2026 INSC 576

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4974 OF 2022

AMAZON.COM NV INVESTMENT HOLDINGS LLC ...APPELLANT(S)

VERSUS

COMPETITION COMMISSION OF INDIA & ORS ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

A. INTRODUCTION

1. Merger control under the Competition Act, 2002[1] is a forward-looking instrument of economic regulation. Its objective is to preserve competitive markets in India by ensuring that combinations which may alter market structure are examined before they take effect. This statutory design necessarily rests on disclosure. The notice in respect of a proposed combination must present the transaction as it is intended to operate in substance, including its structure, its inter-connected steps, and the rights and arrangements that give it commercial meaning, so that the Commission is placed in a position to

[1] In short "the Act"

undertake an informed assessment of likely competitive effects. The law, therefore, insists on substance and requires that the regulator be enabled to examine the transaction as a composite whole.

2. At the same time, the Commission is a creature of statute. Its authority, whether to impose penalties, to draw adverse inferences from alleged non-disclosure, or to disturb an approval already granted, must be traced to the Act and exercised within the limits that the legislature has set. Where the statute requires satisfaction of particular ingredients, including materiality and the prescribed mental element, those requirements cannot be diluted by general observations about candour. Where the statute prescribes time-bound finality and mandates fair notice and hearing, those safeguards are not procedural niceties but are substantive constraints on the power of the Commission. A merger control regime that is rigorous yet law-governed best serves the public interest. It protects and promotes competition in India by maintaining predictability, fairness, and confidence in the administration of economic law.

3. The present Civil Appeal, filed under Section 53T of the Competition Act, 2002, assails the judgment and final order dated 13.06.2022 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi[2], in Competition Appeal (AT) No. 01 of 2022.

[2] In short "NCLAT"

4. By the impugned judgment, the NCLAT affirmed, in substantial part, the order dated 17.12.2021 passed by the Competition Commission of India[3] in proceedings initiated against Amazon.com NV Investment Holdings LLC[4] under Sections 43A, 44 and 45 of the Act, arising out of a show cause notice dated 04.06.2021.
5. The order dated 17.12.2021, inter alia, kept in abeyance the approval order dated 28.11.2019 issued by the CCI under Section 31(1) of the Act in Combination Registration No. C-2019/09/688, directed Amazon to submit a fresh notice in Form II under the Combination Regulations, and imposed monetary penalties.
6. The NCLAT affirmed the CCI's principal conclusions and consequential directions, including the direction keeping the earlier approval in abeyance and the direction to file a fresh notice in Form II, while interfering only to the limited extent of modifying the penalties imposed under Sections 44 and 45 of the Act.
7. The controversy before this Court concerns, in substance, the scope of the notification and disclosure obligations in merger control under the Act and the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011[5], the statutory limits of the CCI's powers after an approval under Section 31(1) of the Act,

[3] In short "the CCI"
[4] In short "Amazon"
[5] In short "the Combination Regulations"

and the legality of the consequences imposed in the present case.

8. We have heard learned counsel for the parties and have perused the material placed on record.

B. Primer on the relevant principles for the present dispute

9. Before turning to the facts and the rival submissions, it is appropriate to set out the principal statutory concepts and terms which arise in merger control under the Act and the Combination Regulations. The purpose of this Primer is purely explanatory. It is meant to enable the reader to follow the later discussion on disclosure duties, the CCI's inquiry, and the legality of the consequences imposed. At the outset, it is necessary to clarify the legal framework applicable to the present dispute. The notice under Section 6(2) of the Act was filed on 23.09.2019. The CCI granted approval under Section 31(1) of the Act on 28.11.2019, the show cause notice was issued on 04.06.2021, and the impugned order was passed on 17.12.2021. The rights, obligations, and limits of power that fall for determination in this appeal must therefore be tested on the basis of the Act and the Combination Regulations as they stood during that relevant period. To the extent statutory provisions or regulations have been amended thereafter, including by subsequent legislative changes, such later amendments cannot govern the legality of the actions taken or the consequences imposed in respect of the events in question. Where reference is

made to later amendments, it is only for contextual completeness, and not as a source of power or as a basis to determine liability in the present case. For the same reason, wherever statutory provisions are reproduced or discussed in the analysis below, they are to be understood as references to the provisions as applicable during the relevant period governing the present dispute.

B.1. The Act and the CCI's merger control role

10. A reading of the preamble and the substantive provisions of the Act makes it clear that it is an economic legislation aimed at preserving competitive markets in India. It establishes the CCI as the primary regulator entrusted with, inter alia:

(i) enforcement against anticompetitive conduct (such as cartels and abuse of dominance); and

(ii) *ex ante* review of certain transactions, called "combinations", to ensure that market structure is not altered in a manner that causes an appreciable adverse effect on competition.

11. For the purposes of the present case, put simply, where the law requires it, certain mergers and acquisitions must be shown to the regulator before they are implemented, so the regulator can ask whether the transaction is likely to harm competition in India. For example: If two of the largest grocery chains in a city propose to merge, the regulator may need to check

whether that would reduce consumer choice or allow price increases.

B.2. What is a "combination" under Section 5

12. Section 5 of the Act, as applicable during the relevant period, has been reproduced hereunder:

> *"**5. Combination** — 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.*

(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 a 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.

(c) any merger or amalgamation in which—

(i) the enterprise remaining after 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.

Explanation.— For the purposes of this section,—

(a) "control" includes controlling the affairs or management by—

(i) one or more enterprises, either jointly or singly, over another enterprise or group;
(ii) one or more groups, either jointly or singly, over another group or enterprise;

(b) "group" means two or more enterprises which, directly or indirectly, are in a position to—

(i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or
(ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or
(iii) control the management or affairs of the other enterprise;

(c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user,

homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of Section 3."

13. Primarily, Section 5 of the Act defines a "combination" by reference to (i) the nature of the transaction and (ii) certain financial thresholds. Broadly, a transaction qualifies as a combination if it involves:

(i) an acquisition of shares, voting rights, assets, or control; or

(ii) a merger or amalgamation, and the parties cross the statutory asset and turnover thresholds set out in Section 5 of the Act. However, it must be noted that this threshold inquiry is purely jurisdictional. Section 5 of the Act is not yet the "harm to competition" test. It is the gateway that determines whether the transaction enters the CCI's merger control jurisdiction. For example: If Company A acquires Company B, but both are very small and below the statutory thresholds, the transaction may not be a "notifiable combination" at all. Conversely, if they are large enough, it enters the merger control framework even if the transaction may ultimately be harmless.

B.3. Section 6: the notification obligation and the "AAEC" standard

14. Section 6 of the Act is also crucial for our discussions in the present case and the same has been reproduced hereunder prior to the 2023 Amendment:

***"6. Regulation of combinations**.—*

(1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

(2) Subject to the provisions contained in sub-section (1), 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 may be determined, by regulations, disclosing the details of the proposed combination, within thirty days of—

(a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of Section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

(b) execution of any agreement or other document for acquisition referred to in clause (a) of Section 5 or acquiring of control referred to in clause (b) of that section.

(2A) No combination shall come into effect until two hundred and ten 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, whichever is earlier.

(3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in Sections 29, 30 and 31.

(4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.

(5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in sub-section (4), shall, within seven days from the date of the acquisition, file, in the form as may be specified

by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

Explanation.— For the purposes of this section, the expression—

(a) "foreign institutional investor" has the same meaning as assigned to it in clause (a) of the Explanation to Section 115AD of the Income-tax Act, 1961 (43 of 1961);

(b) "venture capital fund" has the same meaning as assigned to it in clause (b) of the Explanation to clause (23FB) of Section 10 of the Income-tax Act, 1961 (43 of 1961)."

15. A bare perusal of Section 6 of the Act reveals that it contains both the substantive rule and the procedural requirement for a combination. Section 6(1) of the Act embodies the substantive rule and states that no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition ("AAEC") within the relevant market in India and such a combination is void. Section 6(2) of the Act contains the procedural obligation and requires a person or enterprise "proposing to enter into a combination" to give notice to the CCI in the prescribed form and manner. The design of the provision is primarily preventive. The CCI is to assess competitive effects before the combination is implemented. In common parlance, AAEC may be understood as a material risk of harm to competition. Such harm may include the ability to raise prices, reduce output, reduce quality, slow innovation, or foreclose rivals

within a properly defined market. For example: If after a merger, there are only two suppliers left in a market and entry is very difficult, the merged entity may gain the power to raise prices. That risk is one way AAEC may arise.

B.4. Section 20(4): the factors used to assess AAEC

16. Section 20(4) of the Act is crucial for the instant case and has been reproduced hereunder:

> ***"20. Inquiry into combination by Commission.***
>
> *(4) For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:—*
>
> *(a) actual and potential level of competition through imports in the market;*
>
> *(b) extent of barriers to entry into the market;*
>
> *(c) level of combination in the market;*
>
> *(d) degree of countervailing power in the market;*
>
> *(e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;*
>
> *(f) extent of effective competition likely to sustain in a market;*
>
> *(g) extent to which substitutes are available or are likely to be available in the market;*
>
> *(h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;*

(i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;

(j) nature and extent of vertical integration in the market;

(k) possibility of a failing business;

(l) nature and extent of innovation;

(m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;

(n) whether the benefits of the combination outweigh the adverse impact of the combination, if any."

17. Section 20(4) of the Act enumerates factors the CCI may consider to assess whether a combination is likely to cause AAEC (such as market shares and concentration, barriers to entry, countervailing buyer power, likelihood of foreclosure, and extent of vertical integration). These factors guide an overall assessment rather than a mechanical checklist. For example: Even if market shares appear high, the risk of AAEC may be lower if entry is easy (new competitors can quickly enter), or if powerful buyers (large retailers or government procurement) can discipline prices.

B.5. Combination Regulations and what a "notice" practically contains

18. The procedural framework governing the notification and review of combinations is set out in the Combination Regulations. These Regulations operationalise the obligations under Sections 5 and 6 of the Act by

prescribing the form, manner, and content of the notice to be furnished to the CCI.

19. Regulation 5 of the Combination Regulations is essential for the present appeal and has been reproduced hereunder:

> ***"5. Form of notice for the proposed combination.—***
>
> *(1) Any enterprise which proposes to enter into a combination shall give notice of such combination to the Commission in accordance with sub-section (2) of Section 6 of the Act and these regulations.*
>
> *(2) The notice under sub-section (2) of Section 6 of the Act, shall ordinarily be filed in Form I as specified in Schedule II to these regulations, duly filled in and accompanied by evidence of payment of requisite fee by the parties to the combination.*
>
> *(3) Notwithstanding anything contained in sub-regulation (2) and without prejudice to the provisions of sub-regulation (5), the parties to the combination may, at their option, give notice in Form II, as specified in Schedule II to these regulations, preferably in the instances where—*
>
> *(a) the parties to the combination are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than fifteen percent (15%) in the relevant market;*
>
> *(b) the parties to the combination are engaged at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or trade in goods or provision of services, and their individual or combined market share is more than twenty five percent (25%) in the relevant market.*

(3A) The parties to the combination shall give notice in Form I or Form II, as the case may be, in accordance with the notes to Form I and Form II issued by the Commission and published on its official website, from time to time.

(4) Where in the course of inquiry, it is found by the Commission that it requires additional information, the Commission may direct the parties to the combination to file such additional information:

Provided that the time taken by the parties to the combination in filing such additional information shall be excluded from the period provided in sub-section (2A) of Section 6 of the Act; sub-section (11) of Section 31 of the Act and sub-regulation (1) of regulation 19 of these regulations.

(5) Having due regard to the provisions of sub-regulations (2) and (4), in cases where the parties to the combination have filed notice in Form I and the Commission requires information in Form II to form its prima facie opinion whether the combination is likely to cause or has caused appreciable adverse effect on competition within the relevant market, it shall direct the parties to the combination to file notice in Form II as specified in Schedule II to these regulations:

Provided that the fee already paid by the parties to the combination while filing notice in Form I shall be reduced from the fee payable for filing notice in Form II:

Provided further that the time period mentioned in sub-section (2A) of Section 6 of the Act, sub-section (11) of Section 31 of the Act and sub-regulation (1) of regulation 19 of these regulations shall commence from the date of receipt of notice in Form II.

(6) If the requisite details are not available for any of the columns in Form I or Form II, the date on which they may be submitted should be clearly indicated against those columns, by the parties to the combination:

Provided that the time taken by the parties to the combination to submit the requisite details shall be excluded from the period provided in sub-section (2A) of Section 6 of the Act; sub-section (11) of Section 31 of

the Act and sub-regulation (1) of regulation 19 of these regulations.

(7) The reference to the "board of directors" in clause (a) of sub-section (2) of Section 6 of the Act, shall mean and include,—

(a) the individual himself or herself including a sole proprietor of a proprietorship firm;

(b) the karta in case of a Hindu Undivided Family (HUF);

(c) the board of directors in case of a company;

(d) in case of a corporation established by or under any Central, State or Provincial Act or an association of persons or a body of individuals, whether incorporated or not, in India or outside India or anybody corporate incorporated by or under the laws of a country outside India or a cooperative society registered under any law relating to cooperative societies or a local authority, the person or the body so empowered by the legal instrument that created the said bodies;

(e) in the case of a firm, the partner(s) so authorized;

(f) in the case of any other artificial juridical person not falling within any of the preceding sub-clauses, by that person or by some other person competent to act on his behalf.

(8) The reference to the "other document" in clause (b) of sub-section (2) of Section 6 of the Act shall mean any binding document, by whatever name called, conveying an agreement or decision to acquire control, shares, voting rights or assets:

Provided that if the acquisition is without the consent of the enterprise being acquired, any document executed by the acquiring enterprise, by whatever name called, conveying a decision to acquire control, shares or voting rights shall be the "other document":

Provided further that where a public announcement has been made in terms of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, for acquisition of shares, voting rights or control, such public

announcement shall be deemed to be the "other document".

(9) Where, in a series of steps or individual transactions that are related to each other, assets are being transferred to an enterprise for the purpose of such enterprise entering into an agreement relating to an acquisition or merger or amalgamation with another person or enterprise, for the purpose of Section 5 of the Act, the value of assets and turnover of the enterprise whose assets are being transferred shall also be attributed to the value of assets and turnover of the enterprise to which the assets are being transferred."

20. Regulation 5 of the Combination Regulations governs the form of notice to be filed under Section 6(2) of the Act. Such notice is ordinarily filed in Form I, which requires disclosure of the transaction structure, the parties and their business activities, market overlaps or linkages, and other information necessary for the CCI to form a prima facie view on whether the proposed combination is likely to cause AAEC. Form II is a more detailed form of notification which may be filed at the parties' option in specified circumstances, or required by the CCI where further detail is necessary to form its prima facie opinion. The intensity of disclosure and scrutiny thus scales with the potential competitive significance of the transaction.

21. In addition to prescribing the form of notice, the statutory scheme empowers the CCI to seek further information or clarification from the notifying parties. This power flows from Section 29 of the Act read with Regulation 5(4) of the Combination Regulations and is commonly exercised through Requests for Information ("RFIs"), which enable the CCI to test, verify, or clarify the

disclosures made in the notice. For example, where a notice asserts that there are no horizontal overlaps between the parties, but the CCI's preliminary examination indicates potential overlaps, it may seek additional particulars such as market information, lists of competitors and customers, or details of supply and distribution arrangements.

22. The architecture of Form I is also relevant because it is not confined to financial thresholds or market shares. It is intended to elicit (i) a coherent description of the combination as an economic arrangement, and (ii) the materials on which the parties themselves assessed and justified the transaction. In particular, Item 5.3 calls for the parties to state, in substance, the purpose / rationale of the proposed combination; and Item 8.8 calls for furnishing material documents prepared by or for the parties in relation to the combination (including internal analyses, presentations, memoranda, or reports placed before decision-makers). These disclosures assist the CCI in testing whether the notice reflects the transaction as conceived and intended to operate.

23. First, Item 5.3 requires the notifying parties to state, in substance, the economic and strategic purpose / rationale of the proposed combination. The object is to ensure that the CCI is informed not merely of the legal form of the transaction, but of what the combination is intended to achieve in commercial terms, and how it is intended to operate. Secondly, Item 8.8 requires the

parties to furnish material documents prepared by or for the parties in relation to the combination, including documents that analyse, evaluate, or justify the transaction (such as internal notes, presentations, strategy papers, assessments, or reports placed before decision-makers). The disclosure of such documents is designed to assist the CCI in testing whether the description of the transaction in the notice matches the transaction as it was conceived, evaluated, and presented within the parties' own decision-making processes.

