

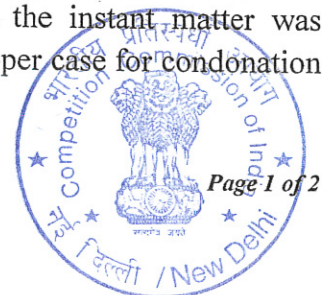
COMPETITION COMMISSION OF INDIA

1st March, 2012

Combination Registration No. C-2011/12/16

Order under section 43A of the Competition Act, 2002

1. On 16th December, 2011 Electromags Automotive Products Private Limited (hereinafter referred to as "EAPL") and The Bombay Burmah Trading Corporation Limited (hereinafter referred to as "BBTCL") jointly filed a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as "Act"). The said notice relates to a proposed combination wherein EAPL would merge into BBTCL, pursuant to implementation of a scheme of amalgamation under Section 391 to 394 of the Companies Act, 1956, approved by the Board of Directors of EAPL on 4th August, 2011 and by the Board of Directors of BBTCL on 5th August, 2011. EAPL and BBTCL, along with the notice also filed an application dated 14th December, 2011 requesting the Commission for condoning the delay in filing the notice as the notice was filed beyond the time limit mentioned in sub-section (2) of Section 6 of the Act.
2. The Commission in its Ordinary Meeting held on 22nd December, 2011, in terms of provisions of Regulation 7 of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations), Regulations, 2011 decided to admit the belated notice with effect from 22nd December, 2011. The Commission in the said meeting also decided to initiate separate proceedings under Section 43A of the Act and accordingly a show cause notice dated 20th January, 2012, regarding imposition of penalty in terms of Section 43A of the Act read with Regulation 48 of General Regulations, 2009 was issued to EAPL and BBTCL with a copy to their authorised representative.
3. On 7th February, 2012, the Commission received a reply to the said show cause notice from EAPL and BBTCL.
4. EAPL and BBTCL have submitted in their reply that they genuinely believed that all combinations wherein a target entity neither had assets of the value being more than Rs.250 crores nor had a turnover of more than Rs. 750 crores, are exempted from the provisions of Section 5 of the Act for a period of 5 years on a plain reading of the notification no. S.O.482 (E) dated 4th March, 2011 read with S.O. 1218 (E) dated 27th May, 2011 issued by the Government of India. It was also submitted in their reply that the omission to comply with Section 6(2) of the Act in the instant matter was altogether inadvertent and unintentional and it is a fit and proper case for condonation of delay.



5. Further, in their reply, EAPL and BBTCL requested the Commission that a personal hearing be given to them before passing any order with respect to imposition of any penalty, to enable them to present their case in person. The Commission in the Ordinary Meeting held on 16th February, 2012 decided to grant EAPL and BBTCL a personal hearing on 1st March, 2012. The Commission personally heard EAPL and BBTCL in its meeting held on 1st March, 2012 and also considered the reply of EAPL and BBTCL to the show cause notice dated 20th January, 2012 regarding imposition of penalty in terms of Section 43A of the Act.
6. Considering the facts and circumstances of the case coupled with the fact that this being the first year of implementation of enforcement provisions relating to Combinations in the Act, the Commission is of the opinion that no penalty is required to be imposed on EAPL and BBTCL in terms of Section 43A of the Act.
7. The Secretary is directed to communicate to EAPL and BBTCL accordingly.



Certified True Copy


15/3/12
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