



***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO.2887 OF 2025

Asian Paints Limited
Through its Authorized Signatory
Having its registered office at:
6A & 6B, Shantinagar, Santacruz (East),
Mumbai- 400 055 ... Petitioner

Versus

1. Competition Commission of India
9th Floor, Office Block -1,
Kidwai Nagar (East),
New Delhi – 110 023
2. Grasim Industries Limited
(Birla Paints Division)
9th Floor, Birla Centurion,
Pandurang Budhkar Marg,
Worli, Mumbai – 400 030 ... Respondents

Mr. Darius Khambata, Senior Advocate with Mr. Sharan Jagtiani,
Senior Advocate, Mr. Ameya Gokhale, Mr. Harman Singh
Sandhu, Ms. Nitika Dwivedi, Ms. Kriti Kalyani, Mr. Chintan
Gandhi, Ms. Anushka Bhardwaj, Ms. Swarupini Srinath i/by
Shardul Amarchand Mangaldas & Co., for the Petitioner

Mr. Mustafa Doctor, Senior Advocate with Mr. Ravi Kini,
Mr. Abhay Itagi, Ms. Vidhi Bhasin i/by M. V. Kini Law Firm, for
the Respondent No.1-CCI

Mr. Aspi Chinoy, Senior Advocate with Dr. Abhinav Chandrachud, Ms. Sneha Jaisingh, Ms. Jaidhara Shah, Ms. Neeraja Barve and Mr. Akshay Ayush i/b Bharucha and Partners, for the Respondent No.2

*CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.
RESERVED ON : 7th AUGUST 2025
PRONOUNCED ON : 11th SEPTEMBER 2025*

JUDGMENT (Per Revati Mohite Dere, J.):

1 Heard learned senior counsel for the respective parties.

2 By this petition, the Petitioner seeks setting-aside of the orders dated 1st July 2025, firstly uploaded on the website of the Respondent No.1-Competition Commission of India (‘the CCI’) on 1st July 2025 and thereafter allegedly/purportedly replaced by the second order of the same date uploaded on the website of the said Authority on 2nd July 2025, passed by the CCI in Case No.32/2024. The Petitioner also seeks a direction to the

CCI to re-examine the purported information/allegations submitted against it, in Case No.32/2024 afresh in exercise of its powers under Section 19(1) read with Section 26(2-A) of the Competition Act of 2002 (`the Act').

3 Facts in brief are as under:

The Petitioner is a company incorporated under the Companies Act *inter alia* engaged in the manufacture, sale and distribution of paints, coatings, home decor products, bath fittings and providing related services. The Respondent No.1- Competition Commission of India (for the sake of brevity, hereinafter referred to as `CCI') is an Authority established under Section 7 of the Competition Act, 2002 (as amended). The Respondent No.2 is a company incorporated under the Companies Act, engaged in the manufacture of man-made fibers, chemicals and is a new entrant in the decorative paints market in India (around March 2024), under the brand name of 'Birla Opus Paints'.

4 The proceeding before the CCI stems from the information received by the CCI from the Respondent No.2, sometime in December 2024, under Section 19(1)(a) of the Act, alleging therein, that the Petitioner has abused its dominance in the decorative paints market.

5 It is the Petitioner's case, that they received an email addressed by a media house requesting a comment in relation to the information received by the CCI from the Respondent No.2. Pursuant thereto, the Petitioner by its letter dated 5th June 2025 addressed to the Respondent No.1, offered an explanation pertaining to the purported allegations made by Respondent No.2 to the CCI. The Petitioner specifically clarified that in an earlier Case No. 36/2019, initiated by JSW Paints Private Limited ('JSW') and Sri Balaji Traders ('Balaji'), based on similar information, alleging abuse of dominance and anti-competitive vertical agreements, the CCI had found no evidence of abuse of

dominance by the Petitioner despite a thorough investigation. The Petitioner also requested for an opportunity to present its case and supporting evidence through an oral hearing. According to the Petitioner, the CCI in its order dated 8th September 2022, found no merit in the information application made by JSW on identical grounds as made by the Petitioner and accordingly disposed of the same. Thus, according to the Petitioner, under the provisions of Section 26(2-A) of the Act, the CCI was jurisdictionally barred from entertaining the Respondent No.2's complaint on the same or substantially the same facts and issues, once the same allegations made by JSW and Balaji were already decided by the CCI in its previous orders.