B.6. "Inter-connected steps" and the substance-over-form principle

24. It is a recognised feature of contemporary commercial transactions that a single economic arrangement may be implemented through multiple agreements, instruments, or sequential steps. The merger control framework under the Act and the Combination Regulations expressly acknowledges this commercial reality and seeks to ensure that regulatory scrutiny is directed at the transaction as it is intended to operate in substance.

25. Regulation 9(4) of the Combination Regulations addresses such situations. It provides that where the ultimate intended effect of a business transaction is achieved by way of a series of steps or through smaller individual transactions, one or more of which may independently amount to a combination, the parties are required to file a single notice covering all such inter-

connected steps / transactions. The object of this provision is to ensure that the CCI is placed in a position to assess the transaction in its entirety, rather than in fragmented or artificial segments.

26. **Regulation 9(5) of the Combination Regulations** reinforces this approach by expressly incorporating the principle of substance over form. It mandates that the requirement of filing notice shall be determined with respect to the substance of the transaction, and that any structure of a transaction which has the effect of avoiding notice in respect of the whole or any part of a combination is to be disregarded. In other words, the CCI is not confined to the formal labels or sequencing adopted by the parties, but is required to examine the real commercial objective and cumulative effect of the transaction while determining compliance with the notification requirement. For example: Company A wants to acquire Company B but does it in three steps: (1) buys 9% today, (2) takes an option to buy 42% later, and (3) enters governance agreements giving it decisive veto rights now. Even if each step is described as “small” or “independent”, if they are part of one integrated commercial plan to achieve acquisition or control, the law expects disclosure as one integrated transaction.

B.7. Why “rights” matter: control and material influence

27. In merger control, competitive effects may arise not only from the acquisition of a majority shareholding, but

also from the acquisition of rights that enable a party to influence the affairs, management, or strategic conduct of an enterprise. This follows from the inclusive explanation of "control" in Section 5 of the Act, as applicable during the relevant period, read with the CCI's merger-control approach, which looks to the real ability of a party to shape commercial conduct and decision-making rather than merely to the percentage of shares acquired. Such influence may arise through rights contained in shareholders' agreements or other governance instruments, including veto rights over annual budgets or business plans, approval rights in respect of capital expenditure, appointment or removal of key managerial personnel, restrictions on the transfer of material assets, consent requirements for entry into significant contracts, or limitations on the manner in which the enterprise may conduct its business in the market. The acquisition of such rights may alter the incentives, strategic choices, or competitive behaviour of the target enterprise, and is therefore relevant to the CCI's assessment of a combination.

28. For example, an investor may acquire only a minority shareholding, such as twenty five percent, in a target enterprise. However, if that investor is vested with the power to block the approval of the annual business plan, major capital investments, or expansion into new markets, the investor may be able to exercise material influence over how the target competes. Such influence, even in the

absence of majority ownership, may have a bearing on the competitive dynamics of the relevant market and is therefore a matter which the CCI is required to consider while examining a proposed combination.

B.8. What the CCI does with a notice

29. Once a notice is filed in accordance with Section 6(2) of the Act, the CCI proceeds in terms of the statutory scheme governing the inquiry into combinations. This scheme is principally contained in Section 29 of the Act, which prescribes the procedure for investigation, and Section 31 of the Act, which empowers the CCI to pass orders upon completion of its assessment as to whether the proposed combination is likely to cause AAEC.

30. Under Section 31 of the Act, the CCI may approve the combination unconditionally, approve the combination subject to such modifications as it may deem necessary, or prohibit the combination altogether if it is of the opinion that the combination has caused or is likely to cause an appreciable adverse effect on competition within the relevant market in India. Merger control under the Act is fundamentally *ex ante* in character. The CCI's approval is premised on the disclosures made by the notifying parties and the competitive assessment carried out on the basis of those disclosures at the stage prior to implementation of the transaction. The statutory design assumes that the notifying party will place before the CCI sufficient and accurate information to enable it to evaluate the

transaction as it is intended to operate in the market. For example, the CCI is not expected to infer or speculate about the structure or competitive implications of a transaction. The obligation lies on the notifying party to present the transaction in a manner that enables the CCI to assess its likely operation and impact on competition, before the transaction is given effect.

B.9. Penalties and consequences: non-notification vs misleading or incorrect disclosure

31. Chapter VI of the Act contains the provisions relating to penalties and offences. These provisions are designed to secure compliance with the merger control framework by attaching legal consequences to failures in notification and to false or misleading disclosures made to the CCI. For the purposes of the present case, three provisions are of particular relevance.

32. Section 43A of the Act deals with failure to give notice of a combination as required under Section 6(2) of the Act. It is attracted where a transaction which is notifiable under the Act is implemented without the requisite notice being furnished to the CCI, or where the conduct of the parties, viewed in substance, amounts to a failure to notify what was statutorily required to be notified. For example, if an enterprise completes a notifiable acquisition of shares or control without filing any notice under Section 6(2) of the Act, the consequence contemplated under Section 43A of the Act may arise.

33. Section 44 of the Act addresses a distinct class of contraventions in the context of a combination. It applies where a person, being a party to a combination, makes a statement which is false in any material particular, or omits to state a material particular, in a notice, document, or information required to be furnished under the Act or the rules or regulations framed thereunder, with the knowledge contemplated by the provision. Section 45 of the Act is broader in its reach. It concerns offences relating to the furnishing of particulars, documents, or information under the Act, and applies where a person makes a statement or furnishes a document which is false in a material particular, omits to state a material fact knowing it to be material, or wilfully alters, suppresses, or destroys a document required to be furnished. Thus, while both provisions are concerned with the integrity of information placed before the CCI, Section 44 of the Act is specifically directed to false statements and material omissions by a party to a combination in the combination process, whereas Section 45 of the Act is wider and also extends to more aggravated misconduct concerning required documents. For example, if a notifying party states that there are no agreements affecting the competitive conduct of the target enterprise, while withholding an agreement that materially alters incentives, access, or strategic behaviour in the market, the applicability of Section 44 of the Act or Section 45 of the Act may arise, depending on the precise nature of the

statement, omission, document, and the mental element prescribed by the statute.

34. Conceptually, the statutory scheme thus draws a distinction between two categories of contraventions. The first concerns non-notification of a notifiable combination, which is addressed by Section 43A of the Act. The second concerns defective, false, or misleading notification or disclosure, which is addressed by Sections 44 and 45 of the Act. Depending on the facts of a given case, one or both categories may be engaged, depending on the law that was required to be notified or disclosed and what was in fact furnished to the CCI. This distinction also matters to the statutory consequences available after the CCI's *ex ante* assessment. An approval under Section 31 of the Act is founded on the notice and the information furnished at the time of review. The Act separately provides for consequences (i) for failure to notify (Section 43A of the Act) and (ii) for materially false or misleading statements / material omissions in a notice or information furnished (Sections 44 and 45 of the Act), while also imposing a time-bound limit on the CCI's power to initiate an AAEC inquiry under Section 20(1) of the Act (discussed below). Therefore, the statutory route to be invoked is determined by the applicable conditions and limits.

B.10. Limitation under the proviso to Section 20(1)

35. **Section 20(1) of the Act** empowers the CCI to inquire into whether a combination has caused or is likely

to cause an appreciable adverse effect on competition. The proviso to Section 20(1) of the Act, imposes a temporal limitation on the exercise of this power by providing that the CCI shall not initiate an inquiry under that sub-section after the expiry of one year from the date on which such combination has taken effect.

36. The expression "has taken effect", used in the proviso to Section 20(1) of the Act, has given rise to interpretative disputes in practice. Such disputes commonly concern, first, the point in time at which a combination can be said to have taken effect, and secondly, the manner in which the limitation provision operates where there is controversy regarding the completeness of notification, the legality of implementation, or the precise nature of the transaction which was placed before the CCI for assessment. For example, where a transaction is implemented in stages, a question may arise as to whether a combination "takes effect" upon the occurrence of an initial step, such as the payment of consideration or the issuance of shares, or only at a later stage when control or material influence over the target enterprise is actually acquired. The proviso reflects a legislative concern for transactional certainty and timely regulatory action in merger control, given the *ex ante* character of review under Sections 6 and 31 of the Act.

37. With this statutory and regulatory framework in view, we now proceed to set out the factual background

and the rival submissions in a manner necessary to frame the issues arising in the present appeal.

C. Factual Background and Procedural History

C.1. Parties and their roles in the transaction

38. The present proceedings arise from a transaction structure by which Amazon, the appellant, proposed to acquire an equity interest in Future Coupons Private Limited[6], an entity within the Future Group, together with certain rights associated with that investment. The dispute also concerns how the transaction and related arrangements, including arrangements connected with Future Retail Limited[7], were presented for regulatory approval under the Act and the Combination Regulations.

C.2. Amazon group entities relevant to the dispute

39. Amazon is a direct subsidiary of Amazon.com Inc.[8]. Amazon was the investing entity through which the proposed acquisition of shareholding in FCPL was structured.

40. The Amazon group carries on business operations in India through various Indian affiliates. For the purposes of the present dispute, reference is made to Amazon Seller Services Private Limited[9], Amazon Retail India Private

[6] In short "FCPL"
[7] In short "FRL"
[8] In short "ACI"
[9] In short "ASSPL"

Limited[10], Amazon Pay (India) Private Limited[11], Amazon Wholesale (India) Private Limited[12], and Amazon Transport Services Private Limited[13].

41. ASSPL operates an e-commerce marketplace platform in India and facilitates sales by third-party sellers to end consumers. ARIPL undertakes retail of certain products through the marketplace. APIPL provides digital payment services. AWIPL carries on wholesale activities. ATSPL provides services connected with shipping and logistics. These Indian affiliates are referred to in the record principally because certain commercial arrangements were stated to exist, or to be contemplated, between such Amazon affiliates and entities within the Future Group.

C.3. Future Group entities relevant to the dispute

42. The transaction concerned entities belonging to the Future Group. The principal entities relevant to the dispute are Future Corporate Resources Private Limited[14], FCPL, and FRL.

43. FCPL is the entity in which Amazon proposed to acquire shareholding. The proposed acquisition was stated to be on a fully diluted basis, and the governance and investor protection rights associated with that

[10] In short "ARIPL"
[11] In short "APIPL"
[12] In short "AWIPL"
[13] In short "ATSPL"
[14] In short "FCRPL"

investment were set out in the transaction documents described later.

44. FCRPL is described in the record as an entity within the promoter group structure of the Future Group. It is referred to because, as part of the transaction steps notified for regulatory approval, (i) certain changes were proposed in relation to FCPL's shareholding, and (ii) an internal transfer step was proposed by which FCPL would acquire an additional equity shareholding in FRL through a transfer of shares held by FCRPL.

45. FRL is a listed company described as the flagship retail entity of the Future Group. FRL carried on retail operations through various formats and brands, and it is the enterprise around which the retail business and retail assets of the group were centred. FRL assumes significance in the present proceedings because the transaction documents and disclosures referred to certain rights and arrangements said to operate in relation to FRL, albeit through FCPL.

46. The relationship between FCPL and FRL is relevant on two planes. First, FCPL had subscribed to equity warrants of FRL which were convertible into equity shares representing 7.30 percent of the share capital of FRL on a fully diluted basis, within a stipulated period. Secondly, the notified transaction contemplated, in addition to the warrants held by FCPL, a step by which FCPL would acquire an additional equity interest in FRL through an

internal transfer of shares within the Future Group structure.

47. The promoter group associated with the Future Group, led by Mr. Kishore Biyani, is also referred to in the record. In substance, the Future Group relationships relevant for present purposes are that FCPL and FCRPL were entities within the promoter group structure, while FRL was the listed retail operating company whose shares and governance arrangements formed part of the wider commercial context.

48. The notified transaction, as presented for regulatory approval, was routed through Amazon's proposed acquisition of shareholding in FCPL, coupled with rights and obligations contained in the transaction instruments, and linked in the disclosures to FCPL's shareholding and arrangements in relation to FRL. The transaction steps and the principal instruments by which they were implemented are set out next.

C.4. The transaction architecture and key instruments

49. The transaction structure relevant to the present proceedings was implemented and presented through a set of agreements executed in August 2019, together with certain pre-existing arrangements within the Future Group structure. For clarity, the principal instruments are set out below, along with the purpose they served in the overall architecture.

C.5. FCPL Share Subscription Agreement

50. On 22.08.2019, Amazon and FCPL entered into a share subscription agreement[15]. In substance, a share subscription agreement is the contract by which an investor agrees to bring money into a company, and the company agrees to issue new shares to the investor in return. It ordinarily sets out the number and nature of the shares to be issued, the price to be paid, and the conditions that must be satisfied before the shares are issued.

51. Under the FCPL SSA, Amazon agreed to acquire 49 percent of the equity share capital of FCPL on a fully diluted basis, by way of a preferential allotment, for a consideration of INR 1,431 crores. "Fully diluted" indicates that the percentage is measured by assuming that any instruments which can convert into shares are treated as having been converted, so that the percentage reflects the stake after such conversions. A "preferential allotment" indicates that the shares are issued to a specified investor rather than being offered generally.

52. The FCPL SSA further contemplated that Amazon's investment would be undertaken only after certain steps within the Future Group structure were completed, and also contemplated certain steps to follow thereafter. In the notice placed before the CCI, these steps were described as Transaction I and Transaction II, and Amazon's acquisition of shareholding in FCPL under the FCPL SSA

[15] In short "the FCPL SSA"

was described as Transaction III. In simple terms, Amazon's investment was presented as being linked to the completion of those internal restructuring steps, and not as an isolated or independent allotment.

C.6. FCPL Shareholders' Agreement

53. On 22.08.2019, Amazon, FCPL, and other parties within the Future Group structure entered into a shareholders' agreement[16]. In substance, a shareholders' agreement is the contract by which the shareholders agree on how the company will be governed after the investment, including how key decisions will be taken, what information the investor is entitled to receive, and what rights shareholders have in relation to matters requiring approval. The FCPL SHA set out the governance framework and the rights and obligations of the shareholders of FCPL following Amazon's acquisition of shareholding under the FCPL SSA.

54. The FCPL SHA also described rights that were linked, in the disclosures, to FRL by reason of FCPL's investment and holding in FRL. In effect, it contemplated that certain matters concerning FRL, where FCPL's consent or decision would be relevant as a shareholder of FRL, would not be acted upon by FCPL without Amazon's prior written consent, as described in the transaction disclosures. Put simply, although Amazon was acquiring shareholding in FCPL, the FCPL SHA contemplated that Amazon would

[16] In short "The FCPL SHA"

have a say, through FCPL, in specified decisions connected with FCPL's position and rights in relation to FRL.

C.7. Shareholders' agreement relating to FRL and the warrants background

55. Prior to execution of the FCPL SSA and the FCPL SHA, FCPL had subscribed to equity warrants of FRL which were convertible into equity shares representing 7.30 percent of FRL's share capital on a fully diluted basis, within a stipulated period.

56. On 12.08.2019, FCPL, FRL, and the relevant shareholders and promoters within the Future Group structure executed a shareholders' agreement relating to FRL[17].The FRL SHA set out the mutual rights and obligations of its parties as shareholders of FRL, including rights exercisable by FCPL as a shareholder of FRL.

57. The warrants transaction was stated to have been separately notified and approved by the CCI by order dated 15.04.2019 in Combination Registration No. C-2019/03/653. The FRL SHA, executed thereafter, forms part of the background against which the FCPL SHA described certain rights in relation to FRL, to be exercised through FCPL.

C.8. Business commercial arrangements

[17] In short "FRL SHA"

58. Alongside the above instruments, the record refers to certain existing and contemplated commercial arrangements between (i) affiliates of the Amazon group in India, and (ii) FRL and other entities within the Future Group. These commercial arrangements were described as Business Commercial Agreements[18].

59. The BCAs included arrangements relating to listing and sale of products on the Amazon marketplace platform, arrangements connected with delivery programmes, arrangements relating to supply of certain products, and arrangements relating to acceptance of digital payment instruments. The relationship between these commercial arrangements and the notified transaction steps later became a matter of contest in the proceedings.

