July 12, 2023

The Officer-In-Charge (Listing) Listing Department National Stock Exchange of India Ltd., Exchange Plaza, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051 Scrip Code: MINDACORP	Head - Listing Operations, BSE Limited, P.J. Towers, Dalal Street, Fort, Mumbai – 400 001 Scrip Code: 538962

Sub: Intimation of order of Hon'ble High Court of Judicature at Madras dated July 11, 2023 in relation to Writ Petition No. 16079 & 16081 of 2023

Dear Sir/Ma'am,

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and in furtherance to Minda Corporation Limited ("Company") various disclosures dated June 02, 2023, May 29, 2023, May 26, 2023, and May 02, 2023, we hereby inform you that the Hon'ble High Court of Judicature at Madras, has pronounced an order on July 11, 2023, vacating the interim injunction that was previously granted by the said Hon'ble Court by its interim order dated May 24, 2023 in relation to adjudication of Minda Corporation Limited's application by Competition Commission of India ("CCI").

A copy of the order passed by Hon'ble High Court of Judicature at Madras dated July 11, 2023 is enclosed herewith at Annexure-I for your information and records.

Additional Information:

Name(s) of the petitioner	Pricol Limited
Name(s) of the respondents	1) Union of India (Secretary, Ministry of Corporate Affairs) 2) Competition Commission of India 3) Minda Corporation Limited
Court/tribunal/agency where litigation is filed	Hon'ble High Court of Judicature at Madras
Brief details of dispute/litigation	Writ petition of Prohibition/Declaration seeking certain directions
Expected financial implications, if any	NIL
Quantum of claims, if any	NIL

Thanking you,

For Minda Corporation Limited

PARDEEP MANN
Digitally signed by PARDEEP MANN
Date: 2023.07.12 14:40:33 +05'30'

Pardeep Mann
Company Secretary
Membership No.: A13371

MINDA CORPORATION LIMITED (GROUP CORPORATE OFFICE)
CIN: L74899DL1985PLC020401A
D-6-11, Sector 59, Noida – 201301, U.P., India
Tel. : +91-120-4787100
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Registered office: A-15, Ashok Vihar, Phase-I, Delhi-110052
Website: www.sparkminda.com

W.P.Nos.16079 and 16081 of 2023
and W.M.P.Nos.15510, 15512, 16807 and 19069 of 2023

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(Order of the court was made by the Hon'ble Chief Justice)

The petitioner has filed W.P.No.16079 of 2023 thereby seeking a declaration that Regulation 8 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 [for brevity, "*the CCI Regulations, 2011*"] as null and void to the extent that it would seem to empower, in the teeth of Section 6(1) of the Competition Act, 2002 [for brevity, "*the Act of 2002*"], acceptance of a notice under Section 6(2) of the Act of 2002, post-facto after combination of the enterprise has been effected.

2. The petitioner has also filed W.P.No.16081 of 2023 to prohibit the second respondent from entertaining or taking on file Form II issued by the third respondent under the CCI Regulations, 2011 in relation to the acquisition of equity shares of the petitioner.

3. A Division Bench of this Court on 24.5.2023 granted an ex parte ad-interim injunction until further orders.

4. W.M.P.No.19069 of 2023 has been moved by the second respondent/Competition Commission of India and W.M.P.No.16807 of 2023 has been moved by the third respondent/Minda Corporation Limited for vacating the ex parte ad-interim order.

5. We have heard the matter on the applications filed by the second respondent and the third respondent for vacating the ex parte ad-interim order.

6. Mr.Sathish Parasaran, learned Senior Counsel for the petitioner, strenuously contends that the petitioner and the third respondent are the only two major players and close rivals operating in the same relevant market and engaged in identical trade serving multiple common customers in the automotive space, catering to two/three-wheeler passenger vehicles segment, tractors

and off-road vehicles.

7. Learned Senior Counsel further submitted that the Tranche I of the acquisition is carried out on 17.2.2023 by way of open market purchase of 1,91,40,342 equity shares of the petitioner representing 15.70406% of its total issued and paid-up equity share capital worth INR 400 crore. Tranche I and the proposed investment in equity shares of petitioner up to 24.5% of total equity shares of petitioner constituting Tranche II are interconnected and re-emphasise the intention of the third respondent to acquire interest and control over the petitioner. The combination under Tranches I and II would have an appreciable adverse effect in the relevant market where the petitioner and the third respondent operate. The third respondent cannot be permitted to divide the acquisition of the petitioner by way of two tranches to bye-pass the threshold statutory mandate provided under the Act of 2002 and the CCI Regulations, 2011 made thereunder and such actions are illegal, null and void.