6 The Respondent No.1 by its letter dated 6th June 2025, responded to the Petitioner's letter of 5th June 2025 asking the Petitioner to file an application under the relevant Regulation for consideration by the CCI. Accordingly, the Petitioner by its letter dated 9th June 2025 provided the CCI with the media

article, which reported the information vis-à-vis the information given by the Respondent No.2 to CCI.

7 It is the Petitioner's case, that the CCI, without affording any hearing to the Petitioner, published the first impugned order directing the Director General ("DG") of the CCI to cause an investigation into the matter and submit an investigation report within a period of 90 days from the receipt of the said order. It was made clear that at this *prima facie* stage, the CCI, in the light of the material available on record, found no reason to hear the Petitioner before passing the said order. According to the Petitioner, the first order dated 1st July 2025 was allegedly pulled down from the website of the CCI and replaced with another order of the same date. It is the Petitioner's case that there were substantial differences in both the orders, although, the end result in both the orders was the same i.e. the 2nd order reiterated the same directions issued by the CCI to the DG. Both these orders, dated 1st July 2025, first order and the

second order alleging replacing the first on the CCI's website, are impugned in the present petition.

8 Mr. Darius Khambata, learned senior counsel appeared for the Petitioner. Mr. Mustafa Doctor, learned senior counsel represented the CCI and Mr. Aspi Chinoy, learned senior counsel represented the Respondent No.2.

Submissions advanced by the learned Senior Counsel appearing for the respective parties:

9 At the very outset, Mr. Khambata, learned senior counsel drew our attention to certain distinct observations of the CCI in both the impugned orders. According to Mr. Khambata, the CCI published the first impugned order observing that “*the relevant market was for manufacture and sale of decorative paints in the organized sector in India.*” In relation to dominance, the CCI, in the first order observed that “*it finds no reason to depart from its earlier findings*” of dominance of Asian Paints Limited

(`APL') in the relevant market in the JSW matter. Mr. Khambata has detailed the deviations in both the orders, in a tabular form in paragraph No. 20 of the petition.

10 Mr. Khambata, learned senior counsel further submitted that the CCI, on an earlier occasion, had considered the same and/or substantially the same facts and issues, on an information made by JSW and Balaji against the Petitioner. He submitted that by letter dated 4th October 2019, JSW had filed information with the CCI alleging abuse of dominance and anti-competitive vertical agreements against the Petitioner, whereas, Balaji had alleged unfair changes by the Petitioner in dealer's retailing tier; that pursuant to the said information, the CCI vide order dated 14th January 2020, had directed the DG to investigate the said complaints; that, the DG submitted a detailed investigation report to CCI and that after going through the report, the CCI found no merit in the applications made by JSW and Balaji and accordingly, disposed of the said applications.

11 Mr. Khambata, learned senior counsel further contended that prior to directing the DG to cause investigation on the information received by CCI from Respondent No.2, the Petitioner was not given a right of representation, as was a practice prevalent before the CCI. He submitted that had an opportunity of hearing been given to the Petitioner, the Petitioner would have pointed out that similar/substantially similar allegations had been made earlier by JSW and Balaji, which could have persuaded the CCI not to entertain a similar complaint of the Respondent No.2. He contends that infact, the impugned orders clearly indicate that the information provided by the Respondent No.2 was itself patently insufficient for the CCI to form a *prima facie* view, warranting dismissal of the same. Mr. Khambata stressed on the provisions of Section 26(2-A) of the Act, arguing that it was mandatory on the part of the CCI in the impugned order to specifically deal with the said provision which operated as a jurisdictional bar on it to re-inquire complaints

based on *same or substantially same facts and issues* which had already been decided by CCI in its previous order. He further contended that the CCI ought to have expressly recorded reasons to justify a re-inquiry into the information received by it from the Respondent No.2, which according to him, was already dealt with in the JSW/Balaji case. Mr. Khambata further explained the legislative intent behind the Competition (Amendment) Act, 2023 which inserted Section 26(2-A) in the interest of expedience and to avoid repetition of effort.