C.9. Chronology and procedural history

60. On 22.08.2019, Amazon and the Future Group parties executed the FCPL SSA and the FCPL SHA, which together governed Amazon's proposed investment into FCPL and the rights associated with that investment.

61. On 23.09.2019, Amazon filed a notice under Section 6(2) of the Act in Form I under the Combination Regulations, which was registered as Combination Registration No. C-2019/09/688.

62. In the notice, Amazon described the combination as comprising three transactions, structured to operate sequentially:

[18] In short " the BCAs"

(i) Transaction I: the issue of 9,183,754 Class A voting equity shares of FCPL to FCRPL, with FCPL being a wholly owned subsidiary of FCRPL both prior to and immediately after such issuance;

(ii) Transaction II: the transfer to FCPL of 13,666,287 shares of FRL held by FCRPL, representing 2.52 percent of FRL's issued, subscribed and paid up equity share capital on a fully diluted basis; and

(iii) Transaction III: Amazon's acquisition, by preferential allotment, of subscription shares representing 49 percent of FCPL's total issued, subscribed and paid up equity share capital on a fully diluted basis.

It may be noted that this numbering reflects the description in the notice as placed by the appellant, whereas the approval order dated 28.11.2019 later described Amazon's acquisition of 49 percent of FCPL as "Transaction I" and referred to the other constituent steps as "Transaction II" and "Transaction III".

63. Amazon stated that its obligation to consummate Transaction III was subject to completion of Transactions I and II. It was also stated that Transactions I and II were not notifiable on a standalone basis, being intra-group steps. In relation to Transaction III, Amazon asserted that it was, on a standalone basis, covered by the "target

exemption" based on FCPL's asset and turnover position as of 31.03.2019. Without prejudice to its stated position on exemption, Amazon nevertheless notified the combination, including with reference to Regulation 9(4) of the Combination Regulations.

64. In describing the transaction documents, Amazon stated that, in relation to the notified combination, the parties had executed only the FCPL SSA and the FCPL SHA. The notice also referred to FRL and to the FRL SHA. In that context, Amazon stated that it would acquire certain rights under the FCPL SHA to protect its investment, including rights that required FCPL to obtain Amazon's prior written consent before FCPL could decide on, or implement, any matter under the FRL SHA where FCPL's consent was required. It was also stated that Amazon would not have any direct shareholding in FRL and would not acquire rights directly in FRL, and that the rights were exercisable through FCPL.

65. The notice referred to FCPL's earlier investment in FRL through equity warrants, noting the approval dated 15.04.2019 in Combination Registration No. C-2019/03/653. It was also stated that subsequent to the warrants transaction, the promoters, FCPL and FRL entered into the FRL SHA. The notice additionally referred to certain existing and contemplated BCAs involving entities within the Amazon group and FRL, including arrangements governing listing and sale of FRL products on the marketplace, an agreement for supply of certain

products by a Future Group entity to an Amazon entity, and a memorandum of understanding relating to offering Amazon Pay as a payment option at FRL outlets and websites. Amazon stated that these arrangements were not inter-connected with, and were not part of, the notified combination. It was also stated that, given the proximity of execution, certain of these arrangements were proposed to be given effect to only after receipt of the CCI's approval in relation to the notified combination.

66. During review of the notice, communications were issued requiring removal of information gaps. Amazon filed its responses on 15.11.2019. In those responses, Amazon elaborated upon the stated rationale for the investment and also addressed queries regarding the nature of rights referred to in relation to FRL and the FRL SHA, as well as the context in which FCPL's investment in FRL was described.

67. The appellant has also relied upon the breadth of the contemporaneous review process to submit that the Commission was not dealing with a bare or skeletal filing. According to the record as placed before us, the notice in Form I ran into substantial length with numerous annexures; two Requests for Information were issued by the Commission; detailed written responses, together with annexures, were furnished; and a meeting was held with senior officials of the Commission in which the retail-side linkages, including FRL-facing aspects and the contemporaneously contemplated commercial

arrangements, were addressed. The appellant further asserts that representatives of the Future Group also participated in that exercise. These matters are relevant, not to dilute the notifying party's duty of candour, but to assess whether the Commission was, in fact, denied a real opportunity to examine the FRL-linked dimensions of the transaction at the ex ante stage.

68. On 28.11.2019, the CCI approved the combination notified in Combination Registration No. C-2019/09/688. Thereafter, on 25.03.2021, FCPL moved an application before the CCI raising grievances regarding the completeness and correctness of disclosures made in the notice and related submissions, and seeking initiation of proceedings in relation to the notice and the approval granted.

69. On 04.06.2021, the CCI issued a show cause notice to Amazon initiating proceedings under Sections 43A, 44 and 45 of the Act in relation to the disclosures made in the notice and the approval granted. In those proceedings, responses were filed and hearings took place, including participation by FCPL, and also participation by a third-party intervener.

70. In the course of those proceedings, certain internal note/communications by email of the appellant, including communications dated 24.05.2018, 10.07.2018 and 19.07.2019, were brought on record. These were relied upon by the Commission as bearing upon the internal

conception of the transaction, including the commercial objective sought to be achieved through FCPL, the relationship with FRL, and the broader structure through which strategic rights in relation to FRL were said to be pursued. The appellant disputed both the inferences sought to be drawn from them and their legal significance, contending that the earlier materials related to exploratory structures not ultimately adopted and that the finally executed documents alone governed the notified transaction.

C.10. CCI's order dated 17.12.2021

71. By order dated 17.12.2021, the CCI concluded the proceedings initiated under Sections 43A, 44 and 45 of the Act in relation to the notice filed by Amazon in Combination Registration No. C-2019/09/688 and the approval granted on 28.11.2019.

72. In substance, the CCI proceeded on the footing that merger control under the Act is an *ex ante* regime and that its approval necessarily rests upon the completeness and correctness of disclosures made in the notice and in the supporting material furnished during review. The CCI noted that the notice, as filed in Form I, described the combination and the connected documentation in a particular manner and, during review, Amazon maintained its position on the scope and inter-connection of the arrangements disclosed.

73. The CCI then held that the disclosures made by Amazon did not place the CCI in a position to evaluate the combination in its real scope and intended operation. The CCI took the view that the notice and the subsequent correspondence portrayed the transaction as a limited investment into FCPL, while material arrangements bearing upon the strategic alignment of the parties, and the rights and interests sought to be acquired in the overall transaction setting, were either not disclosed in full or were presented as unconnected with the notified combination.

74. In particular, the CCI found that the manner in which the transaction documents and the rights and arrangements relating to FRL were presented in the notice did not reflect, in substance, the full set of contemporaneous arrangements that were relevant to the CCI's assessment. The CCI further held that the commercial arrangements between Amazon group entities and FRL (described in the record as the BCAs and related commercial understandings) could not, on the CCI's assessment, be treated as entirely divorced from the combination where they were executed in close proximity and were part of the broader commercial structure through which the parties proposed to operationalise their alignment in the relevant sectors.

75. On this basis, the CCI concluded that the deficiencies were not immaterial. It held that the omissions and statements in the notice and accompanying

material were of a nature that affected the regulatory assessment itself, since the CCI's task is to examine the combination as it would operate in the market and to evaluate whether it is likely to cause AAEC.

76. The CCI, accordingly, held that Amazon had:

(i) failed to notify the combination as required under Section 6(2) of the Act in its true scope and substance, thereby attracting proceedings and penalty under Section 43A of the Act; and

(ii) made false statements and/or omitted material particulars in the notice and in documents/information furnished in the course of review, thereby attracting Sections 44 and 45 of the Act.

77. Consequent upon these findings, the CCI:
(i) kept the approval granted on 28.11.2019 in Combination Registration No. C-2019/09/688 in abeyance;
(ii) directed Amazon to file a fresh notice in Form II within the stipulated period; and
(iii) imposed monetary penalties upon Amazon under Section 43A of the Act and under Sections 44 and 45 of the Act, with consequential directions regarding payment.

C.11. Decision of the NCLAT

78. Amazon challenged the CCI's order dated 17.12.2021 before the NCLAT. The NCLAT, by the impugned judgment,

affirmed the CCI's core conclusions as to the nature of the disclosures made in the notice and the consequences that followed under the Act and the Combination Regulations.

79. In addressing Amazon's challenge, the NCLAT proceeded on the basis that the CCI was entitled to examine whether the notice, and the material furnished during review, placed the CCI in a position to assess the combination as it was structured and intended to operate. The NCLAT held that the CCI's review could not be rendered ineffective by selective disclosure, and that the statutory scheme requires full and candid disclosure of material particulars relevant to merger control scrutiny.

80. The NCLAT endorsed the CCI's view that the transaction documents and the rights arising therefrom were required to be considered in substance, including in the context of inter-connected steps. It upheld the CCI's conclusion that the impugned proceedings were not confined to a purely technical deficiency, but concerned the CCI's ability to assess the combination on the basis of complete and accurate material. The NCLAT also sustained the CCI's decision to keep the earlier approval in abeyance and to direct a fresh notice in Form II, holding that such directions were linked to the CCI's statutory obligation to ensure that combinations are assessed on proper disclosures and within the framework contemplated by the Act and the Combination Regulations.

81. In relation to penalties, the NCLAT affirmed the CCI's jurisdiction to invoke the relevant penal provisions where the statutory requirements were found to be attracted on the facts as recorded. To the extent the NCLAT interfered with any part of the penalty or directions, it did so on the basis of its evaluation of the statutory thresholds and proportionality within the scheme of Chapter VI. Being aggrieved by the judgment of the NCLAT, which upheld the CCI's order dated 17.12.2021 in the manner indicated above, Amazon has instituted the present civil appeal.

D. Submissions of the parties

D.1. Submissions on behalf of the appellant

82. Learned senior counsel Mr. Gopal Subramanium appearing for the appellant submitted that the impugned proceedings had proceeded on an erroneous understanding of the notice filed under Section 6(2) of the Act, of the scope of the CCI's jurisdiction while reviewing a notified combination, and of the statutory requirements governing disclosures. It was urged that the CCI's order dated 17.12.2021, and the judgment of the NCLAT affirming it, were vitiated both on substance and on jurisdictional and procedural grounds.

D.1.1. Proceedings are said to be triggered by a collateral dispute; arbitration is urged to be legally irrelevant

83. It was further submitted that the proceedings before the CCI had been initiated upon an application moved by

FCPL in the midst of disputes between the parties arising out of contractual arrangements, which were already the subject matter of arbitration and allied proceedings. It was asserted that the CCI's process had been invoked as a countermeasure to the appellant's contractual enforcement.

84. The appellant further submitted that the arbitration proceedings had no determinative bearing on the present dispute under the Act. It was emphasised that the CCI itself had recorded that, while some factual foundations might overlap, the legal issues in arbitration and those arising in the proceedings under the Act were mutually independent. On this basis, it was pleaded that any attempt to rely upon pleadings or positions taken in arbitration to sustain action under Sections 43A, 44 and 45 of the Act was misconceived.

85. The appellant also contended that the contexts were distinct. A merger control review was an ex ante statutory assessment of whether a proposed combination was likely to cause AAEC. Arbitration, on the other hand, involved an ex post adjudication of contractual rights and alleged breaches after the relevant arrangements had taken effect. It was argued that statements made in arbitration could not be mechanically treated as admissions of non-disclosure or misrepresentation in the merger filing.

86. It was also submitted that there had been no misrepresentation of the CCI's approval order before the arbitral tribunal, and that the appellant's case in

arbitration had proceeded on the agreements and covenants as executed and disclosed.

D.1.2. Section 43A is inapplicable as this is not a case of "failure to give notice"

87. The appellant submitted that Section 43A of the Act concerned failure to give notice as required under Section 6(2) of the Act. The present matter, it was argued, was not one of non-notification. A notice in Form I had been filed, the filing had run into a substantial record with annexures, the CCI had issued requests for information, detailed responses had been furnished, and the combination had been approved under Section 31(1) of the Act.

88. On these premises, the appellant contended that proceedings and penalty under Section 43A of the Act were legally unsustainable, because the statutory mischief contemplated by Section 43A of the Act was not attracted where notice had in fact been given and the combination had been approved after review.

D.1.3. Distinction between Section 5 and Section 6; the role of Regulations 9(4) and 9(5)

89. The appellant submitted that the CCI and the NCLAT had proceeded on an incorrect construction of the statutory scheme. It was argued that Section 5 of the Act concerned what constituted a "combination" and therefore what triggered the obligation to notify. Section 6 of the Act, read with Section 20(4) of the Act, concerned what the CCI

had to examine in order to assess competitive effects and determine whether the combination was likely to cause AAEC.

90. It was further argued that Regulations 9(4) and 9(5) of the Combination Regulations required the notifying party to disclose inter-connected steps and to place substance over form, so that the CCI might assess the transaction as it was intended to operate. However, according to the appellant, these regulations did not expand the definition of a "combination" beyond Section 5 of the Act, nor did they convert every disclosed arrangement into an independent Section 5 of the Act trigger.

91. On this reasoning, the appellant submitted that it had correctly identified the FCPL SSA and the FCPL SHA as the transaction documents giving rise to the event under Section 5 of the Act, namely the acquisition of shares in FCPL. At the same time, it was pleaded that the FRL SHA and the BCAs had been disclosed to enable the CCI to perform its assessment under Section 6 of the Act of competitive effects.

D.1.4. Disclosure is asserted to be comprehensive; all eight agreements are said to have been placed before the CCI

92. The appellant submitted that the CCI and the NCLAT had erred in proceeding on the premise that material agreements had not been disclosed. It was urged that all eight agreements, including the FRL SHA and the BCAs,

had been furnished in the filing and had been explained through the narrative and responses to the CCI's queries.

93. The appellant submitted that the gravamen of the CCI's case was not concealment of rights, but dissatisfaction with the appellant's characterisation of disclosed rights. It was argued that this distinction was crucial when Sections 44 and 45 of the Act were invoked, because those provisions were concerned with false statements or omission of material particulars required to be stated, and not with a subsequent disagreement on how disclosed rights ought to be labelled.

D.1.5. FRL is argued to be central; "but for FRL" the FCPL acquisition is said to be exempt

94. The appellant submitted that FRL had formed an integral part of the combination as notified. It was argued that the combination had been notified as a composite structure, including inter-connected steps, precisely because FRL had been commercially and structurally central to the arrangement.

95. It was further submitted that, if one were to view the investment as only an acquisition of shares in FCPL, the transaction would, on the appellant's case, have fallen within the small target exemption on account of FCPL's assets and turnover. It was further argued that the notification had therefore been made "but for FRL", and that the CCI's later approach, which was said to treat the approval as if it were confined to a narrow payments

aspect, was inconsistent with the basis on which the filing had been made and assessed.

D.1.6. The approval would cover retail also: the CCI is said to be impermissibly re-characterising its own approval

96. The appellant submitted that it had made extensive disclosures to assist the CCI's assessment of AAEC in the Indian retail market. It was pleaded that the retail market had been identified as the only plausible relevant market for purposes of assessment, and that the competitive analysis had been presented on the assumption of integration between the relevant Amazon group entities and FRL.

97. It was submitted that the payments market had been separately disclosed where required, and that the CCI had conducted a distinct analysis of payments-related aspects, but that the filing and review had not been confined to payments alone. The appellant therefore contended that the CCI was impermissibly seeking to re-characterise the approval order by asserting that approval had been granted only with reference to payments and not the retail market. Such an approach, it was argued, was contrary to the record of disclosures and to the structure of the approval itself.

D.1.7. Sections 44 and 45 are inapplicable: alleged "cherry-picking" and mischaracterisation of material

98. The appellant submitted that Sections 44 and 45 of the Act were not attracted. It was argued that the CCI had

selectively relied on particular statements from the filing, without reading them in the context of the queries asked, the structure of Form I, and the accompanying annexures and responses.

99. It was further argued that internal documents and emails had been mischaracterised. According to the appellant, documents predating the final structure were not reflective of what was ultimately notified, and the executed agreements had superseded prior negotiations and understandings. It was also pleaded that the substance of the internal email of 19.07.2019 had stood reflected in the contractual provisions and disclosures actually made.

100. The appellant also contested the reasoning that, because the filing stated that the BCAs were not "part of the combination", the CCI had been precluded from assessing their competitive effects. It was urged that such agreements had been disclosed under the competitive assessment portion precisely so that the CCI could evaluate any competitive implications, even if those agreements did not constitute an independent trigger under Section 5 of the Act. The appellant further submitted that there was no requirement to disclose the basis for arriving at the consideration amount, and that an alleged absence of valuation rationale could not be elevated into misrepresentation, particularly where the statutory scheme and Form I did not require such disclosure.

