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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA
Case Nos. 47, 48 and 49 of 2017

Case No. 47 of 2017

In Re:

Maj. Pankaj Rai

Informant

And

NIIT Ltd.

Opposite Party

WITH

Case No. 48 of 2017

In Re:

Pankaj Gupta

Informant

And

NIIT Ltd.

Opposite Party

WITH

Case No. 49 of 2017

In Re:

Shri Lakshmi Reddy Eddula

Informant

And

NIIT Ltd.

Opposite Party

ORDER

1. This order shall govern disposal of an application dated 02.04.2021 moved by the Informant in Case No. 47 of 2017 *i.e.* Major Pankaj Rai whereby and whereunder the order dated 28.11.2017 passed by the Commission in the present batch of Informations closing the matters finding no contravention of the provisions of the Competition Act,



सत्यमेव जयते



2002 ('the Act'), is sought to be recalled and reviewed. Separately but concurrently, another application of even date has been moved by this Informant seeking condonation of delay of 1193 days in moving the instant review/ recall application.

2. For appreciating the genesis of and developments leading up to the filing of the instant application, it would be appropriate to recapitulate the events arising out of the order dated 28.11.2017 passed by the Commission in a chronological manner, which would demonstrate the egregious misconduct of Major Pankaj Rai in abusing the regulatory process whereby a final order passed by the Commission under Section 26(2) of the Act which has been affirmed by the Hon'ble Appellate Tribunal and the Hon'ble Supreme Court in statutory appeals, is sought to be reopened.
3. In the captioned matters, the Commission *vide* a common order dated 28.11.2017 passed under Section 26(2) of the Act, closed all the three Information finding no case of contravention of the provisions of the Act. This order was put to challenge in judicial review by Major Pankaj Rai by filing a writ petition bearing W.P. No. 42223 of 2017 before the Hon'ble High Court of Hyderabad. The said writ petition came to be dismissed by a judgment and order dated 14.02.2018 passed by the learned Single Judge of the Hon'ble Hyderabad High Court by noting that the impugned order could be challenged in statutory appeal before the Hon'ble National Company Law Appellate Tribunal (NCLAT). The relevant excerpts from this order are noted below:

"....This Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the present writ petitions are liable to be rejected on the ground of availability of the alternative remedy...."

4. Aggrieved thereby and dissatisfied therewith, Major Pankaj Rai preferred an intra-court appeal before a Division Bench of the Hon'ble High Court of Hyderabad bearing Writ Appeal No. 456 of 2018. The same also came to be dismissed *vide* an order dated 31.12.2018 passed by the Division Bench by noting the following:



“8. The aforesaid position notwithstanding having regard to various submissions made by the appellants touching the merits of the matter, and to satisfy ourselves as to whether any critical factor has been ignored for the purpose of exercising the discretion to entertain the writ petitions or not, on the face of an admittedly available alternative remedy, we had required the learned counsel appearing for the Commission to place before us the entire records relating to the case. We have perused those records. We do not see that the discretion exercised by the learned single Judge by relegating the appellants to the statutory appellate jurisdiction is unfounded on fundamental principles of law. We, therefore, do not find any ground to interfere with the impugned order.

9. For the aforesaid reasons, the Writ Appeals fail. We clarify that even if the appellants were move to the Appellate Tribunal established under the Competition Act, the said authority would not be bound by any of the observations made by the learned single Judge in the impugned order or by us through this Judgment, in acting upon the statutory appeal, in accordance with law...”

5. Against the aforesaid dismissal of the writ appeal, Major Pankaj Rai filed a review petition before the Hon’ble High Court. In order to expedite the hearing on the review application, Major Pankaj Rai moved a writ petition bearing W.P. (C) No. 1311 of 2019 before the Hon’ble Supreme Court under Article 32 of the Constitution of India in January, 2019 and sought directions from the Hon’ble Supreme Court for early disposal of the review petition filed before the Hon’ble High Court. This writ petition also came to be dismissed whereafter the review petition pending before the Hon’ble High Court was sought to be withdrawn by Major Pankaj Rai. Accordingly, the review petition was dismissed with the following order of the Court dated 02.12.2019:

“Major Pankaj Rai, Party in Person, seeks liberty to withdraw the petitions. Therefore, the petitions are hereby dismissed as withdrawn”.