12 Mr. Khambata, learned senior counsel placed reliance on the following decisions to buttress his submissions:

- i. Competition Commission of India v. Steel Authority of India Limited and Anr.*¹ ('SAIL')
- ii. Star India Private Limited v. Competition Commission of India and Ors.*²
- iii. Alliance of Digital India Foundation v. Google*³

1 (2010) 10 SCC 744

2 2019 SCC Online Bom 3038

3 Case No.23(2) of 2024 order dated 1st August 2025

- iv. *State of U. P. v. Jogendra Singh*⁴
- v. *Initiatives for Inclusion Foundation v. Union of India*⁵
- vi. *Mohinder Singh Gill v. Chief Election Commissioner*⁶
- vii. *Dipak Babaria v. State of Gujarat*⁷
- viii. *Winzo Games Private Limited v. Google LLC & Ors.*⁸
(`Google')
- ix. *In Re: S. Kannan, Managing Partner, M/s Arcus Enterprises v. Asian Paints Limited*⁹
- x. *Sivanandan C. T. v. High Court of Kerala*¹⁰
- xi. *J. Mohammed Nazir v. Mahasemam Trust*¹¹
- xii. *Asianet Star Communications Pvt. Ltd. v. Competition Commission of India*¹²
- xiii. *Vodafone India Limited v. Competition Commission of India & Ors.*¹³
- xiv. *Oryx Fisheries Private Limited v. Union of India & Ors.*¹⁴

4 1963 SCC OnLine SC 96

5 (2024) 1 SCC 779

6 (1979) 1 SCC 405

7 (2014) 3 SCC 502

8 Case No. 42 of 2022 order dated 28th November 2024

9 Case No. 53 of 2020 order dated 12th April 2021

10 (2024) 3 SCC 799

11 Special Leave to Appeal (C) No.16303-16304/2022 order dated 23rd January 2023

12 2022 SCC OnLine Bom 11919

13 2017 SCC OnLine Bom 8524

14 (2010) 13 SCC 427

13 *Per contra*, Mr. Doctor, learned senior counsel, at the outset clarified that the first impugned order dated 1st July 2025 was merely a draft inadvertently uploaded on the website of the CCI, and that the second impugned order of the same date was the actual order duly signed by the Members of the CCI. He submitted that it is this second order dated 1st July 2025, which is the authentic order, which was furnished to the Petitioner as the correct order.

14 On merits, Mr. Doctor, learned senior counsel, submitted that the order passed by the CCI cannot be faulted, inasmuch as, the CCI after going through the information received from the Respondent No.2, arrived at an opinion, that there is a *prima facie* case of contravention of the provisions of the Act, by the Petitioner, warranting investigation. He submitted that the functions performed by the CCI under Section 26(1) are administrative in nature and not judicial and hence, the Petitioner

has no right of hearing prior to passing of an order under Section 26(1). Mr. Doctor submitted that the order impugned being administrative in nature, the High Court is not competent to adjudge the validity of such an order. Mr. Doctor further contended that the Petitioner's submissions proceed on an incorrect premise, namely, that the same or substantially similar facts and issues had already been decided in the earlier orders passed by the CCI in the JSW/Balaji cases. He submitted that such a contention reflects a misconceived understanding and erroneous interpretation by the Petitioner of Section 26(2-A) of the Act and the scheme underlying the said provision.

15 Mr. Doctor, learned senior counsel, took us through the scheme of the Act wherein Section 19(1)(a) of the Act empowered the Commission to inquire into any alleged contravention of the provisions of the Act, either on its own motion or on receipt of information from any person. He submitted that keeping in mind the scheme of the Act, there is no

requirement of any hearing to be given to the Petitioner as the DG is merely directed to cause an investigation.