D.1.8. Allegations of "fraud" are urged to be misconceived

101. The appellant submitted that the NCLAT had erred in treating the matter as one involving fraud on a statutory authority. It was contended that a finding of fraud, in this statutory setting, would have required a clear foundation that something required by law to be disclosed had been suppressed with intent to evade the Act, and that such suppression had materially impacted the CCI's exercise of jurisdiction and its competitive assessment. It was submitted that neither the CCI nor the NCLAT had demonstrated such material impact.

102. The appellant further contended that, in the present case, the transaction documents had been notified, the CCI had conducted a review, and approval had been granted before implementation of the notified combination. It was also argued that certain arguments now raised by the CCI, including those invoking Section 21A of the Act, were afterthoughts not forming part of the CCI's reasons, and that a statutory authority could not improve its case at the appellate stage beyond what was contained in the impugned order.

D.1.9 Directions to file Form II, keeping approval in abeyance, and the scale of penalties are all assailed

103. The appellant submitted that the CCI had no statutory power to keep its approval order in abeyance and to direct a fresh filing in Form II after approval. It was argued that merger control was ex ante in character, that

the CCI was a creature of statute, and that the directions issued travelled beyond the scheme of Sections 29 and 31 of the Act.

104. The appellant further submitted that the magnitude of penalty imposed was unprecedented and disproportionate, and was inconsistent with the scale of penalties generally imposed under Section 43A of the Act. It was also contended that the impugned order travelled beyond the show cause notice, thereby violating principles of natural justice.

105. For all these reasons, the appellant submitted that the order dated 17.12.2021 passed by the CCI and the judgment of the NCLAT affirming it deserved to be set aside, along with the consequential directions and penalties.

D.2. Submissions on behalf of Respondent No. 1 (Competition Commission of India)

106. The submissions advanced on behalf of Respondent No. 1 by learned Additional Solicitor General Mr. N. Venkataraman and Mr Sanyat Lodha, learned Advocate-on-Record proceeded on the premise that the order dated 17.12.2021 and the judgment of the NCLAT dated 13.06.2022 were rooted in the statutory scheme of merger control and in concurrent findings on non-disclosure and misrepresentation.

107. It was submitted that the present case turned on the notifying party's statutory duty to place before the CCI the

complete and correct combination, including all inter-connected steps, and to make full and truthful disclosure of material particulars in the notice and the material filed during review. It was contended that where approval was obtained on incomplete or incorrect disclosures, the approval could not be permitted to operate as a bar against corrective action under the Act. The following were the main assertions of Respondent No. 1:

D.2.1. Duty of full disclosure in an ex ante merger control regime

108. It was submitted that merger control under the Act was ex ante in character. It was contended that Section 6(2) of the Act required notice before a combination was given effect, so that the CCI could assess the true competitive impact in advance.

109. It was further submitted that compliance was not achieved by filing a form alone. The duty was to disclose the true nature, scope, and purpose of the combination, and to furnish material particulars so that the regulatory assessment could be undertaken on an accurate foundation. Misrepresentation, suppression, or concealment of material information was said to strike at the root of the approval process. Reliance was placed on the Combination Regulations to submit that the statutory mandate was operationalised through Form I disclosures, the power to seek additional information during review, and the power to direct filing in Form II where a deeper assessment was necessary.

D.2.2. Inter-connected steps and substance over form

110. Great emphasis was placed on Regulation 9(4) of the Combination Regulations and Regulation 9(5) of the Combination Regulations. It was submitted that Regulation 9(4) of the Combination Regulations required a single notice covering all steps where the ultimate intended effect of a transaction was achieved through a series of inter-connected steps. It was further submitted that Regulation 9(5) of the Combination Regulations mandated that the filing requirement was determined with reference to the substance of the transaction, and that any structuring having the effect of avoiding notice for the whole or part of the combination had to be disregarded.

111. On this basis, it was contended that the transaction instruments comprising the FCPL SSA, the FCPL SHA, and the FRL SHA formed part of one integrated commercial understanding designed to confer strategic rights and material influence over FRL through FCPL. It was further argued that denial of inter-connection, coupled with treatment of the BCAs as unrelated, had prevented a proper appreciation of the transaction in its true scope.

D.2.3. How the combination was presented in the notice and how approval was obtained

112. It was submitted that, at the stage of notification, the transaction had been presented as an investment in FCPL and its coupons and payments-related business. It was

contended that the disclosures had repeatedly asserted absence of direct or indirect shareholding in FRL and absence of direct acquisition of rights in FRL. It was further submitted that, even where FRL-related rights had been referred to, they had been characterised as limited investor protection rights exercisable through FCPL and derived from the FRL SHA, which had been stated to have been negotiated independently of the investment. It was also submitted that certain BCAs between Amazon group entities and FRL had been disclosed, while expressly stating that such arrangements were neither inter-connected with nor part of the combination, and that this position had been reiterated during review in responses to the CCI's queries.

113. It was argued that approval under Section 31(1) of the Act dated 28.11.2019 had been granted on the basis of the combination as notified and explained during review. It was submitted that approval could be accorded only in respect of the combination claimed and assessed, and not in respect of an unpresented or concealed transaction. Reliance was also placed on the condition recorded in the approval order that the approval was contingent and would stand revoked if information furnished was found to be incorrect, and that approval would not operate as immunity from proceedings under other provisions of the Act.

D.2.4. Basis for initiation of proceedings under Sections 43A, 44 and 45

114. It was submitted that an application dated 25.03.2021 had been placed before the CCI asserting that false representations had been made and material particulars had been suppressed while obtaining approval. It was contended that, upon examination, a view had been formed that the FRL SHA had not been identified or notified as part of the combination, that strategic interest in FRL had been concealed, and that false or incorrect representations had been made while suppressing material facts.

115. It was submitted that the show cause notice dated 04.06.2021 had set out contradictions on three themes: (i) the purpose of the combination, (ii) the relationship between the agreements, and (iii) the nature of rights over FRL. It was argued that the show cause notice had called upon the appellant to explain why it should not be held to have failed to give notice in respect of the FRL SHA and to have furnished false or incorrect information and suppressed material facts, thereby attracting Sections 43A, 44 and 45 of the Act.

D.2.5. Internal communications relied upon; "twin entity" structure and "foot-in-the-door" objective

116. It was submitted on behalf of Respondent No. 1 that internal communications of the appellant, including communications dated 24.05.2018, 10.07.2018 and 19.07.2019, were placed on record during the show cause proceedings and demonstrated that the transaction was

internally conceived in broader strategic terms than those reflected in the notice. In that regard, reliance was placed, inter alia, on the following expressions appearing in the internal record: that Amazon was not then allowed to make direct FDI investment in FRL without Government approval; that if Amazon made a direct investment in FRL, its Indian affiliates could not enter into BCAs with FRL for sale of FRL products on Amazon's marketplace platform; and that "Amazon would like a 'Foot-in-the-door'." It was further pointed out that the same material recorded that Amazon had "strategic interest over FRL's retail business and assets" and that the rationale for investment in FCPL was said to include "the acquisition of material and strategic rights over FRL", entry into various BCAs, acquisition of an indirect shareholding in FRL, and acquisition of a call option to acquire FRL shares when regulations would permit.

117. It was further submitted that another internal communication dated 10.07.2018 described FRL as one of the key players in the offline retail market to partner with, identified strategic objectives including the ability to become the single largest shareholder in FRL when permissible, the preclusion of competitive interest, and commercial arrangements to bolster the appellant's ultra-fast delivery programme, while the internal email dated 19.07.2019 referred to the proposed "twin entity" structure under which the appellant would acquire 49 percent in FCPL and FCPL would acquire 8 to 10 percent

in FRL. Reliance was also placed on the assertion that the number of FRL shares to be held through FCPL was calculated such that the appellant could indirectly hold the same number of FRL shares that it would otherwise have acquired directly, and that the 25 percent premium was linked to strategic rights and a call option. On this basis, it was argued that these communications revealed the true intended structure and purpose of the transaction and that their non-furnishing under Item 8.8, while furnishing the "Taj Coupons" presentation instead, materially distorted the picture placed before the Commission.

D.2.6. Non-disclosure and misrepresentation: documents, purpose, and inter-connected steps

118. In this regard, first, it was submitted that relevant documents had been suppressed under Item 8.8 of Form I, because key internal communications evidencing the asserted true intent and structure had not been furnished despite the disclosure obligation and despite opportunities during review.

119. Secondly, it was submitted that the purpose and rationale disclosed under Item 5.3 of Form I, and the nature of rights disclosed under Item 5.1.3, had not reflected the asserted real transaction. It was contended that the narrative had been framed around FCPL's business potential and that FRL had been projected as a factor of financial strength, while the strategic retail

purpose and "foot-in-the-door" objective had not been disclosed.

120. Thirdly, it was submitted that the FRL SHA and the BCAs had not been notified as inter-connected steps, and that the filing had expressly asserted that the commercial arrangements were neither part of nor connected with the combination. It was argued that this had prevented the CCI from assessing the combination as an integrated commercial whole.

121. On these bases, it was contended that the complete and correct combination had not been notified as required by Section 6(2) of the Act read with the Combination Regulations, thereby attracting Section 43A of the Act. It was also argued that the notice and responses had contained false statements or omissions of material particulars, thereby attracting Sections 44 and 45 of the Act.

D.2.7. Keeping approval in abeyance, directing Form II, and imposing penalties

122. It was submitted that, once approval was found to have been obtained on incomplete or incorrect disclosures, the CCI had been justified in keeping the earlier approval in abeyance and directing a fresh filing in Form II so that the combination could be assessed on the basis of complete and truthful information. The directions were sought to be supported by reference to Regulation 5(5) of the Combination Regulations and by the submission that the CCI possessed authority to pass consequential

directions in proceedings concerning furnishing of information. Reliance was also placed on Section 45(2) of the Act as a source of residuary power to pass such orders as were necessary to preserve the statutory purpose.

123. It was further argued that where approval was procured by fraud or misrepresentation, the CCI had the power to undo the consequences of such approval, and that the power to revoke included the lesser power to keep approval in abeyance pending a fresh and proper filing. It was submitted that penalties had been justified in view of the nature of contraventions found, and that the NCLAT had upheld the penalty under Section 43A of the Act while reducing penalties under Sections 44 and 45 of the Act.

D.2.8. Misrepresentation before other fora and arbitral findings on the scope of approval

124. It was submitted that the appellant had misrepresented the scope of the approval order before other fora by portraying the approval as covering a broader business transaction than what had been notified and assessed. It was also submitted that the arbitral tribunal had returned findings or commentary on the nature and scope of the CCI's approval without the CCI being a party, and that an approval order was *in rem*. Reliance was placed on ***Vidya Drolia v. Durga Trading Corporation***[19] to submit that disputes *in rem* are non-arbitrable.

D.2.9. Limitation under the proviso to Section 20(1)

[19] (2021) 2 SCC 1

125. It was submitted that the proviso to Section 20(1) of the Act did not bar the present proceedings. It was contended that limitation applied where a combination had taken effect as contemplated by law, whereas where the true and complete combination had not been notified in the manner required, the proviso could not be invoked to defeat corrective action.

126. It was also argued that the present proceedings had arisen from a notice filed under Section 6(2) of the Act and action taken in relation to misrepresentation and suppression, and that this was not to be equated with initiation of a fresh inquiry in the manner contemplated under Section 20(1) of the Act. Reliance was also placed on the condition recorded in the approval order concerning incorrect information, contending that the condition remained operative and had no temporal embargo.

D.2.10. Response to the criticism that the order dated 17.12.2021 contains no AAEC analysis

127. It was submitted that the criticism that the order dated 17.12.2021 did not contain an alternate AAEC analysis was misconceived. It was contended that the focus of that order had not been to re-evaluate AAEC on the merits of the correct combination, but to determine whether the notice and disclosures had been truthful and complete so as to enable a proper AAEC inquiry.

128. It was argued that a detailed AAEC analysis could only follow a proper filing containing true, correct and

complete particulars of the actual combination, and that directing Form II while keeping the earlier approval in abeyance had been procedurally sequenced on that basis.

129. On these submissions, it was prayed that the civil appeal be dismissed and that the impugned judgment be upheld.

D.3. Submissions on behalf of Respondent Nos. 2 and 3

130. Respondent Nos. 2 and 3 had, in substance, adopted submissions broadly aligned with those noticed in relation to Respondent No. 1 on the issues of disclosure-driven ex ante merger control, inter-connected steps/substance-over-form, suppression of internal documents (including emails to senior management), and the consequent justification for keeping the approval in abeyance and directing a fresh Form II filing. Apart from the aforesaid commonality, the following additional/differentiating submissions were emphasised.

D.3.1. Respondent No. 2's additional points

131. It was submitted that the present civil appeal raised no substantial question of law; rather, it impermissibly sought a de novo re-appreciation of evidence and concurrent findings of fact, which was contended to be beyond the permissible appellate remit.

132. It was further submitted that there was no stay operating against the directions issued by the NCLAT, yet the appellant had not complied with them, including the direction to file a fresh notice in Form II under the

Combination Regulations within the stipulated period, and, on that premise, it was argued that the appellant was not entitled to discretionary relief.

D.3.2. Respondent No. 3's additional points

133. Respondent No. 3 submitted, additionally, that the impugned conduct had a distinct illegality dimension, namely, that the transaction structure was a device to obtain an entry or foothold in India's multi-brand retail trade sector by circumventing the extant FDI regime, and that the consequences were borne by small traders and MSMEs represented by Respondent No. 3.

134. It was submitted that, had full and candid disclosure been made at the notification stage, the CCI could have examined the matter with the benefit of inter-agency inputs, including, as contended, recourse contemplated under the regulatory framework, and that this underscored why suppression or misrepresentation could not be treated as inconsequential merely because an AAEC assessment had been undertaken on the truncated narrative.

135. It was also submitted that limitation objections predicated on the proviso to Section 20(1) of the Act could not be invoked as a shield against proceedings founded on fraud or misrepresentation, particularly where the gravamen was non-disclosure attracting the statutory consequences under Sections 44 and 45 of the Act.

E. Issues for determination

136. The rival submissions enlisted above, and the nature of the relief sought in this appeal, give rise to certain questions which fall for determination. Since the present appeal is preferred under Section 53T of the Act against the decision of the NCLAT, a threshold question also arises as to the proper scope and standard of interference by this Court with the conclusions reached by the NCLAT, including the extent to which concurrent findings returned by the CCI and affirmed by the NCLAT may be revisited in an appeal of the present nature.

137. Subject to the above, the following issues arise for consideration in the present appeal:

Issue (I): Whether, on a proper construction of Section 6(2) of the Act read with Regulations 9(4) and 9(5) of the Combination Regulations, the appellant was obligated to notify, in a single comprehensive notice, all inter-connected steps and agreements by which the ultimate intended effect of the transaction was to be achieved; and whether the notice filed in Form I under the Combination Regulations satisfied that obligation in substance.

Issue (II): Whether the CCI and the NCLAT were correct in holding that the appellant's manner of notification and disclosure, including the treatment of the FRL SHA and the BCAs, amounted to a failure to notify the complete combination as required by law, thereby attracting action under Section 43A of the Act.

Issue (III): Whether the findings of suppression, omission, and misrepresentation recorded against the appellant, including in relation to Item 5.3 and Item 8.8 of Form I under the Combination Regulations and the responses furnished during review, satisfy the statutory requirements of Sections 44 and 45 of the Act.

Issue (IV): Whether, and to what extent, the proviso to Section 20(1) of the Act bears upon the CCI's authority to initiate and conclude proceedings of the present nature, having regard to the basis on which the show cause notice dated 04.06.2021 was issued and the character of the proceedings culminating in the order dated 17.12.2021.

Issue (V): Whether the CCI possessed the statutory power to keep the approval order dated 28.11.2019 in abeyance and to direct the appellant to file a fresh notice in Form II under the Combination Regulations; and whether such power can be traced to the Act and the Combination Regulations, including the residuary power under Section 45(2) of the Act, the scheme of Regulation 5(5) of the Combination Regulations, and the condition recorded in the approval order itself.