A bare perusal of the aforesaid order makes it evident that while seeking withdrawal, no liberty was prayed for by Major Pankaj Rai much less granted by the Hon'ble Court. Notwithstanding this factual backdrop, Major Pankaj Rai has made a false averment in the application filed before the Commission seeking condonation of delay that the review petition was “*withdrawn with liberty to approach NCLAT*” (S. No. 7, at Page No. 6 of the application seeking condonation of delay moved by Major Pankaj Rai).

6. Thereafter, Major Pankaj Rai preferred an Appeal before NCLAT on 06.01.2020 after a delay of 730 days. This appeal came to be dismissed by an order dated 29.05.2020 passed by NCLAT with the following observations:

“...It is flabbergasting to note that the Appellant, despite dismissal of his Writ Petition on the ground of efficacious remedy in the form of appeal being available under the Act, remained unfazed and adamant at pursuing remedy before the Hon'ble High Court by filing Writ Appeal and upon its dismissal sought further judicial intervention in the form of approaching the Hon'ble Apex Court and finally withdrawing the review petition. The Appellant persisted with his stubborn attitude in pursuing remedy before the Constitutional Courts and not filing appeal before this Appellate Tribunal though advised to do so by the Writ Court. Such conduct cannot constitute a “sufficient cause” for not exercising the statutory right of appeal. In view of the Appellant's conduct he cannot be heard to say that he was prevented by a “sufficient cause” from filing an appeal within the statutory period of limitation. The Appellant, howsoever hoarse he may cry that miscarriage of justice has been done, has to blame himself. Keeping these factors in view, no substantial ground to admit appeal beyond prescribed period of limitation can be said to exist.

The appeal is accordingly dismissed as being barred by limitation. Any observations made in this Order shall not be construed as an expression on the merits of the appeal.”



सत्यमेव जयते



7. The aforesaid order of the Hon'ble NCLAT was challenged by Major Pankaj Rai before the Hon'ble Supreme Court in Civil Appeal No. 2967 of 2020. *Vide* an order dated 12.10.2020, the Hon'ble Supreme Court dismissed the said Civil Appeal and observed as follows:

“3. In these circumstances, it cannot be postulated that the appellant was bona fide pursuing his remedies before the High Court. Even after the dismissal of the petition by a Single Judge and an appeal by the Division Bench, the appellant persisted with a manifestly misconceived remedy. Despite being apprised of the legal position that a petition under Article 226 was not maintainable in view of an appellate remedy, the appellant chose to allow time to elapse by pursuing the proceedings. In this view of the matter, we agree with the view of the appellate tribunal that the delay could not have been condoned in the absence of a sufficient cause or explanation. Whereas the statute contemplates the filing of an appeal within sixty days, the appeal was filed with a delay of over seven hundred days.”

8. Thereafter, the aforesaid order of the Hon'ble Supreme Court was challenged by Major Pankaj Rai in a Review Petition (Civil) 1926/2020. This review petition was also dismissed by the Hon'ble Supreme Court *vide* its order dated 27.01.2021.
9. In view of the afore-detailed summary of events, it is manifestly evident that Major Pankaj Rai was not pursuing his remedies in a bona fide manner. As previously noted, the Commission passed a final order under Section 26(2) of the Act closing the matter on 28.11.2017. The statutory appeals filed thereagainst first before the Hon'ble Appellate Tribunal and subsequently before the Hon'ble Supreme Court, stand dismissed, as noted *supra*. In these circumstances, filing of the instant application seeking review/ recall of the order dated 28.11.2017 passed by the Commission which has attained finality, is gross abuse of the process of law. The Commission has also taken a serious note of the false averment made by Major Pankaj Rai in the application, as noted in para 5 of this order.



सत्यमेव जयते



10. In view of the foregoing, the applications moved by Major Pankaj Rai stand dismissed. A copy of this order be also conveyed to NIIT Ltd. *i.e.* the Opposite Party in these matters and a copy of this order be further uploaded on the website of the Commission.
11. The Secretary is directed to communicate to the Informant - Major Pankaj Rai, accordingly.

**Sd/-
(Ashok Kumar Gupta)
Chairperson**

**Sd/-
(Sangeeta Verma)
Member**

**Sd/-
(Bhagwant Singh Bishnoi)
Member**

Dated: 03/06/2021

Place: New Delhi