16 Mr. Doctor has drawn a distinction between the earlier JSW complaint relating to violation of Section 4(2)(c) and Section 3(4)(b) and 3(4)(d) of the Act, whereas, in the present case, the CCI has formed an opinion that *prima facie* there exists a contravention of Sections 4(2)(a)(i), 4(2)(c) and 4(2)(d) of the Act. Learned senior counsel submitted that the earlier complaint was dismissed, as there was no adequate material supporting the complaint made by JSW/Balaji. In response to the argument of Mr. Khambata relating to Section 26(2-A) of the Act, Mr. Doctor submitted that the said section infact empowers the Committee to pass orders for closure of cases in the interest of expedience and it does not create any right in favour of the Petitioner, namely, that the CCI is under any obligation to record reasons as to why a latter complaint was not closed by the CCI. Mr. Doctor submitted that the present petition is nothing but an attempt on

the part of the Petitioner to prevent the CCI from even conducting an investigation on the information received from the Respondent No.2 and as such the petition be dismissed. Mr. Doctor finally placed reliance on the decision of the Supreme Court in *SAIL (Supra)* and distinguished the facts of this case from the case of *Google (Supra)*, strongly relied upon by Mr. Khambata.

17 Mr. Aspi Chinoy, learned senior counsel, supported the submissions advanced by Mr. Doctor and reiterated that Section 26(2-A) does not place any embargo on the CCI from recording a finding, to entertain a subsequent complaint, even if an earlier one has been dismissed, provided the CCI, on forming a *prima facie* opinion, finds material indicating contravention of the provisions of the Act. He also buttressed the legislative intent of the amendment to the Act, in inserting Section 26(2-A). According to Mr. Chinoy, Section 26(2-A) which follows Section 26(2) is merely a clarificatory and enabling provision and that

Section 26(2-A) expressly clarifies [what was implicit in Section 26(2)] and expressly enables the Commission to close a matter, if it is of the opinion that the same or substantially same facts and issues raised in the information received under Section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order. Learned senior counsel in this context relied on Report of the Competition Law Committee-July 19; to show that Section 26(2-A) is both clarificatory and enabling. He relied on the words 'expressly enable' to show the intent and object of introducing Section 26(2-A), as an enabling provision i.e. CCI would be required to refer to and deal with the same in its order, only in cases where it decides to close the case, on the ground stated in Section 26(2-A).

18 Mr. Chinoy further submitted that the information on which the impugned order was passed, was made by a different party, pertained to a different context, invoked different sections,

and referred to different material and as such no fault can be found in the same.

19 Having heard the learned counsel for the respective parties, and for the reasons set out hereinafter, we are of the opinion that the petition is devoid of merits and as such, ought to be dismissed.

20 As far as the first relief sought by the Petitioner is concerned, i.e. quashing and setting aside of the orders dated 1st July 2025 (firstly uploaded on the website of Respondent No. 1–CCI on 1st July 2025 and thereafter purportedly replaced by a second order of the same date uploaded on 2nd July 2025), we find no merit therein.

21 According to Mr. Khambata, learned senior counsel, there were certain variance/deviations in both the orders, which have been set out in a tabular form in para 20 of the petition. It

is not in dispute that, although there were some deviations in the orders, the end result in both the orders is identical/same.

22 Mr. Doctor, learned senior counsel appearing for the Respondent No. 1 submitted that the order uploaded on 1st July 2025 at 4:30 p.m. was only a draft order inadvertently uploaded on the website by its staff. He submitted that inadvertently, at the end of the said uploaded draft, the symbol “sd/-” was inserted in the soft copy. Mr. Doctor further submitted that, upon discovery of this inadvertent error, the correct order, which is annexed at Exhibit `B’ to the petition and signed by all members on 1st July 2025, was uploaded on 2nd July 2025 at 2:00 p.m. This order (Exhibit B) was thereafter forwarded by a covering letter dated 3rd July 2025 (Exhibit D to the petition) to the Petitioner as well as to the DG, for investigation. The fact, that the Petitioner received the second order by a covering letter, is not disputed.

We find substance in the submission advanced by Mr. Doctor that the unsigned order uploaded on 1st July 2025

was inadvertently uploaded and that, upon discovering the error, the correct signed order dated 1st July 2025 was uploaded on 2nd July 2025. The fact, that the order dated 1st July 2025, uploaded on 2nd July 2025 was sent to the Petitioner under CCI's covering letter is not disputed. Hence, there is no substance in the grievance made by the Petitioner with respect to two orders. Infact, upon the explanation offered by Mr. Doctor, learned senior counsel for Respondent No.1, Mr. Khambata, learned senior counsel for the Petitioner, did not seriously contest the first order and as such, we are not required to go into the same.