Issue (VI): Whether the impugned proceedings are vitiated for breach of the principles of natural justice, including the appellant's contention that the final findings and directions travelled beyond the show cause notice dated 04.06.2021, or that the appellant was otherwise denied a fair opportunity to meet the case against it.

F. Findings and Analysis

F.1. Scope of appellate interference under Section 53T of the Act

138. Before we turn to the issues framed above, it is necessary to clarify the scope of interference in an appeal under Section 53T of the Act. The present civil appeal is directed against an appellate decision of the NCLAT, arising from proceedings before a specialist regulator, namely the CCI, exercising merger control jurisdiction under the Act.

139. Section 53T of the Act provides a statutory appeal to this Court by an aggrieved party against a decision or order of the NCLAT, subject to limitation and the power to condone delay on sufficient cause. Though the provision is couched in broad terms, its exercise must still be understood in the context of the statutory scheme. The CCI is an expert regulator entrusted with fact-intensive economic assessment. The NCLAT is the designated appellate forum to examine the legality, correctness, and sustainability of the CCI's orders on the record. In this institutional design, an appeal under Section 53T of the Act cannot be treated as a third round of factual adjudication on the same material, as though this Court were another fact-finding tribunal.

140. Accordingly, while exercising jurisdiction under Section 53T of the Act, this Court ordinarily applies settled appellate discipline. It examines whether the NCLAT has applied the correct legal principles, adopted the correct

approach to statutory interpretation, acted within jurisdiction, and reached conclusions sustainable in law and from the record. It does not, in the ordinary course, reweigh evidence merely because another view is possible.

141. Where concurrent findings of fact are returned by the CCI and affirmed by the NCLAT, interference is warranted only on recognised grounds such as findings based on no evidence; ignoring material evidence; reliance on irrelevant considerations; misreading vital documents; conclusions so unreasonable that no fair-minded adjudicator could reach them; or application of an incorrect legal test. The same restraint applies to submissions which, in substance, seek reappreciation of facts under the guise of a legal challenge.

142. At the same time, the present appeal raises questions which are, in their core, questions of law and jurisdiction, including the construction of Section 6(2) of the Act read with Regulation 9(4) and Regulation 9(5) of the Combination Regulations, the legal threshold for attracting Sections 43A, 44 and 45 of the Act, the effect of the proviso to Section 20(1) of the Act, the source and limits of the CCI's power to keep an approval in abeyance and direct a fresh Form II filing, and compliance with natural justice in the issuance and adjudication of the show cause notice. On such questions, the correctness of the legal framework applied is itself under scrutiny.

143. We shall, therefore, proceed on the following basis:

(i) where the controversy turns on interpretation of the statute and regulations, the existence or limits of statutory power, or compliance with natural justice, the matter will be decided on first principles of statutory construction and administrative law; and

(ii) where the controversy turns on factual appreciation, this Court will not undertake a fresh fact-finding exercise, but will test whether the concurrent findings are supported by the record, rest on a correct understanding of law, and are free from perversity or material procedural unfairness.

144. It is in this framework that we now proceed to consider the issues arising for determination.

Issue (I): Whether, on a proper construction of Section 6(2) of the Act read with Regulation 9(4) and Regulation 9(5) of the Combination Regulations, the appellant was required to notify all inter-connected steps and agreements forming the composite transaction in a single notice; and whether its Form I filing met that requirement in substance.

145. This issue concerns the scope of the notification obligation in a structured transaction. Section 6(2) of the Act requires that a proposed combination be notified so that the CCI can undertake an *ex ante* assessment of its competitive effects. This is because the *ex ante* review contemplated by Section 6(2) of the Act can be meaningfully undertaken only if the proposed

arrangement is presented as it is designed to operate, and not in a fragmented manner that obscures connected steps or the substance of the transaction. Regulation 9(4) and Regulation 9(5) of the Combination Regulations address the manner in which that notification must be made where the parties seek to achieve the commercial outcome through multiple related instruments and steps. The issue has arisen because the CCI and the NCLAT proceeded on the basis that the notice filed in Form I did not, in substance, disclose the complete set of inter-connected steps and agreements by which the ultimate intended effect of the transaction was to be achieved.

F.2. What Regulation 9(4) and Regulation 9(5) of the Combination Regulations require

146. Regulation 9(4) of the Combination Regulations provides that: "Where the ultimate intended effect of a business transaction is achieved by way of a series of steps or smaller individual transactions which are inter-connected, one or more of which may amount to a combination, a single notice, covering all these transactions, shall be filed by the parties to the combination." The plain terms of Regulation 9(4) of the Combination Regulations make two features clear. First, the trigger is the "ultimate intended effect" of the business transaction, and not the isolated form of any one step. Second, where that ultimate intended effect is achieved through "a series of steps" or "smaller individual

transactions" that are "inter-connected", the regulation mandates "a single notice" "covering all these transactions". The object is to prevent fragmentation, namely the presentation of a composite arrangement in a piecemeal manner that obscures how the intended commercial outcome is to be achieved. The words "covering all these transactions" are of wide amplitude and are not confined to only those steps which, viewed in isolation, may independently qualify as a combination. They require that the CCI be presented with the full set of inter-connected steps through which the parties propose to achieve the ultimate intended effect, so that the combination is evaluated as a composite whole for the purposes of Section 6(2) of the Act.

147. Regulation 9(5) of the Combination Regulations further provides that: "The requirement of filing notice under regulation 5 of these regulations shall be determined with respect to the substance of the transaction and any structure of the transaction(s), comprising a combination, that has the effect of avoiding notice in respect of the whole or a part of the combination shall be disregarded." Regulation 9(5) of the Combination Regulations is, therefore, an express anti-avoidance direction. It instructs that the obligation to notify is to be tested by the "substance of the transaction", and it requires the CCI to disregard any "structure" that "has the effect of avoiding notice" in respect of the whole or a part of the combination. Read together with Regulation 9(4) of

the Combination Regulations, the scheme is clear. The regulations aim to ensure that parties do not, by transactional architecture, defeat the statutory purpose of notification by splitting, sequencing, or describing connected arrangements in a manner that results in avoidance of notice of the combination in substance. At the same time, the focus of these provisions is on whether the CCI was placed in a position to assess the combination with full knowledge of the connected steps and linkages that explain how the arrangement is intended to operate. These provisions do not turn the notification regime into a purely formal exercise of labels. They require disclosure of the connected steps so that the CCI can examine the combination on its substance, while disregarding any structuring that is designed, or has the effect, of avoiding notice of the whole or a part of the combination.

F.3. The controversy that falls for determination under Issue (I)

148. The controversy here is not whether the CCI is entitled to examine the transaction in substance. The controversy is whether the Form I notice, read as a whole, failed to place before the CCI the inter-connected steps and agreements that were said to constitute the composite arrangement, in particular the FRL SHA and the BCAs, with the consequence that the notice could not be treated as a single comprehensive notification within the meaning of Regulation 9(4) of the Combination Regulations and was

not a disclosure of substance within the meaning of Regulation 9(5) of the Combination Regulations.

149. It is also necessary to identify the limits of this issue. Issue (I) is confined to the completeness of notification and disclosure for the purposes of Section 6(2) of the Act read with Regulation 9(4) and Regulation 9(5) of the Combination Regulations. It does not finally determine whether any particular instrument, by itself, constituted a notifiable combination under Section 5 of the Act, or whether the conduct amounted to a failure to notify attracting penalty. Those questions arise under the subsequent issues.

F.4. Findings on disclosure and comprehensiveness of the notice

150. The determination of this issue must be anchored in the contemporaneous regulatory record that was before the CCI in the Section 6(2) of the Act proceeding which culminated in an approval under Section 31(1) of the Act. That record comprises the Form I notice as filed, the executed instruments annexed to the notice, the information furnished in response to the CCI's requisitions during the statutory review, and the approval order itself. It is with reference to this record, and not by hindsight reconstruction, that the Court must assess whether the notice "covered" the inter-connected steps for the purposes of Regulation 9(4) of the Combination Regulations, and whether the CCI was placed in a position to examine the transaction by reference to its substance

for the purposes of Regulation 9(5) of the Combination Regulations.

151. Read as a whole, the filing did not confine itself to an isolated acquisition step. The notice referred to the agreements explaining the structure and the rights proposed to be acquired, including the shareholders' agreement in relation to FRL (FRL SHA), and also referred to the commercial arrangements relied upon by the respondents as constituting relevant inter-connections, including the business cooperation arrangements (BCAs). The contemporaneous record shows that copies of the FRL SHA and the BCAs were placed before the Commission, that the rights and rationale pertaining to those arrangements were addressed in the notification and subsequent responses, and that the Commission's own RFIs and approval order demonstrate that the FRL-linked aspects of the transaction were in fact examined at the ex ante stage. If that be so, this is not a case in which the Commission can be said to have been left ignorant of the FRL-facing dimensions of the transaction or denied a real opportunity to examine them at the ex ante stage.

152. Nor does the record, as presented by the appellant, support the suggestion that the FRL SHA or the FRL-facing aspects of the transaction lay inert in some remote annexure without intelligible linkage to the notified structure. The appellant's case is that the FRL SHA was expressly referenced in the notification itself, repeatedly cross-referred to in the FCPL SHA, and further explained

in the responses furnished during review. If that is so, the respondents' suggestion that the relevant FRL-linked material was merely buried in the record becomes correspondingly weaker.

153. The respondents are correct in one limited sense. Their case is not that the FRL SHA and the BCAs were wholly absent from the record. Their case is that these arrangements were not notified as constituent inter-connected steps of the combination, but were disclosed only in a legally distancing or under-characterised manner. That distinction must be confronted directly. In our view, however, Regulation 9(4) does not make the sufficiency of notice depend upon the notifying party's own adoption of the Commission's eventual legal characterisation. Once the executed agreements, the rights flowing therefrom, their temporal proximity, and their commercial linkages were before the Commission in the same review process, and the Commission in fact queried and examined those FRL-linked aspects during review, the matter could not readily be recast as one of absence of a composite notice in any real sense. At most, the controversy was one of asserted under-characterisation or legal distancing of disclosed arrangements, and not of their complete non-placement before the Commission.

F.5. Application of Regulation 9(4) and Regulation 9(5) of the Combination Regulations

154. Where the notice, read with contemporaneous clarifications, renders the interconnection intelligible and operationally capable of assessment, the requirement of a single notice 'covering' inter-connected steps cannot be treated as having failed merely because the notifying party did not itself adopt the regulator's later characterisation of every disclosed arrangement. The transaction was not presented through fragmented and sequential notifications so as to deprive the CCI of a composite picture. The relevant instruments were brought on record in a single notice and were processed as part of one review under Section 6(2) of the Act. Regulation 9(4) of the Combination Regulations is not satisfied by the mechanical inclusion of papers divorced from the narrative, but by a notice which, read as a whole, discloses the connected steps and explains the linkages by which the ultimate intended effect is to be achieved. On the present record, that functional requirement stands met.

155. Once it is shown that the notice disclosed the agreements and the material rights and relationships arising from them, a later dispute as to the proper legal or economic characterisation of those rights does not, by itself, justify treating Regulation 9(5) as having been violated. A later disagreement about how those rights ought to have been described, or whether a particular set of rights should be viewed through a different analytical lens, does not convert disclosure into non-disclosure. Regulation 9(5) of the Combination Regulations requires

disclosure of substance, not the adoption of a particular label.

156. A notice "covering" inter-connected steps for the purposes of Regulation 9(4) of the Combination Regulations ordinarily entails two elements: first, placing the relevant instruments on the CCI's record; and second, explaining, either in the notice itself or in responses furnished during review, the linkages by which those instruments operate within the composite structure to achieve the ultimate intended effect. Where these elements are satisfied, the CCI is enabled to apply Regulation 9(5) of the Combination Regulations and examine the substance of the transaction, irrespective of the notifying party's descriptive label.

157. The respondents also contended that "mere filing" or "mere annexing" of documents, or reference in footnotes, cannot amount to disclosure, and that a valid notice must not conceal material in the "crevices" of the record. As a general proposition, disclosure is not a mechanical checklist. However, the statutory test remains functional. The question is whether the notice, read with the contemporaneous clarifications sought and furnished during review, placed the CCI in a position to examine the connected arrangements in substance at the *ex ante* stage. Where the CCI in fact issued requisitions, received responses, and thereafter recorded in its approval order the overlaps and relationships involving FRL, it is not open to treat the same record as if it was unintelligible or

effectively hidden from scrutiny. On these facts, the "crevices" critique does not displace the conclusion that the notice covered the inter-connected steps within the meaning of Regulation 9(4) of the Combination Regulations and enabled an assessment in substance within the meaning of Regulation 9(5) of the Combination Regulations. Indeed, the Commission's own conduct during the statutory review, issuing requisitions and receiving responses on FRL-linked rights, relationships, and overlaps, demonstrates that the FRL-facing aspects of the transaction were treated as part of the live record being examined. Where the approval order itself records FRL-linked overlaps and retail-market assessment, it is untenable to suggest that the relevant interconnections were "concealed in the crevices" of the filing. As this Court has cautioned in ***State of Punjab v. Shamlal Murari***[20], 'processual law is not to be a tyrant but a servant… procedural prescriptions are the handmaid and not the mistress'. Therefore, once the regulatory record contained the connected instruments and enabled an informed *ex ante* review, alleged imperfections in presentation or labelling cannot be elevated into non-notification. This is not to condone concealment. It is to distinguish concealment from a later dispute over characterisation where the instruments were furnished, queried, and analysed in the approval itself.

[20] (1976)1 SCC 719

158. The reasoning adopted by the CCI and affirmed by the NCLAT under this issue proceeds, in substance, on the assumption that if an agreement was not identified in a particular manner, it was not comprehensively notified. That approach elevates form over substance and is inconsistent with the structure of Regulation 9(4) of the Combination Regulations and Regulation 9(5) of the Combination Regulations, particularly where the contemporaneous record shows that the agreements and their linkages were supplied and examined. This Court has repeatedly warned against depriving a party of substantive compliance by technicality, and against construing regulatory requirements in a manner that makes a fortress out of the dictionary. The focus must remain on whether the decision-maker had the necessary material to apply the law in substance as laid down in ***Mangalore Chemicals and Fertilisers Ltd. v. CCT***[21].

159. The respondents urged that the notice did not "cover" the FRL SHA and the BCAs within the meaning of Regulation 9(4) of the Combination Regulations because the appellant did not characterise them as "transaction documents" or as constituting part of the combination, and in certain portions stated that the BCAs were not part of the combination. This submission proceeds on an unduly formal view of Regulation 9(4) of the Combination Regulations. The regulation does not prescribe a talismanic label. What it requires is that the inter-

[21] (1992) Supp (1) SCC 21

connected instruments and the linkages by which the ultimate intended effect is to be achieved are brought on record in the same notification and explained with sufficient clarity to enable an *ex ante* assessment. A statement that a particular agreement, viewed in isolation, does not constitute a notifiable event under Section 5 of the Act is, at the highest, a position on classification; it does not amount to withholding, and it does not bind or disable the CCI from examining the agreement as part of the composite structure under Regulation 9(5) of the Combination Regulations.

160. It was also urged that the CCI's approval proceeded on a limited understanding confined to a payments or coupons dimension, and that the CCI therefore lacked the opportunity to examine the transaction as one operating in the retail sector. For the limited purpose of Issue (I), this premise cannot be accepted because it is contradicted by the CCI's own contemporaneous approval order, which records horizontal overlaps and vertical relationships involving FRL and its group entities and reflects an assessment undertaken with reference to the retail market at an overall level. Where the CCI's order itself evidences engagement with the overlaps and relationships involving FRL, it is not open to sustain, on this issue of comprehensiveness of notification, that the connected steps and agreements necessary for an informed review were absent from the record. The relevant portions from

the approval order dated 28.11.2019 have been reproduced hereunder:

"13. With respect to the presence of Future Group and certain Acquirer Affiliates in the business of B2C retail, the Commission carried out the assessment at the overall India retail market level, separately for the organised segment, and within the organised segment separately for other narrower segments. The Commission observed that the presence of FRL and Acquirer Affiliates in overall B2C retail or in any narrower segment stated above is not such as to raise any competition concern. Therefore, the Proposed Combination is not likely to raise any competition concern and the exact relevant market definition is being left open.

.....

14(e) The sales made by Future group entities including FRL through third party online marketplaces (including Amazon India Marketplace) are insignificant.