8. It is submitted by learned Senior Counsel that the acquisition of shares by the third respondent in the Tranche I was without discussion or arrangement between the parties and was made without consent or prior approval of the petitioner. The acquisition under Tranche I is covered under the ambit of the combinations made without the consent of the target enterprise. The Tranche I transaction was mandatorily required to be notified to the second respondent under Section 6(2) of the Act of 2002. The third respondent misrepresented that the open market transaction was merely an investment and did not require any prior approval. Failure to seek prior approval from the second respondent is contrary to the intent and the text of the Act of 2002 and the CCI Regulations, 2011.

9. It is also submitted by learned Senior Counsel for the petitioner that the petitioner and the third respondent are rivals in the market for manufacturing automotive components. Tranche I acquisition could not have side-stepped the prior approval

requirements under Item 1 exemption. The third respondent dishonestly avoided to notify the second respondent about the acquisition. It was only on 2.5.2023 the third respondent intimated the Stock Exchange that in furtherance of its earlier Tranche I acquisition, it has decided to file an application to the Competition Commission of India for making investment in equity shares of the petitioner up to 24.5% (Tranche II). According to learned Senior Counsel for the petitioner, the third respondent has wilfully contravened the provisions of the Act of 2002 by going ahead with Tranche I acquisition without seeking the prior approval of the second respondent and by approaching the second respondent in May, 2023, the third respondent is surreptitiously attempting to seek ratification of an act that is specifically rendered void by an express statutory provision, viz., Section 6(1) of the Act of 2002. The third respondent ought to have put the second respondent on notice of the combination created under Tranche I prior to the acquisition. Regulation 8 of the CCI Regulations, 2011 requires to be declared null and void to the extent that there cannot be acceptance of post-facto notification by the second respondent in

the light of the intent and language of Sections 6(2) read with Section 6(1) of the Act of 2002. The provisions need to be complied with more stringently considering the fact that the acquisition made by way of Tranches I and II was without the consent of the petitioner and given the contravention of providing prior notice, the combination is null and void and hence no acquisition is liable to be effected.

10. Learned Senior Counsel also submitted that Form II filed by the third respondent is pending consideration before the second respondent, whereas the same ought to have been returned forthwith as beyond jurisdiction in the light of Section 6(1) of the Act of 2002. The petitioner has filed an objection dated 16.5.2023 before the second respondent setting out the position of the acquisitions under Tranches I and II and praying for the outright and in limine rejection of the Form II filed by the third respondent.

11. Learned Senior Counsel for the petitioner submits that the language of Section 6 of the Act of 2002 is mandatory, inasmuch as

it requires notice to be given by the third respondent to the second respondent in terms of Section 6(2) of the Act of 2002 in respect of the acquisition of the shares of the petitioner. Section 6(2) of the Act of 2002 uses the word "*shall*", which is indicative of the fact that the language is mandatory, since the said word was introduced by way of an amendment in the year 2007.

12. Learned Senior Counsel for the petitioner relies upon the judgment of the Apex Court in the case of *SCM Solifert Limited and another v. Competition Commission of India, (2018) 6 SCC 631,* to submit that prior intimation of the combination is mandatory and post-facto intimation is not permissible.

13. Learned Additional Solicitor General of India appearing on behalf of the second respondent/Competition Commission of India submits that the petitioner is erroneously reading the judgment of the Apex Court in the case of *SCM Solifert Limited and another* (supra). In the said case, the Apex Court was considering whether levy of penalty for non-compliance of Section 6(2) of the Act of

2002, i.e., for not giving the prescribed notice to the Commission disclosing the details of the proposed combination within thirty days, is permissible. In that context, the Apex Court observed that the factum of approval of the combination subsequently by the Commission is not going to provide an insulation when the provisions of the Act of 2002 have been violated and prior notice had not been given under Section 6(2) of the Act of 2002. It is open to impose a penalty under Section 43-A of the Act of 2002. In the said case, the Apex Court has not held that, if prior notice has not been given, the Competition Commission cannot inquire into the same. According to learned Additional Solicitor General, the petition is premature. The Competition Commission is a statutory authority. A statutory inquiry is being made and the same cannot be stalled.

14. Learned Additional Solicitor General also relies upon Section 20 of the Act of 2002 to submit that the Competition Commission of India has got *suo motu* powers to conduct an inquiry. Regulation 8 of the CCI Regulations, 2011 permits the Competition Commission to

inquire into even if a prior notice of combination is not given. The presumption is always in favour of the validity of the CCI Regulations, 2011.