23 In support of the reliefs sought, two essential submissions advanced by Mr. Khambata are:

(i) That the Petitioner ought to have been heard and given a right of representation before passing of the impugned order, more particularly since Respondent No. 1-CCI had dismissed a complaint made by JSW and Balaji, containing similar

or substantially similar allegations, as those made by Respondent No. 2.

(ii) That the provision of Section 26(2-A) of the Act, despite being mandatory, were not complied with by the Respondent No. 1; that Section 26(2-A) of the Act operates as a jurisdictional bar on Respondent No. 1 to re-inquire into complaints based on the same or substantially the same facts already decided by the CCI in its earlier orders; and that Respondent No. 1 has failed to expressly record reasons justifying re-inquiry into the information received from Respondent No. 2, particularly when similar complaints had been dealt with by CCI in the JSW/Balaji cases,

24 Before we proceed to consider the aforesaid, it would be necessary to place the scheme of the provisions with which we are concerned. Section 19(1)(a) of the Act empowers the Commission to inquire into any alleged contravention of provisions of Sections 3(1) and 4(1), either on its own motion or

inter alia upon receipt of information from any person, consumer, or trade association. The procedure to be followed for an inquiry under Section 19 is laid down in Section 26 of the Act. Section 26 of the Act reads thus:

“26. Procedure for inquiry under Section 19.–

(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under Section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:

Provided that if the subject-matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under Section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(2-A) The Commission may not inquire into agreement referred to in Section 3 or conduct of an enterprise or group

under Section 4, if the same or substantially the same facts and issues raised in the information received under Section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order.

(3) The Director General shall, on receipt of direction under sub-Section (1), submit a report on his findings within such period as may be specified by the Commission.

(3-A) If, after consideration of the report of the Director General referred to in sub-Section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.

(3-B) The Director General shall, on receipt of direction under sub-Section (3A), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.

(4) The Commission may forward a copy of the report referred to in sub-Sections (3) and (3-B) to the parties concerned:

Provided that in case the investigation is caused to be made based on a reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-Sections (3) and (3-B) to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in sub-Sections (3) and (3-B) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections or suggestions referred to in sub-Section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub-Section (5), if any, the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in sub-Sections (3) and (3-B) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

(9) Upon completion of the investigation or inquiry under sub-Section (7) or sub-Section (8), as the case may be,

the Commission may pass an order closing the matter or pass an order under Section 27, and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be:

Provided that before passing such order, the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified by regulations and give a reasonable opportunity of being heard to the parties concerned.”
(emphasis supplied)

25 Thus, under Section 26(1), if upon receipt of information, the Commission is of the opinion that a *prima facie* case exists, it may direct the DG to investigate. Section 26(2) empowers the Commission to close the matter forthwith if it is of the opinion that no *prima facie* case exists. Sections 26(3) to 26(6) relate to the processes to be followed by the Commission, after receipt of the DG’s report, both, in the event the Commission is inclined to proceed further or to close the matter. Under Section 26(6), the Commission is mandatorily empowered to close the matter after receipt of the DG’s report. In the event, the Commission is inclined to proceed with the matter and pass

an order under Section 27 (after inquiry), it is specifically required to issue a show-cause notice to the party concerned, indicating the contraventions alleged to have been committed, the object being to give a reasonable opportunity of being heard to the party concerned. Thus, the Act guarantees for sufficient safeguards with respect to the rights of an affected party to have a full and fair hearing before any order is passed by the CCI, on receipt of a report of the DG, which may affect the rights of the parties.

26 The legal propositions vis-a-vis interpretation of Section 26 of the Act, which are well settled, are, (i) the functions performed by the Respondent No. 1-CCI under Section 26(1) are in the nature of preparatory matter in contrast to decision making process¹⁵; (ii) that an order passed under Section 26(1) is administrative in nature and not a judicial order¹⁶; (iii) that the Petitioner has no right to hearing prior to passing of an order

15 SAIL (Supra) – Para 93

16 SAIL (Supra) – Para 38

under Section 26(1)¹⁷; and (iv) since the order under Section 26(1) is administrative in nature and *prima facie*, the High Court is not competent to adjudicate the validity of such an order¹⁸.