15. Considering the facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment of the proposed combination on the basis of factors stated in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under sub-section (1) of Section 31 of the Act."

161. In view of the findings above, Issue (I) is answered in favour of the appellant. On a proper construction of Section 6(2) of the Act read with Regulation 9(4) and Regulation 9(5) of the Combination Regulations, the obligation is to place before the CCI, in a single notice, the inter-connected steps and agreements that explain the substance of the composite arrangement. On the basis of the notice as filed, the subsequent clarifications, and the contents of the approval order under Section 31(1) of the Act, the appellant's filing could not, in the circumstances of the case, be treated as failing in substance to present a composite notification of the inter-connected arrangement. The contrary conclusion reached by the CCI and affirmed by the NCLAT, on this limited question of comprehensiveness and disclosure, cannot be sustained.

Issue (II): Whether the CCI and the NCLAT were correct in holding that the appellant's manner of notification and disclosure, including the treatment of the FRL SHA and the BCAs, amounted to a failure to notify the complete combination as required by law, thereby attracting action under Section 43A of the Act.

162. This issue concerns the threshold for invoking Section 43A of the Act in a case where a notice under Section 6(2) of the Act was admittedly filed, was processed through the statutory review mechanism, and culminated

in an approval under Section 31(1) of the Act. The CCI and the NCLAT nevertheless held that the notification was, in substance, of an incomplete combination, on the footing that the FRL SHA and the BCAs were not notified as part of the combination. The question is whether that approach is consistent with the statutory scheme.

F.6. What Section 43A of the Act requires

163. Section **43A of the Act** reads as follows:

> *"43A. Power to impose penalty for non-furnishing of information on combination.—*
> *If any person or enterprise fails to give notice to the Commission under sub-section (2) of Section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one percent, of the total turnover or the assets, whichever is higher, of such a combination.."*

164. A perusal of Section 43A of the Act reveals that it is a penal provision. Its jurisdictional foundation is the statutory default of failure to give notice to the Commission under Section 6(2) of the Act. Where the allegation is not that no notice was filed at all, but that the notice was "incomplete" in a structured transaction, the inquiry must remain anchored to whether there was, in substance, a failure to give notice of the combination as required by Section 6(2) of the Act read with Regulation 9(4) and Regulation 9(5) of the Combination Regulations.

165. Because Section 43A of the Act is penal in character and contemplates significant consequences, it must be applied only where the statutory condition for its invocation is established on the material before the CCI. It

is not attracted merely because, in hindsight, the regulator forms the view that the notice could have described aspects of the transaction differently, or because the regulator later prefers a different characterisation of disclosed documents. It is true that the phrase "fails to give notice" could, in an appropriate case, be invoked where what is filed is not a notice of the combination in substance. However, that construction cannot be applied mechanically. The operative question is whether the notice withheld an inter-connected step such that the Commission was not seized of the transaction it was being asked to clear.

166. The statutory scheme also reinforces the limited field of Section 43A of the Act. The Act contains separate provisions to address false statements, material omissions, suppression, or furnishing incorrect information in what is filed or furnished during the combination review, each with its own ingredients and safeguards. Section 43A of the Act cannot be expanded into a general penal provision for every asserted deficiency in drafting, emphasis, or presentation in a notice that was in fact filed, processed, and adjudicated.

167. Section 43A of the Act is a penal provision and must therefore be applied only upon strict satisfaction of its jurisdictional ingredients. Where a notice under Section 6(2) of the Act was filed and the CCI exercised its statutory review culminating in an approval under Section 31(1) of the Act prior to implementation, Section 43A of the Act

cannot be expanded to punish a later disagreement on how disclosed material ought to have been framed or emphasised. The Act separately provides for consequences for false statements and material omissions through Sections 44 and 45 of the Act. Section 43A of the Act cannot be converted into an omnibus penalty for every alleged defect in narration.

F.7. The controversy that falls for determination under Issue (II)

168. The controversy is narrow. The CCI and the NCLAT did not proceed on the basis that no notice was filed. They proceeded on the basis that what was notified was not the "complete combination", because the FRL SHA and the BCAs were not notified as constituent elements of the combination, and because certain parts of the notice stated that the BCAs were not part of the combination. On that footing, they treated the case as one of failure to notify the combination in substance, and thus as attracting Section 43A of the Act.

169. The question, therefore, is whether, in a case where the relevant inter-connected agreements and steps were placed on the CCI's record and processed in a single review culminating in an approval under Section 31(1) of the Act, it is permissible to hold that there was a failure to notify the combination so as to attract action under Section 43A of the Act.

F.8. Findings relevant to Section 43A of the Act

170. As already found while answering Issue (I), the contemporaneous record of the Section 6(2) of the Act proceeding demonstrates that the Form I notice, together with the annexed executed instruments and the clarifications furnished during review, placed on the CCI's record the FRL SHA and the BCAs which are now relied upon as inter-connected steps of the composite arrangement. The CCI did not treat the filing as a partial or fragmented notification. It exercised its statutory review function by issuing requisitions, receiving responses, and then granting approval under Section 31(1) of the Act prior to implementation. The appellant's case before the NCLAT was also that copies of all five BCAs were furnished, that the rights and rationale under those arrangements were disclosed, and that the FRL SHA itself carried an effective-date linkage to receipt of the CCI's approval. At the least, therefore, the record does not support the proposition that the Commission was asked to clear the transaction in ignorance of the FRL-facing linkages and commercial arrangements that are now said to have formed part of the broader structure.

171. In these circumstances, the case cannot be treated as one of failure to give notice *merely because* the Commission later concluded that the appellant's narrative understated or legally distanced certain FRL-facing arrangements. That species of disagreement does not satisfy the jurisdictional premise for action under Section

43A of the Act, which is confined to the statutory default of failure to give notice under Section 6(2) of the Act. At the most, the respondents' case is one of alleged under-emphasis, misdescription, or incomplete characterisation in a notification that was nevertheless filed, processed, and adjudicated. Allegations of that nature, if otherwise made out on the statutory requirements, belong to the field of Sections 44 and 45 of the Act. They do not, without more, satisfy the narrower jurisdictional default contemplated by Section 43A of the Act, namely failure to give notice under Section 6(2).

172. There is also force in the appellant's submission that, viewed on its own, the acquisition of shares in FCPL was asserted to fall within the small target exemption, and that the combination was nevertheless notified because of the wider FRL-linked structure and the inter-connected steps presented with it. While that submission does not by itself conclude the legal issue, it does sit uneasily with a later characterisation of the case as one of avoidance of notice or non-notification in substance. A party which comes forward with a composite filing on the footing that the wider FRL-linked structure warranted notification cannot, without closer analysis, be treated as having sought to evade notification altogether.

F.9. Errors in the reasoning of the CCI and the NCLAT

173. The approach adopted by the CCI and affirmed by the NCLAT proceeds on an equation of "imperfect

characterisation" with "non-notification". That equation is inconsistent with the structure of Section 6(2) of the Act read with Regulation 9(4) and Regulation 9(5) of the Combination Regulations. Regulation 9(4) of the Combination Regulations requires a single notice covering the inter-connected steps by which the ultimate intended effect is achieved. Regulation 9(5) of the Combination Regulations requires an examination based on substance and directs that avoidance structures be disregarded. Where the documents and linkages are placed before the CCI in a single proceeding, the statutory purpose is served. Section 43A of the Act cannot be invoked merely because the CCI later considers that the notifying party should have described the same documents in different terms.

174. The respondents sought to sustain the impugned conclusion on the footing that the FRL SHA and the BCAs were not "notified as part of the combination", since they were not characterised as "transaction documents" and because the notice contained statements that the BCAs were not part of the combination. This submission does not engage with the correct statutory inquiry. For Section 43A of the Act, the question is whether there was a failure to notify the combination in substance, not whether every inter-connected instrument was labelled in a particular manner. Regulation 9(5) of the Combination Regulations expressly cautions against a form-driven approach. It is also significant that the CCI, as the statutory decision-

maker, was never bound by the notifying party's characterisation and remained obliged to examine the substance of the transaction and its practical operation. Where the agreements were furnished and the CCI proceeded to analyse overlaps and relationships and to grant approval, it is not open to treat the same filing as a failure to notify.

175. The CCI and the NCLAT also appear to have proceeded on the assumption that the notice is incomplete unless each inter-connected agreement is treated as an independent notifiable event. That assumption is directly inconsistent with Regulation 9(4) of the Combination Regulations itself, which contemplates that one or more inter-connected steps may amount to a combination, and yet requires a single notice covering all inter-connected steps. The regulation is concerned with completeness of presentation, not with transforming every connected agreement into a separate notifiable trigger. The record demonstrates that the connected steps and instruments were placed before the CCI in one notice and were processed as one review. On that footing, the case does not satisfy the statutory premise for action under Section 43A of the Act.

F.10. Reliance on *Thomas Cook* and *SCM Solifert*

176. The respondents placed reliance on the decisions in ***Competition* Commission *of India v. Thomas Cook (India) Limited & Anr.*,**[22] and ***SCM Solifert Limited & Anr. v. Competition Commission of India*[23]**,** to contend that merger control is concerned with substance, and that the CCI is entitled to prevent parties from defeating the notification regime by fragmentation, labels, or step-wise structuring. There is no dispute with the general proposition. Regulation 9(4) and Regulation 9(5) of the Combination Regulations embody that principle. However, the application of that principle depends upon the factual setting in which the transaction was notified, reviewed, and implemented. The ratio of these decisions cannot be extended to treat a filed and approved notice as a "failure to give notice" under Section 6(2) of the Act, merely because the CCI later prefers a different interpretive emphasis on materials that were before it at the time of review.

177. In ***Thomas Cook*** (supra), the Court was dealing with a transaction structure where the regulatory concern was that the *ex ante* architecture of Section 6(2) of the Act would be defeated if notifiable acquisition steps could be treated as insulated from scrutiny by being described as separate or sequential, or by being implemented in a manner that deprived the CCI of a meaningful opportunity to examine the combination before it took effect. The

[22] (2018) 6 SCC 549
[23] (2018) 6 SCC 631

principle applied there was that parties cannot rely on formal separation of steps to defeat prior scrutiny of a composite transaction. The present case is materially different. Here, a notice under Section 6(2) of the Act was filed. The CCI exercised its statutory review function by calling for information and receiving responses. The CCI then granted approval under Section 31(1) of the Act before the combination was implemented. The foundational mischief addressed in ***Thomas Cook*** (supra), namely the frustration of prior scrutiny by implementation outside the clearance framework, is therefore absent. It is in that setting, where prior scrutiny is frustrated by structuring or sequencing, that the conduct is treated as a failure to give notice in substance for the purposes of Section 43A of the Act.

178. In ***SCM Solifert*** (supra), the decision is invoked to emphasise Regulation 9(4) and Regulation 9(5) of the Combination Regulations. The controlling concern there was that when the "ultimate intended effect" is achieved through inter-connected steps, the CCI must be placed in possession of the composite arrangement at the notification stage, and parties cannot avoid scrutiny by isolating one step and treating the remainder as unrelated. The present case does not attract that concern. As analysed under Issue (I), the agreements and arrangements now said to be relevant to the composite picture, including the FRL SHA and the BCAs, were available on the CCI's record in the same Section 6(2) of

the Act proceeding which culminated in approval under Section 31(1) of the Act. The respondents' contention, at its highest, is that the notifying party's narrative did not characterise the inter-connection with sufficient emphasis, or that the CCI, in hindsight, would have approached the same disclosed record differently. That type of dispute about characterisation does not convert a processed and approved notice into a case of failure to give notice under Section 6(2) of the Act for the purposes of Section 43A of the Act. That is the mischief to which Regulation 9(4) and Regulation 9(5) are directed, and it is only where that mischief exists that the conduct can be characterised as failure to give notice in substance for Section 43A of the Act.

179. To accept the respondents' reliance on these precedents for invoking Section 43A of the Act on the facts here would also distort the statutory scheme. Chapter VI draws a clear distinction between defaults of notice addressed by Section 43A of the Act and false statements or material omissions in what is furnished addressed by Section 44 of the Act and Section 45 of the Act. If every later disagreement about framing, or every asserted inadequacy in how disclosed material was described, could be treated as a failure to give notice, Section 43A of the Act would become an elastic penal provision capable of being invoked even where notice was filed, scrutinised, and approved. That is neither what ***Thomas Cook*** (supra) or ***SCM Solifert*** (supra) decide, nor what the text of

Section 43A of the Act permits. These decisions prevent avoidance of notice and prior scrutiny through fragmentation. They do not authorise treating a filed and approved notice as no notice merely because the CCI later views the same record through a different analytical lens.

180. In view of the findings above, Issue (II) is answered in favour of the appellant. The CCI and the NCLAT were not correct in treating the appellant's manner of notification and disclosure, in the circumstances of this case, as a failure to notify the complete combination so as to attract action under Section 43A of the Act. The statutory condition for invoking Section 43A of the Act was not satisfied on the contemporaneous regulatory record. If there remained any arguable complaint, it had to be tested, if at all, within the stricter and more specific framework governing false statements and material omissions, and not by converting a processed notification into a case of non-notification. If Issue (II) concerns the legal sufficiency of the notification as filed, Issue (III) concerns a distinct question, namely whether the contents of that filing and the non-furnishing of certain internal materials attract the penal consequences contemplated under Section 44 of the Act and Section 45 of the Act.

Issue (III): Whether the findings of suppression, omission, and misrepresentation recorded against the appellant, including in relation to Item 5.3 and Item 8.8 of Form I and the responses furnished during review, attract the requirements of Section 44 of the Act and Section 45 of the Act.

181. This issue concerns the correctness of the conclusions reached by the CCI and the NCLAT that the appellant suppressed material information and made misrepresentations during the combination review, and that such conduct attracted penalty under Section 44 of the Act and Section 45 of the Act. The gravamen of the impugned findings is that certain internal documents and communications were not disclosed with the Form I filing, and that the disclosures made in Form I, including in response to Item 5.3 of Form I and Item 8.8 of Form I, and in responses furnished during review, were either incomplete or misleading.

F.11. What Section 44 of the Act and Section 45 of the Act require

182. **Section 44 of the Act** and **Section 45 of the Act** have been reproduced hereunder:

> ***"44. Penalty for making false statement or omission to furnish material information.—***
> *If any person, being a party to a combination,—*
> *(a) makes a statement which is false in any material particular, or knowing it to be false; or*
> *(b) omits to state any material particular knowing it to be material,*
> *such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission.*
>
> ***45. Penalty for offences in relation to furnishing of information***
> *(1) Without prejudice to the provisions of Section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—*

(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or

(b) omits to state any material fact knowing it to be material; or

(c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

such person shall be punishable with fine which may extend to rupees one crore as may be determined by the Commission.

(2) Without prejudice to the provisions of sub-section (1), the Commission may also pass such other order as it deems fit."

183. Section 44 draws two distinct routes:

(a) a statement which is false in any material particular; or a statement made knowing it to be false; and

(b) omission to state a material particular knowing it to be material.

Accordingly, for Section 44(a), the inquiry is whether either limb is established on the record: (i) material falsity, or (ii) knowing falsity. For Section 44(b), the inquiry is whether a material particular was omitted with knowledge of its materiality.

184. Section 45(1) of the Act is wider in its reach and is framed "without prejudice" to Section 44 of the Act. It applies to any person who furnishes or is required to furnish, under the Act, any particulars, documents, or information. It is attracted where such person makes a statement or furnishes a document which the person knows or has reason to believe to be false in any material

particular, or omits to state any material fact knowing it to be material. Section 45(1) of the Act also targets an additional and aggravated category of conduct, namely the wilful alteration, suppression, or destruction of any document which is required to be furnished. Section 45(2) of the Act empowers the CCI to pass such other order as it deems fit, but that consequential power presupposes that the conditions under Section 45(1) of the Act are first satisfied.

185. Both Section 44 of the Act and Section 45 of the Act are penal provisions. Their invocation must rest on a precise and reasoned finding that the statutory ingredients are satisfied on the material before the CCI. These provisions are not attracted merely because the regulator later prefers a different description, emphasis, or analytical framing of information that was otherwise disclosed. They require the CCI to identify the specific statement said to be false or the specific particular or fact said to have been omitted, to explain why it was material in the context of the statutory review, and, **where the statute so requires**, to record a clear finding on the requisite state of mind. In penal adjudication, the CCI must record clear reasons. The "face of an order" must speak or otherwise it becomes an "inscrutable face of a sphinx" as held by this Court in ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan***[24].