15. Learned Deputy Solicitor General of India appearing for the first respondent/Union of India and learned counsel for the third respondent adopt the arguments of learned Additional Solicitor General.

16. We have considered the submissions canvassed by learned Senior Counsel for the petitioner and learned Additional Solicitor General for the second respondent.

17. The Competition Commission has been established to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto.

18. Under Section 5 of the Act of 2002, the phrase "*combination*" has been dealt with. It states that 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. It also lays down the further contingencies of merger and amalgamation.

19. Section 6 of the Act of 2002 provides for regulation of combinations. Sub-section (1) of Section 6 of the Act of 2002 mandates that a combination shall not be permitted which causes or is likely to cause an appreciable adverse effect on competition within the

relevant market in India. Sub-section (2) of Section 6 of the Act of 2002 stipulates that any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which would be determined by regulations, disclosing the details of the proposed combination within thirty days under the contingencies referred to in clauses (a) and (b) of Sub-section (2) of Section 6 of the Act of 2002. Sub-section (2-A) of Section 6 of the Act of 2002 further mandates that no combination shall come into effect until 210 days have passed from the day on which the notice has been given to the Commission under Sub-section (2) or the Commission has passed orders under Section 31 of the Act of 2002, whichever is earlier. Further sub-sections of Section 6 of the Act of 2002 prescribe the procedure to be adopted by the Commission after receipt of notice under Section 6(2) of the Act of 2002.

20. The prima donna contention of Mr.Sathish Parasaran, learned Senior Counsel for the petitioner, is that the third respondent has faltered in abiding by Sections 6(2) and 6(1) of the Act of 2002, inasmuch as no prior notice has been given by the third respondent of the purchase of Tranche I in February, 2023. According to learned

Senior Counsel, subsequent notice is not permissible and the same would defeat the very provisions of Section 6 of the Act of 2002.

21. Regulation 8 of the CCI Regulations, 2011 provides for the contingency where the parties to a combination fail to file the form under Sub-section (2) of Section 6 of the Act of 2002. In that event, the Commission may under Sub-section (1) of Section 20 of the Act of 2002, upon its own knowledge or information relating to such combination, inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition within India.

22. Section 20 of the Act of 2002 gives powers to the Commission, upon its own knowledge or information relating to acquisition referred to in clause (a) of Section 5 or acquiring of control referred to in clause (b) of Section 5 or merger or amalgamation referred to in clause (c) of that section, inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India.

23. Prima facie, Regulation 8 of the CCI Regulations, 2011 is in aid of Section 20 of the Act of 2002.

24. Much emphasis has been laid by learned Senior Counsel for the petitioner on the judgment of the Apex Court in the case of *SCM Solifert Limited and another* (supra) to submit that the Apex Court has held that Sub-section (2) of Section 6 of the Act of 2002 is mandatory. It is trite that the judgment of the Apex Court cannot be read as Euclid theorem. The said judgment has to be read in the context in which it was delivered. In the said case, the Apex Court was called upon to decide whether the levy of penalty for non-adherence to Sub-section (2) of Section 6 of the Act of 2002 was proper. It was in that context the Apex Court observed that penalty can be levied. Paragraph 21 of the said judgment clarifies the position.

25. The presumption is in favour of the Regulation. The said Regulation 8 of the CCI Regulations, 2011 is in the statute book since the year 2011. Moreover, Regulation 8 of the CCI

Regulations, 2011 read with Section 20 of the Act of 2002 empowers the Commission to make an inquiry. The Commission, being a statutory authority, is making an inquiry permitted under law. It would not be appropriate to stall the statutory inquiry being conducted by the Commission. If any prohibitory orders are passed against the Commission, it would tantamount to prohibiting the statutory authority from proceeding further in the matter. The same would not be appropriate. Moreover, the proceedings before the Commission are at a nascent stage. If at all the further procedure is not being followed, it is always open to the aggrieved party to agitate in accordance with law.

26. In the light of the above, we vacate the ex parte ad-interim order granted by this court on 24.5.2023.

27. W.M.P.Nos.19069 and 16807 of 2023 are accordingly allowed and W.M.P.No.15510 of 2023 is dismissed.

28. Place the writ petitions on 12.9.2023. The parties are put

to notice that, if it is otherwise not inconvenient for the court, the court would endeavour to decide the writ petitions finally at the stage of admission.

(S.V.G., C.J.) (P.D.A., J.)
11.7.2023

Index : Yes/No
Neutral Citation : Yes/No

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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(sasi)

W.P.Nos.16079 and 16081 of 2023
and W.M.P.Nos.15510, 15512, 16807 and 19069 of 2023

11.7.2023