27 In the present petition, we are concerned essentially with Section 26(2-A), which is inserted by an amendment to the Act, and which came into effect from 18th May 2023. By the said amendment, the Commission has the discretion to decide not to inquire into any agreement if the same or substantially same issues are raised in the information received under Section 19, which issues have already been decided by the Commission in its previous order. The legislative intent behind this amendment, as noted in the Committee Report, was to avoid duplication of effort and to ensure expedition in disposal of matters.

28 The Committee in its report issued in **July 2019**, in para **2.4** has noted as under:

17 SAIL (Supra) – Paras 78 & 83

18 CCI v. Bharti Airtel Ltd. & Ors. (2019) 2 SCC 521 – Paras 116 & 121

“2.4 *The Committee discussed if the Competition Act should be amended to expressly empower the CCI to pass orders for closure of certain cases, the facts and issues of which have been finally decided by the CCI and in respect of which a final order has been passed. It was felt that such a provision may be necessary in the interests of expedience and also to avoid repetition of effort in the conduct of inquiry and investigation by the DG and CCI. The Committee recommended that the procedure under Section 26 of the Act should be amended to **expressly enable** the CCI to pass orders for closure of cases where the information or reference that is received pertains to the same or substantially the same facts/issues as have already been decided by CCI and in respect of which a final order has been passed by the CCI.”*
(emphasis supplied)

29 Thus, as is evident from the above, the legislative intent behind the Competition (Amendment) Act of 2023 which inserted Section 26(2-A), that it was in the interest of expedience and to avoid repetition of the effort already undertaken by the CCI.

30 It appears that the Respondent No. 2 had made a representation to the CCI in December 2024 under Section 19(1) (a) of the Act, alleging therein, that the Petitioner has abused its dominance in the decorative paints market by inter *alia*:

“(i) Offering additional/ extra discounts/condonations/ incentives like foreign travel etc. to its dealers in exchange for exclusivity, which is arbitrary in nature and not linked to any uniform policy or based on performance/sales of the dealer;

(ii) Exercising and enforcing de facto exclusivity upon dealers by threatening them against stocking the Informant's paints by, inter alia:

➤ Reducing the credit limit and revision of service levels for dealers that engage with the Informant;

➤ Increasing and enhancing sales targets for dealers engaging with the Informant and accordingly, recalling their benefits like foreign travel etc.;

➤ Reducing customer leads, termination of relations with institutional customers and taking other punitive actions like reduction in product offerings, low priority for

servicing orders, opening competing dealerships in vicinity, etc., in the event the dealers engage with the Informant;

(iii) Directing its dealers to return/ not use or not install the tinting machines supplied by the Informant;

(iv) Restraining third parties, including suppliers of essential raw materials, from providing goods and services to the Informant;

(v) Coercing landlords, Clearing and Forwarding ('C&F') Agents and transporters to refrain from engaging with the Informant, restricting logistics and transportation of goods; and

(vi) Subjecting the Informant to a fake smear campaign etc.”

31 It appears that the CCI was dealing with the Respondent No.2's representation for contravention of Sections

4(2)(a)(i), 4(2)(c) and 4(2)(d) of the Act and after going through the same, had formed an opinion that there exists a *prima facie* case against the Petitioner. It is pertinent to note that earlier on a representation made by JSW in 2019 relating to violation of Sections 4(2)(c) and Section 3(4)(b) and 3(4)(d), the CCI had directed investigation by the DG vide order dated 14th January 2020 and later on receipt of the DG's report vide order dated 8th September 2022 had dismissed the said complaint as no case of contravention of Sections 3 and 4 had been made out. It is thus evident from the aforesaid that the sections under which the Respondent No.2 filed its complaint i.e. the sections invoked were not the same as those invoked in the JSW case.

32 Apart from the same, what is reflected from/in the impugned order dated 1st July 2025 is, that the primary reason for dismissal of the JSW representation (after receipt of the DG's report), was that there was no adequate material supporting the representation made by JSW/Balaji. It appears that Balaji had

preferred an appeal against the rejection order before the National Company Law Appellate Tribunal (`NCLAT'), New Delhi, which appeal came to be dismissed. It further appears that the appeal preferred by JSW is pending before the Appellate Tribunal. Be that as it may, it is not as if once a representation made by a party is dismissed, no new representation on a subsequent complaint can be entertained which is based on new facts. That ofcourse would depend on the facts and circumstances of each case. There may be several reasons for dismissing a representation e.g. may be a party is unable to substantiate its representation by evidence and so on.