[24] (2010) 9 SCC 496

186. The statutory mental element and the materiality requirement must be kept distinct for each limb. Under Section 44(a), liability may arise if the party either makes a statement which is false in any material particular, or makes a statement knowing it to be false. Under Section 44(b), liability arises where the party omits to state a material particular, knowing it to be material. Under Section 45(1)(a), the statute requires that the person knows or has reason to believe that the statement or document furnished is false in any material particular. Under Section 45(1)(b), the statute requires omission of a material fact, knowing it to be material. Under Section 45(1)(c), the statute requires wilful alteration, suppression or destruction of a document which is required to be furnished. The expression "suppression", and a fortiori "wilful suppression", imports a deliberate act and cannot be equated with inadvertent non-production or with a dispute as to relevance unless the document is first shown to be one that the statute or the prescribed filing framework required to be furnished.

187. In combination proceedings, materiality must be assessed with reference to the CCI's statutory function. A statement or omission is material only if it bears a rational nexus to the CCI's *ex ante* assessment of the combination and its decision under Section 31(1) of the Act. An omission of information not required by the Act or the statutory filing framework, or information that does not bear upon the competitive assessment the CCI is required

to undertake, cannot be treated as a material omission for the purposes of imposing penalty.

188. It follows that a non-disclosure cannot be elevated into a penal omission merely because, in hindsight, the authority considers the omitted matter useful or illuminating. The matter omitted must first be shown to be one which the Act, the Rules, the Regulations, or the prescribed filing framework required to be disclosed in the circumstances of the case. Absent that threshold showing, the foundation for invoking Sections 44 and 45 becomes correspondingly weak. This assumes added significance where the respondents seek to characterise the conduct as amounting, in substance, to fraud on a statutory authority.

189. Where both Section 44 of the Act and Section 45 of the Act are invoked on the same factual foundation, the CCI must also articulate the distinct basis on which each provision is attracted. Section 44 of the Act is a specific provision directed at false statements and material omissions by parties to a combination in the combination process. Section 45 of the Act is a general provision applicable to persons who furnish or are required to furnish information under the Act, and it additionally addresses wilful alteration, suppression, or destruction of required documents. The statutory scheme does not support overlapping penal consequences for the same alleged misstatement or omission without demonstrating

distinct statutory ingredients and a clear field of operation for each provision.

F.12. The controversy that falls for determination under Issue (III)

190. The CCI and the NCLAT proceeded on the basis that certain internal documents and communications, which were not furnished with the Form I filing, revealed an intent and structure that was allegedly inconsistent with the disclosures made to the CCI. They held that this amounted to suppression and misrepresentation, including in relation to Item 5.3 of Form I and Item 8.8 of Form I, and that penalties under Section 44 of the Act and Section 45 of the Act were warranted. The controversy therefore turns on whether, on the contemporaneous record of the filing and the review, the non-furnishing of those internal documents, or the manner in which the Form I responses were framed, can properly be characterised as suppression or misrepresentation of a material nature, so as to attract Section 44 of the Act and Section 45 of the Act.

F.13. Internal communications relied upon by the Commission

191. Since the impugned findings under Section 44 and Section 45 rest in substantial measure upon internal communications of the appellant, it is appropriate to notice the relevant contents of those communications in some detail. The Commission relied upon them to contend

that the transaction, though outwardly presented as an investment in FCPL, was internally conceived as a strategic arrangement directed at FRL and its retail business. The appellant, in contrast, argued that the earlier communications related to alternative or exploratory structures, and that the finally executed transaction documents and the notice filed before the Commission constituted the legally relevant record.

192. The internal material relied upon by the Commission includes the statement that Amazon was not permitted to make direct FDI investment in FRL without Government approval and that, if such direct investment were made, Amazon's Indian affiliates could not enter into BCAs with FRL for sale of FRL's products on Amazon's marketplace platform; it then records that "Amazon would like a 'Foot-in-the-door'." The same material further states that Amazon has "strategic interest over FRL's retail business and assets" and that the rationale for investment in FCPL included: acquisition of "material and strategic rights over FRL"; entry into various BCAs under which FRL products would be sold on the marketplace platform of Amazon's India affiliate; acquisition of an indirect shareholding in FRL; acquisition of a call option to acquire FRL shares from the Biyanis when regulations permit; and, "in essence", that the strategic interest of Amazon was "over the retail business and assets of FRL." It additionally records that Amazon "neither has any interest in FCPL nor is the business of FCPL of relevance to Amazon", that

Amazon was investing in FCPL "with a view to indirectly investing in FRL", that the entire sum of INR 1431 crores invested in FCPL had to be permanently invested by FCPL in FRL so that Amazon indirectly acquired 9.82 percent shareholding in FRL, that no value was attributed to the gift card and coupons business of FCPL, and that Amazon was paying a premium of 25 percent over the market price of FRL shares "for the strategic rights" being acquired over FRL through the proposed combination.

193. The Commission also relied on the 10.07.2018 internal email, which was said to describe FRL as one of the key players in the offline retail market to partner with, to identify strategic objectives including the ability to become the single largest shareholder in FRL when permissible, the preclusion of competitive interest in FRL, and entry into commercial arrangements to bolster the appellant's ultra-fast delivery programme, as well as the strategic rights expected to be obtained in relation to the "Foot-in-the-door" objective.

194. Further, the internal email dated 19.07.2019 was relied upon to show that the proposed structure was conceived as a "twin entity" structure whereby the appellant would acquire 49 percent stake in FCPL and FCPL would acquire 8 to 10 percent of FRL; that the number of FRL shares to be held by FCPL had been calculated such that the appellant could indirectly hold the same number of FRL shares that it would have acquired through a direct investment route; that the 25

percent premium was paid on account of the strategic rights and call option being provided; and that the appellant would obtain indirect control over FRL through the consent structure operating between Amazon, FCPL and FRL.

195. These communications are plainly relevant. They cannot be ignored merely because they are internal materials. They do tend to show that, within the appellant's internal deliberative process, the transaction was viewed in broader strategic terms than the restrained language used in some parts of the notice and responses. In that sense, they provide an intelligible basis for the Commission's concern that the transaction had a wider commercial setting involving FRL and the BCAs. At the same time, relevance is not the same as conclusiveness. The question under Section 44 and Section 45 is not whether internal communications used expansive commercial language, but whether the notice and accompanying material, read with the executed agreements and the responses furnished during review, contained a materially false statement or omitted a material particular required by law.

196. The evidentiary force of these communications must therefore be assessed with care. The 2018 materials are, at the least, open to the appellant's contention that they related to a period when multiple structures, including a direct investment route in FRL, were under exploration and were not finally adopted. The appellant's case, more

specifically, is that the finally adopted structure differed from what those earlier materials contemplated. The communication dated 19.07.2019 stands on a somewhat different footing because it is closer in time to the finally adopted structure. Yet even in relation to that communication, the appellant's case is not one of simple denial, but that the substance of that email stood reflected in the finally executed agreements and in the disclosures furnished to the Commission. The decisive legal inquiry therefore remains whether the non-furnishing of that internal communication rendered the actual notice and responses materially false or materially incomplete in the statutory sense. On that inquiry, the communications, though relevant, do not by themselves discharge the burden of establishing penal suppression or misrepresentation within the meaning of Sections 44 and 45 of the Act.

F14. Timing of the internal communications and the executed transaction documents

197. There is also an important temporal aspect to the internal communications relied upon by the Commission. The communications dated 24.05.2018, 10.07.2018 and 19.07.2019 all preceded the execution of the principal transaction documents. The FRL SHA was executed on 12.08.2019, while the FCPL SSA and the FCPL SHA were executed on 22.08.2019. The notice under Section 6(2) of the Act was thereafter filed on 23.09.2019. The internal communications were therefore anterior to the binding

instruments through which the parties ultimately recorded their rights and obligations.

198. This timing does not render the internal communications irrelevant. They may illuminate the commercial thinking of the appellant and may be considered where the statutory filing framework requires disclosure of material internal documents. However, their evidentiary value must be calibrated with care. Commercial negotiations often involve the exploration of alternative structures, regulatory routes, economic models and strategic objectives before the parties settle upon the final contractual form. Penal liability under Sections 44 and 45 of the Act cannot rest merely on treating pre-execution internal formulations as the transaction itself, unless it is further shown that the final agreements and the notification materially concealed, contradicted, or misrepresented the operative rights and commercial linkages actually created.

199. The controlling record for combination review must therefore remain the executed transaction structure placed before the Commission, the rights and obligations arising under that structure, the notice and responses furnished during review, and the approval order passed on that basis. Pre-execution communications may provide context against which the adequacy of disclosure is tested. They cannot, by themselves, displace the statutory inquiry. The question remains whether any material particular required to be stated was omitted, whether any

statement made was false in a material particular, whether any document required to be furnished was wilfully suppressed, and whether the mental element prescribed by Sections 44 and 45 of the Act was established.

F.15. Findings on the contemporaneous record

200. The assessment under this issue must begin, and remain anchored, in the contemporaneous record of the Section 6(2) of the Act proceeding, as summarised while answering Issue (I). The executed instruments and inter-connected arrangements relied upon by the respondents were on the CCI's record at the stage of statutory review. The CCI called for and received clarifications before passing the approval order under Section 31(1) of the Act. The allegations of suppression, omission, or misrepresentation must therefore be tested against (i) what the statutory filing framework required to be furnished, (ii) what was in fact furnished, and (iii) whether any asserted deficiency satisfies the statutory ingredients of Section 44 of the Act and Section 45 of the Act, rather than against a hindsight assessment of how the same record might now be characterised.

F.16. Item 5.3 of Form I: purpose and rationale

201. The internal communications noticed above do show that, within the appellant's internal assessment process, the transaction could be described in commercially broader terms than the language used in certain portions

of the notice. However, the statutory inquiry under Item 5.3 is not whether internal communications used stronger language, but whether the purpose and rationale required by law to be stated were expressed in a manner that amounted to a materially false statement or a materially culpable omission for the purposes of Sections 44 and 45 of the Act. For that purpose, the final transaction documents, the rights actually obtained thereunder, the inter-connected arrangements disclosed, and the responses furnished during review are of greater legal significance than internal formulations viewed in isolation.

202. On the contemporaneous record, the executed agreements and the rights flowing from them were before the Commission, and the Commission's own approval order shows that it undertook retail-market assessment involving FRL and the relevant Amazon affiliates. In such a setting, the internal articulations relied upon by the Commission may at best suggest that the appellant's internal commercial thinking was broader or more direct in tone than the restrained formulation adopted in the notice. They do not, without a more exact statutory showing, establish that the notice affirmatively misstated the rights actually being acquired under the executed structure, or that any omission in the statement of rationale was shown to be materially capable of vitiating the Commission's ex ante assessment in the manner required for penal action.

F.17. Item 8.8 of Form I: documents required to be furnished

203. Item 8.8 is not to be treated as a boundless obligation requiring production of every internal email, negotiation trail, or preliminary working paper generated during the life of a transaction. Its purpose is to secure such internal materials as bear materially on the combination as notified and on the Commission's assessment of that combination under the Act. The existence of internal materials, even those containing expansive commercial formulations, does not by itself justify penal consequences. It must still be shown that the omitted materials were within the scope of what the filing framework required to be furnished, that their non-furnishing rendered the filing materially false or incomplete in relation to the statutory review actually undertaken, and that the requisite mental element under Sections 44 and 45 stood established.

204. In the present case, the difficulty in sustaining the penal findings lies in the absence of a sufficiently reasoned demonstration by the Commission that the omitted internal materials were documents required to be furnished in the circumstances; that their non-furnishing rendered the notice or subsequent responses materially false or materially incomplete in relation to the statutory assessment; and that the distinct ingredients of Sections 44 and 45, including materiality and the applicable mental element, stood established. The mere existence of

additional internal materials, including materials reflecting preliminary or abandoned alternatives, cannot by itself justify penal consequences. This conclusion is reinforced where the internal materials preceded the execution of the binding transaction documents, and the Commission has not shown why such pre-execution deliberations remained independently material despite the subsequent execution and disclosure of the operative agreements.

F.18. Materiality and the statutory mental element

205. This brings the inquiry back to the responses furnished in Form I, including under Item 5.3 and Item 8.8, and to the responses furnished during review. The mere fact that the CCI subsequently formed the view that additional internal materials ought to have been furnished does not, by itself, establish that any answer actually furnished was false in a material particular, or that there was an omission of a material particular or material fact within the meaning of Sections 44 and 45 of the Act. A penal conclusion requires a demonstrable mismatch between what was required to be disclosed, what was disclosed, and what was withheld. It further requires a reasoned finding as to why the alleged omission or falsehood was material to the statutory review.

206. Some of the passages later relied upon by the Commission as evidence of a payments-centred narrative were, in fact, answers to pointed CCI queries directed

specifically to FCPL's coupons / payments business, or formed part of a statutorily constrained summary. If that be so, those answers could not fairly be lifted out of context and treated as defining the entirety of the notified combination or as negating the broader retail-side disclosures elsewhere in the record. In proceedings under Sections 44 and 45 of the Act, context is not incidental; it is central to the inquiry whether any particular statement was false in a material particular.

207. Materiality is also relevant from another perspective. The CCI's contemporaneous approval order reflects that it undertook an assessment on the basis of the parties and their group entities, the overlaps and relationships identified, and the disclosed commercial arrangements. In such a situation, a finding of misrepresentation cannot rest on internal phrasing unless the authority demonstrates why that internal material bore a rational nexus to, and was reasonably capable of influencing, the statutory AAEC assessment and the decision under Section 31(1) of the Act on the combination as notified. The impugned reasoning does not establish such nexus with the specificity expected in penal adjudication.

208. This aspect is reinforced by the Commission's own approval order dated 28.11.2019. That order records, in express terms, horizontal overlaps and vertical relationships involving FRL and Acquirer Affiliates, undertakes assessment in the overall India retail market, and notes FRL-linked sales through third party online

marketplaces. The contemporaneous approval record therefore materially weakens the premise that the alleged omissions prevented the Commission from examining the FRL-facing dimensions of the transaction at the ex ante stage.

209. A further distinction is necessary. The communications of 2018 are considerably weaker as a foundation for penal liability if, as the appellant contends, they related to an earlier phase in which multiple structures, including a direct investment route in FRL, were under examination and were not finally adopted. The communication dated 19.07.2019 is closer to the finally adopted structure and therefore cannot be brushed aside on the same footing. Even so, the legal question remains whether the final notice, the annexed agreements, and the subsequent responses materially concealed the operative rights and commercial linkages which that email is said to reflect. On that question, the contemporaneous review record weighs heavily against a finding that the Commission was disabled from assessing the FRL-facing dimensions of the transaction.

210. Equally, the impugned order uses broad language of knowledge and suppression, but does not sufficiently particularise how the statutory ingredients were met separately for each impugned statement, omission, and document. Under Section 44(a), liability may arise if the party either makes a statement which is false in any material particular, or makes a statement knowing it to be

false. Under Section 44(b), liability arises where the party omits to state a material particular, knowing it to be material. Under Section 45(1)(a), the statute requires that the person knows or has reason to believe that the statement or document furnished is false in any material particular. Under Section 45(1)(b), the statute requires omission of a material fact, knowing it to be material. Under Section 45(1)(c), the statute requires wilful alteration, suppression or destruction of a document which is required to be furnished. A penal conclusion cannot be sustained on insinuation or on a broad inference of "lack of candour" without a specific finding, supported by reasons, meeting these statutory ingredients. Penalty is not an automatic consequence. It is quasi-criminal in nature and is not ordinarily imposed unless the party acted deliberately in defiance of law or was guilty of dishonest conduct; it must also be noted that a bona fide belief negates penal consequences as held by this Court in ***Hindustan Steel Ltd. v. State of Orissa***[25]. A broad inference of "lack of candour", unaccompanied by a precise finding on falsity, materiality, requirement of disclosure, and the relevant state of mind, is insufficient to sustain penalty under these provisions.

