger will involve shares of TCIL being issued to Sterling shareholders at a defined swap ratio or 120:100

The merger brings significant synergies to both partners – with Thomas Cook India gaining access to Sterling Resorts' network of 19 resorts in 16-holiday destinations across India.

The company also has 15 additional sites where it plans to add new resorts in the coming years.

Serling's affiliation with Resort Condominiums International (RCI)- the global expert in exchange vacations, also allows its members to vacation in over 4000 RCI affiliated resorts all over the world."

25. The resolution passed by the Board of Director of TCIL on 7.02.2014. Share Subscription Agreement etc. and similar resolutions were passed by TCISIL and SHRIL.

26. It is apparent that in the notification made under section 6(2) on 14.2.2014 notifiable transactions were shown regarding merger and amalgamation. It was also mentioned that parties have also contemplated certain other transactions in view of the notifiable transactions, they were the substitution of equity shares, SPA, open offer

and market purchase. It is crystal clear from the aforesaid application itself that all these transactions were part of the same transactions and even before notifying the transactions of purchase from the market on 14.2.2014, it was consummated between 10.2.2014 to 12.2.2014. It is crystal clear that market purchases being a part of the composite combination was consummated before giving notice to the Commission. Joint Press Release dated 7.2.2014 clearly indicated SPA as an open offer. The Board of Directors of the respective parties authorized market purchases on the same day. All the said transactions are intrinsically connected and interdependent with each other and form part of one viable business transaction.

27. Though market purchases have no references in MCA, SA, SPA and the scheme, the facts, and circumstances of the case, as the scheme was prepared on the same day and the three companies passed the resolution on the same day. All other acquisitions were made on the same day. Market purchases having been consummated between 10.2.2014 to 12.2.2014, which is almost after finalizing the composite combination clearly suggested that market purchases would not have taken place in the absence of scheme and the other acquisitions. In case they were not part of the same scheme that would not have been referred to in the

notice filed by them with the Commission on 14.2.2014. Thus, in our considered opinion market purchases were not independent and were intrinsically related to the scheme and other acquisitions.

28. Coming to the question of the exemption that was claimed, the market purchases do not qualify as a combination in view of the target exemption notification which exempts an enterprise if 'assets' are of the value not more than INR Rs.250 crores in India or 'turnover' of not more than INR Rs.750 crores in India. When series of transactions is envisaged to accomplish a combination, all the transactions have to be taken into consideration by the Commission, not an isolated transaction. While it is open for the parties to structure their transactions in a particular way the substance of the transactions would be more relevant to assess the effect on competition irrespective of whether such transactions are pursued through one or more step/transactions. Structuring of transactions cannot be permitted in such a manner so as to avoid compliance with the mandatory provisions of the Act. For ensuring the compliance with the requirements of the Act it is open to considering whether the particular step was an individual transaction or part of the whole of the transaction. It was evident in the facts and circumstances of the case as TCISIL would not have made market

purchase in the absence of any one transaction. Thus, market purchases could not have been termed to be independent transaction.

29. Coming to the submission with respect to the effect of regulation 9(4) of the combination regulation. It is apparent that there is power under the Regulation 9(4) to consider the ultimate intended effect of transaction achieved by series of steps which are interconnected or inter-dependent on each other, it would depend upon the facts and circumstances of the case and a single notice may be filed by the parties to a combination. The Regulation envisages the possibility of a business transaction may be achieved by a combination by way of interconnected or interdependent steps/ transactions. Enabling provision to file single notice would not mean that in what particular manner transaction has taken place, same is to be determined on the facts and circumstances. The market purchases were not independent could not have been viewed in isolation for the purpose of the exemption.

30. The provision of Regulation 9(4) clearly acknowledges the possibility of the business transaction being interconnected or interdependent steps of such transactions. Technical interpretation to isolate two different steps of transactions of a composite combination would be against the spirit and provision of the Act. Market purchases

were not independent and could not be used in isolation for the purpose of any exemption. Regulation 9(4) cannot be interpreted to enable consummation by a composite combination before giving notice to the Commission. That would be defeating the intent and purpose of the Act and in particular section 5 and 6 thereof.

31. If the ultimate objective test is applied, it is apparent that market purchases were within view of the scheme that was framed. As such the subsequent change of law also did not come to the rescue of the respondents considering the substance of the transaction. The market purchases were part of the same transaction of the combination.

32. Lastly, the submission raised that there were no *malafides* on the part of the respondent as such penalty could not have been imposed. We are unable to accept the submission. The mens rea assumes importance in case of criminal and quasi criminal liability. For the imposition of penalty under section 43A, the action may not be mala fide in case there is a breach of the statutory provisions of the civil law, penalty is attracted simpliciter on its violation. The imposition of penalty was permissible and it was rightly imposed. There was no requirement of *mens rea* under section 43A or intentional breach as an essential element for levy of penalty. Section 43A of the Act does not use the expression "the failure

has to be willful or mala fide" for the purpose of imposition of penalty. The breach of the provision is punishable and considering the nature of the breach, it is open to impose the penalty.

In *Hindustan Steel Ltd. v. State of Orissa* AIR 1970 SC 253, with respect to imposition of penalty on failure to comply with the civil obligation this Court has laid down thus:

> "In our opinion, mens rea is not an essential ingredient for contravention of the provision of a civil act. In our view, the penalty is attracted as soon as the contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not. This apart that unless the language of the statute indicates the need to establish the element of mens rea. It is generally sufficient to prove that a default in complying with the statute has occurred. The penalty has to follow and only the quantum of penalty is discretionary.
> x x x
>
> In our considered opinion, a penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence intention of the parties committing such violation becomes wholly irrelevant.
> x x x
>
> We also further hold that unless the language of the

> statute indicates the need to establish the presence of *mens rea*, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D) (b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before a penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow."

33. The imposition of penalty under section 43A is on account of breach of a civil obligation, and the proceedings are neither criminal nor quasi-criminal; the penalty has to follow. Only discretion in the provision under section 43A is with respect to quantum of penalty.

34. We find that in the facts and circumstances of the case, the order passed by the Commission was just and proper and in accordance with law, which the Tribunal set aside on wrong premises. Thus, the order of the Tribunal cannot be said to be legally sustainable.

35. The nominal penalty has been imposed by the Commission of Rupees One crore only considering the facts and circumstances of the case and that there was a violation of the provision. Thus, we find no ground to interfere with the nominal penalty that has been imposed in the instant case.

36. Resultantly, the appeal filed by the Commission is allowed, the order passed by the Tribunal is set aside, and passed by the Commission imposing penalty of Rupees One crore is hereby restored. No costs.

.....J.
(ARUN MISHRA)

.....J.
(NAVIN SINHA)

APRIL 17, 2018
NEW DELHI.