33 Thus, we do not find that Section 26(2-A) creates any jurisdictional embargo on the CCI to entertain a representation, if the representation is found distinct/different from the earlier representation. The object of Section 26(2-A) is only to avoid repetition of the task already undertaken, and in the interest of expedience. Section 26(2-A) only cautions and the CCI to be

mindful before considering the representation for the said reasons and cannot be interpreted to create any jurisdictional embargo, when a new complaint is made to CCI. Infact, it appears to operate in cases, where CCI intends to close the case. Section 26(2-A) which follows Section 26(2) appears to be clarificatory and an enabling provision. Section 26(2-A) expressly clarifies, what was implicit in Section 26(2) and expressly enables the Commission to close a matter, if it is of the opinion that '*the same or substantially the same facts and issues*' raised in the information received under Section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order. The same is fortified by the report of the Competition Law Review Committee-July 2019, which is reproduced in Para 28 of this judgment. The word '*expressly*' used in the said report reveals the object of introducing Section 26(2-A) i.e. to clarify what is already implied in Section 26(2) and the use of the term 'enable' establishes that the intent and object

was to expressly introduce Section 26(2-A) as an enabling provision. Thus, CCI would be required to deal with the same i.e. Section 26(2-A), in its order only in cases where it decides to close the case by acting under Section 26(2) or Section 26(2-A) i.e. the CCI is of the view that ‘the same or substantially same facts and information raised in the information under Section 19 or reference from the Central Government or a State Government or a statutory authority, has already been decided by the CCI in its earlier order. Conversely, where CCI decides not to close the case under Section 26(2) or 26(2-A) and decides to direct the DG to cause an investigation to be made, the CCI is not required to give reasons why Section 26(2-A) is not applicable.

34 A perusal of the impugned order indicates that Respondent No.1, despite being aware of the JSW representation and its dismissal, found substance in the representation of Respondent No.2 and, after recording a *prima facie* observation, directed the DG to investigate the same. The object of Section

26(2-A) is not to create an embargo on the filing of a subsequent information, but to emphasize that an information founded on similar or substantially identical facts ought not to be entertained. The discretion is that of the CCI, whether or not to entertain a subsequent representation. Infact, a perusal of the impugned order also shows that the CCI was fully conscious of the earlier representation made by JSW/Balaji and its dismissal. The impugned order further reflects that the JSW representation was rejected after receipt of the DG's report, as JSW had failed to substantiate its allegations. It is therefore evident that the CCI passed the impugned order with full awareness of the earlier proceeding. Whether or not to give hearing is the CCI's discretion and there is no inherent right in a party to demand the same. Consequently, we do not find any jurisdictional bar on the Respondent No.1 compelling them to give reasons under Section 26(2-A), as contended by Mr. Khambata, whilst considering and entertaining the Respondent No.2's representation.

35 It is well settled that no inherent right of hearing, oral/written, vests in the Petitioner at the stage of formation of a *prima facie* opinion. Whether or not to afford such hearing is a matter of discretion with the CCI, guided by the facts and circumstances of each case. The impugned order, being administrative in nature, merely records such opinion and directs the DG to undertake investigation. Thus, there is no merit in the Petitioner's contention that he ought to have been heard in the facts.

36 The judgments relied upon by Mr. Khambata, particularly, the case of *Google (supra)* have no application to the facts of the present matter and are completely distinguishable. The Apex Court in the case of *Google (supra)*, on which great reliance was placed by Mr. Khambata, has observed in paragraphs 29 to 31 as under:

“29. *The Commission has perused the submissions of the*

parties as well as other information on record. In relation to RMG Pilot, there are two issues for determination, the first being, whether the selection of DFS and Rummy for the Pilot has resulted in any anti-competitive disadvantage for other RMG apps. The Commission further notes that initially the RMG Pilot was intended to operate for one year i.e., from 28.09.2022 to 28.09.2023. However, as stated above, the same was extended by Google for different reasons. Based on the reply dated 21.06.2024 submitted by Google, it is noted that the said Pilot has been extended indefinitely beyond 30.06.2024 as no date has been set for its termination. Therefore, the second issue for consideration is whether such long duration Pilot has resulted or is likely to result in any distortion in the competitive process in the RMG market.

30. In relation to first issue, Google has submitted that it has selected DFS and Rummy for the pilot primarily based on their popularity, with the aim of maximising learnings from the RMG Pilot. It has been further averred that the Hon'ble Supreme Court of India (as well as other courts) have recognised DFS and Rummy as predominantly games of skill. The higher degree of legal certainty attached to DFS and Rummy is stated to provide Google with additional comfort from a risk assessment perspective.

31. The Informant on the other hand has averred that Google has failed to provide a valid justification for selectively allowing only two categories of RMG apps while excluding the rest of the RMG market and its responses for the same have been inconsistent, unsubstantiated, based on assumptions and unverified market statistics. In this regard, the Informant has also relied on the submission dated 15.06.2024 filed by Google wherein it has been stated that

"Further,....., it is not the characterisation of a game as a game of skill or game of chance, but the fragmented regulatory and legal landscape for RMG apps in India and risks that RMG apps carry that has informed Google's RMG Policy and Google's decision to limit its short-term Pilot Program to DFS and Rummy apps." The Informant has further averred that during the preliminary hearing, however, Google insisted that the premise for restricting RMG apps to DFS and Rummy to the Pilot Program was primarily due to both such categories of RMG's having been declared as games of skill. The Informant has further relied upon the OPs written statement as filed before the Hon'ble Delhi High Court in CS(OS) No. 346/2023, wherein the OPs have submitted that the Pilot Program was not launched based on classification of apps as games of skill or games of chance and it does not make any distinction of such nature."

37 The facts in ***Google (supra)*** are clearly distinguishable.

In the case of ***Google (supra)***, the allegations related to a policy of Google, which was previously examined by the Commission, pursuant to which, subsequent representation vis-a-vis the same policy, was not entertained. Hence, ***Google (supra)*** has no application to the case in hand.

38 It is also pertinent to note that the Apex Court in para

97 in *SAIL (Supra)* has observed thus:

“97. The above reasoning and the principles enunciated, which are consistent with the settled canons of law, we would adopt even in this case. In the backdrop of these determinants, we may refer to the provisions of the Act. Section 26, under its different sub-sections, requires the Commission to issue various directions, take decisions and pass orders, some of which are even appealable before the Tribunal. Even if it is a direction under any of the provisions and not a decision, conclusion or order passed on merits by the Commission, it is expected that the same would be supported by some reasoning. At the stage of forming a prima facie view, as required under Section 26(1) of the Act, the Commission may not really record detailed reasons, but must express its mind in no uncertain terms that it is of the view that prima facie case exists, requiring issuance of direction for investigation to the Director General. Such view should be recorded with reference to the information furnished to the Commission. Such opinion should be formed on the basis of the records, including the information furnished and reference made to the Commission under the various provisions of the Act, as aforesaid. However, other decisions and orders, which are not directions simpliciter and determining the rights of the parties, should be well reasoned analyzing and deciding the rival contentions raised before the Commission by the parties. In other words, the Commission is expected to express prima facie view in terms of Section 26(1) the Act, without entering into any adjudicatory or determinative process and by recording minimum reasons substantiating the formation of such opinion, while all its other orders and decisions should be well reasoned.”

39 We may also note that the Apex Court in the case of *Bharti Airtel (Supra)*, in para 121, has held as under:

“121. Once we hold that the order under Section 26(1) of the Competition Act is administrative in nature and further that it was merely a prima facie opinion directing the Director General to carry the investigation, the High Court would not be competent to adjudge the validity of such an order on merits. The observations of the High Court giving findings on merits, therefore, may not be appropriate.”

40 Keeping in mind the aforesaid, and having perused the impugned order, we do not find any infirmity in the impugned order passed by the CCI under Section 26(1) of the Act.

41 In view of the above discussion, we find no merit in the petition. The petition is accordingly dismissed. No order as to costs.

42 All concerned to act on the authenticated copy of this judgment.

DR. NEELA GOKHALE, J.

REVATI MOHITE DERE, J.