F.19. Errors in the approach of the CCI and the NCLAT

211. The CCI and the NCLAT were entitled to treat the internal communications as relevant surrounding

[25] (1969) 2 SCC 627

material. However, they proceeded further to equate internal deliberations with the notified transaction itself, to equate differences in descriptive characterisation with statutory falsehood, and to equate non-furnishing of those materials, including materials pertaining to structures not finally adopted, with penal suppression, without a sufficiently exact demonstration of statutory materiality. Each step in that chain is legally unsound for the purpose of applying Section 44 of the Act and Section 45 of the Act.

212. First, the combination review is grounded in the executed transaction structure and the operative rights and linkages created thereby. The filing record shows that the executed agreements and the rights under them were furnished. Where the CCI had those agreements and undertook review on that basis, it is not permissible to treat the filing as vitiated by misrepresentation unless there is a clear finding that the filing affirmatively misstated the existence or nature of those rights, or omitted a material right or linkage that the CCI was required to examine.

213. Second, the approach adopted in the impugned decisions places undue emphasis on labels. A party may describe rights as protective or strategic, but the decisive question for the CCI's purposes remains whether the rights were disclosed and whether their competitive implications were capable of assessment. Section 44 of the Act and Section 45 of the Act are not triggered by disagreements over nomenclature. They are triggered by

false statements or omissions of material particulars. Where the rights and linkages are disclosed and annexed through executed agreements, a subsequent difference in analytical characterisation does not transform disclosure into misrepresentation. On these facts, Section 44(a) is not attracted on either limb as the Approval Order itself records that the Commission assessed FRL overlaps in B2C retail and noted FRL-linked online marketplace sales (para 13; para 14(e)), and approved under Section 31(1) (para 15). That contemporaneous engagement negatives the premise of a materially false portrayal that prevented retail-side assessment.

214. Third, the impugned reasoning does not establish, with reasons, that any identified omission or statement under Item 5.3 of Form I or Item 8.8 of Form I was material in the statutory sense. Nor does it return a specific finding satisfying the mental element required by Section 44 of the Act and Section 45 of the Act. In penal proceedings, it is not sufficient to state that certain internal documents existed and were not filed. The CCI must show that the filing framework required their furnishing in the circumstances, that the answers given were false or incomplete in a material manner, and that the omission affected the CCI's ability to perform its statutory review. Those steps are not established.

215. Fourth, the imposition of penalties under Section 44 of the Act and Section 45 of the Act on an overlapping factual foundation, without a clear delineation of how each

provision is independently attracted, results in an approach that is not faithful to the statutory scheme. Penal liability cannot be imposed in the abstract, and it cannot be multiplied by invoking general provisions where the field is already occupied by a specific provision addressing the notice process.

216. Finally, insofar as the impugned findings rely on materials introduced after the initiation of proceedings, it becomes necessary to ensure that the party against whom penalty is proposed was put to the precise case and had a fair opportunity to meet it. That aspect is considered separately while answering Issue (VI). Even on the merits of Issue (III), however, the impugned findings do not establish the statutory ingredients of Section 44 of the Act and Section 45 of the Act.

217. In view of the findings above, Issue (III) is answered in favour of the appellant. The contemporaneous filing and review record, read with the impugned reasoning, does not sustain the conclusion that the statutory ingredients of false statement, material omission, or wilful suppression were established against the appellant in the manner required by Section 44 of the Act and Section 45 of the Act. The CCI and the NCLAT proceeded on an unduly expansive understanding of these penal provisions, and on a conflation of internal deliberations and descriptive characterisations with statutory misrepresentation. The fact that the impugned internal communications predated the binding transaction documents further reinforces the

conclusion that they could provide context, but could not by themselves substitute the statutory inquiry into the executed agreements, the notice, the responses furnished during review, and the approval record. The findings of suppression, omission, and misrepresentation recorded against the appellant, insofar as they form the basis for action under Section 44 of the Act and Section 45 of the Act, cannot be sustained.

Issue (IV): Whether, and to what extent, the proviso to Section 20(1) of the Act bears upon the CCI's authority to initiate and conclude proceedings of the present nature, having regard to the basis on which the show cause notice dated 04.06.2021 was issued and the character of the proceedings which culminated in the order dated 17.12.2021.

218. This issue concerns the relationship between finality in combination control and the CCI's power to revisit an approved and consummated transaction after the passage of time. The show cause notice dated 04.06.2021 was issued long after the CCI had granted approval under Section 31(1) of the Act, and after the transaction had been given effect to. The proceedings culminated in the order dated 17.12.2021 which, apart from imposing penalties, also purported to disturb the earlier approval by directing that the approval order be kept in abeyance and by requiring the filing of a fresh notice. The question is whether such proceedings, in substance and effect, are constrained by the limitation contained in the proviso to Section 20(1) of the Act.

F.20. What the proviso to Section 20(1) of the Act requires

219. Section 20(1) of the Act is reproduced here for reference:

> ***"20. Inquiry into combination by Commission.***
>
> *(1) The Commission may, 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:*
>
> *Provided that the Commission shall not initiate any inquiry under this sub-section after the expiry of one year from the date on which such combination has taken effect."*

220. Section 20(1) of the Act is the provision under which the CCI enquires into whether a combination has caused, or is likely to cause, an appreciable adverse effect on competition in India. The proviso to Section 20(1) of the Act places an express outer limit on that power. It provides that the CCI shall not initiate any inquiry under Section 20(1) of the Act after the expiry of one year from the date on which such combination has taken effect.

221. The proviso to Section 20(1) of the Act is not a mere procedural guideline. It is a jurisdictional limitation enacted to ensure that combinations, once approved and implemented, are not left indefinitely exposed to re-opening on the merits. The combination regime is designed to function *ex ante*. The statutory architecture

proceeds on the basis that combinations are to be notified under Section 6(2) of the Act, assessed by the CCI, and either approved, modified, or prohibited under Section 31 of the Act, before they are given effect to. The proviso to Section 20(1) of the Act provides certainty and finality after implementation, by limiting the period within which the CCI may initiate an inquiry on the competition merits under Section 20(1) of the Act.

222. The limitation contained in the proviso to Section 20(1) of the Act cannot be defeated by characterising what is, in substance, an inquiry into the combination as something else. The principle is well settled that what cannot be done directly cannot be permitted to be done indirectly. If proceedings commenced after the expiry of one year have, as their practical effect, the reopening of the competitive assessment of a consummated combination, or the undoing of a prior approval so as to require a fresh substantive review, the bar in the proviso to Section 20(1) of the Act would be rendered illusory. The statutory prohibition, therefore, must be given effect according to substance and not form.

223. This does not mean that the CCI is powerless to address every form of misconduct after one year. The Act contains specific penal provisions, including Section 44 of the Act and Section 45 of the Act, which operate in their own field and are triggered by their own statutory ingredients. The point, however, is that those provisions cannot be used as a route to achieve what the proviso to

Section 20(1) of the Act prohibits, namely a belated reopening of the combination inquiry on the merits, or a belated re-doing of the approval process through a direction that requires a fresh notice and a fresh competition assessment.

F.21. The controversy that falls for determination under Issue (IV)

224. The controversy is not confined to the fact that the show cause notice dated 04.06.2021 was issued after the lapse of one year. The controversy is whether the proceedings that followed, and the order dated 17.12.2021 which resulted from those proceedings, were in substance an inquiry into the combination so as to attract the bar contained in the proviso to Section 20(1) of the Act.

225. The proceedings culminated in directions which had the direct effect of disturbing the finality of the approval granted under Section 31(1) of the Act. In particular, the order dated 17.12.2021 directed that the approval order be kept in abeyance and required the filing of a fresh notice in Form II. These directions necessarily contemplate a fresh substantive review of the combination by the CCI. The question is whether the CCI could, consistently with the proviso to Section 20(1) of the Act, initiate and conclude proceedings resulting in such directions after the expiry of one year from the date the combination took effect.

F.22. Findings relevant to the application of the proviso to Section 20(1) of the Act

226. The contemporaneous record shows that the CCI passed an approval order under Section 31(1) of the Act on 28.11.2019. It is also the appellant's recorded case before the NCLAT that the FRL SHA came into effect on 19.12.2019, and that FCPL received the subscription amount on 26.12.2019, when the FCPL SHA also came into effect. On either version urged on behalf of the appellant before the NCLAT, the combination had taken effect well before 04.06.2020. For the purposes of the present issue, it is sufficient to hold that the show cause notice dated 04.06.2021 was issued beyond one year of the transaction having taken effect on the appellant's own recorded chronology. The proviso does not necessarily bar penal proceedings for misstatements as such; it bars post-facto steps whose operative effect is to reopen merger review through measures such as approval abeyance and compelled re-notification.

227. The show cause notice dated 04.06.2021 was therefore issued beyond one year from the date on which the combination had taken effect. The order dated 17.12.2021 was passed even later. The character of the proceedings and the directions issued are equally material. The order dated 17.12.2021 did not merely impose monetary penalties. It proceeded to keep the approval order in abeyance and directed the filing of a fresh notice in Form II. Those directions do not operate in

a vacuum. They are meaningful only if the CCI is to reassess the combination afresh on the basis of the new notice, which necessarily takes the matter back into the domain of the combination inquiry and review contemplated by Section 20(1) of the Act and Section 31 of the Act.

F.23. Application of the proviso to Section 20(1) of the Act and errors in the approach of the CCI and the NCLAT

228. Once it is found that the combination had taken effect by December 2019, and that the show cause notice dated 04.06.2021 was issued after the expiry of one year, the CCI could not, consistently with the proviso to Section 20(1) of the Act, take steps which in substance reopened the combination for a fresh competition review under the guise of proceedings framed under other provisions.

229. The difficulty in the present case is that, although the proceedings were styled as proceedings relating to the notification and disclosure process, the final directions issued in the order dated 17.12.2021 had the practical effect of reopening the combination for a fresh substantive review. A direction to keep an approval order in abeyance, coupled with a direction to file a fresh notice in Form II, is not a mere ancillary consequence of penal action. It is, in substance, a step towards recommencing the combination review process after the expiry of the statutory period. That is precisely what the proviso to Section 20(1) of the Act forbids.

230. The respondents sought to meet this difficulty by contending that the proceedings were not an inquiry under Section 20(1) of the Act, but proceedings under other provisions of the Act dealing with notification, disclosure, and penalties. That submission, as a matter of principle, can be accepted only to the limited extent that the CCI is not barred from invoking distinct penal provisions which operate independently of Section 20(1) of the Act and which do not seek to reopen the competitive merits of an implemented combination. However, once the proceedings result in directions that necessarily require a fresh competition review of the combination, the proceedings cross the line from a penal inquiry into a belated reopening of combination control on the merits. To that extent, the proceedings are barred by the proviso to Section 20(1) of the Act.

231. The CCI and the NCLAT also appear to have proceeded on a premise that the CCI could, despite the proviso to Section 20(1) of the Act, effectively place the approval in a suspended state and require a fresh notice so that the transaction could be examined afresh. That approach is inconsistent with the statutory insistence on finality after one year. The proviso to Section 20(1) of the Act would have little content if, after one year, the CCI could nonetheless achieve a fresh review of the very same combination by issuing directions that require re-notification and re-examination.

232. It was also suggested that allegations of fraud or concealment justify a reopening of the approval after one year. The Act, however, contains specific provisions, including Section 44 of the Act and Section 45 of the Act, which address false statements and omissions. The proviso to Section 20(1) of the Act does not create an exception based on allegations of fraud, and it is not open to introduce such an exception by implication, particularly where the consequence would be to defeat a jurisdictional bar enacted by Parliament. In any event, the availability of penal provisions confirms that the statute has drawn a clear line between penal consequences for misconduct and the reopening of the competition merits of a consummated combination after the stipulated period.

233. In this view, and without prejudice to the further questions which arise under Issue (V) as to the existence of a substantive power to keep an approval order in abeyance or to require a fresh notice, the proviso to Section 20(1) of the Act operates as an independent and sufficient bar to any attempt to reopen the combination review process after the expiry of one year from the date the combination took effect. The directions issued in the order dated 17.12.2021, to the extent that they sought to disturb the approval and compel a fresh substantive review of the combination, are therefore beyond jurisdiction.

234. Issue (IV) is accordingly answered in favour of the appellant. The proviso to Section 20(1) of the Act bars the

CCI from initiating an inquiry under Section 20(1) of the Act after one year from the date the combination has taken effect. Having regard to the timing of the show cause notice dated 04.06.2021 and the nature of the directions issued by the order dated 17.12.2021, the CCI lacked jurisdiction, after the expiry of the statutory period, to employ proceedings of this nature as a vehicle for reopening the combination to fresh merits review, including through approval abeyance and compelled re-notification, including by keeping the approval order in abeyance and requiring a fresh notice.

Issue (V): Whether the CCI possessed the statutory power to keep the approval order dated 28.11.2019 in abeyance and to direct the filing of a fresh notice in Form II, and whether such power can be traced to the Act and the Combination Regulations, including Section 45(2) of the Act, Regulation 5(5) of the Combination Regulations, and the condition recorded in the approval order.

235. This issue concerns the source, and the limits, of the CCI's power after it has granted approval under Section 31(1) of the Act. By the order dated 17.12.2021, the CCI did not merely impose penalties. It also directed that the approval order dated 28.11.2019 be kept in abeyance and required the filing of a fresh notice in Form II. The NCLAT affirmed these directions. The question is whether the Act or the Combination Regulations confer any such power, and whether such a power can be supported either as a residuary power under Section 45(2) of the Act, or by reference to Regulation 5(5) of the Combination

Regulations, or by reliance on a condition recorded in the approval order itself.

F.24. The statutory structure does not contemplate suspension or re-opening of an approval under Section 31(1) of the Act, save in the manner expressly provided

236. The combination control framework under the Act is designed as an *ex ante* mechanism. A notice is furnished under Section 6(2) of the Act so that the CCI may assess, prior to implementation, whether the proposed combination causes or is likely to cause an appreciable adverse effect on competition. That statutory design is reflected in Section 31(1) of the Act, which provides that where the CCI forms the opinion that a combination does not, or is not likely to, have such an effect, it shall, by order, approve that combination in respect of which a notice has been given under Section 6(2) of the Act. The statutory consequence of such an order is an approval of the combination that was notified.

237. Two features of Section 31 are material. First, Section 31(1) speaks in terms of approval of "that combination" in respect of which notice has been given. It does not contemplate an intermediate category of a conditional or provisional approval that may later be kept "in abeyance" at the CCI's discretion. Secondly, the Act itself incorporates time-bound finality in combination review. Section 6(2A) provides the standstill rule. Further, Section 31(11), as applicable during the relevant period, provided for deemed approval where, after the stage

contemplated by Section 29(2), the Commission did not pass the requisite order or direction within the statutory period. The scheme, therefore, contemplates terminal legal outcomes within the statutory framework, and not an extra-statutory category of an approval kept in suspended animation.

238. In this scheme, the direction to keep an approval under Section 31(1) of the Act in abeyance, and to require a fresh notice in Form II so that the transaction is re-examined, is not a procedural adjustment. It amounts, in substance, to a power to suspend or re-open a concluded approval. Such a power cannot be assumed merely because the CCI is a regulator. It must be traceable to the Act in express terms, or by necessary implication from its structure. Section 31(1) of the Act, read with the wider statutory framework of *ex ante* review, indicates the contrary. It provides for approval as the terminal decision on a notified combination, and it does not contemplate a power to keep that approval in abeyance after it has been granted and acted upon.

239. The absence of any statutory recognition of an "approval in abeyance" is particularly significant once Section 31(11) of the Act is kept in view. Where the law itself contemplates deemed approval without any separate order on expiry of the statutory timeline, it would be incongruous to hold that the CCI nevertheless possesses a general power to place an approval in abeyance, because

such a power would, in principle, have to operate even in cases of deemed approval where there is no order to suspend. This provides further confirmation that the Act proceeds on finality of approval within the statutory framework, and does not confer a post-approval power of suspension or re-notification.

F.25. Section 45(2) of the Act does not confer a power to keep an approval order in abeyance or to compel a fresh Form II notice after approval

240. The CCI and the NCLAT sought to locate the impugned directions in the residuary language of Section 45(2) of the Act. That approach is legally untenable. Section 45 of the Act is a penal provision dealing with contraventions in relation to furnishing information. Section 45(2) of the Act is expressly framed "without prejudice" to Section 45(1) of the Act. Its function is to supplement the penal and corrective framework that operates in relation to the furnishing of information. It cannot be read as an independent source of substantive powers to revisit or suspend an approval granted under Section 31(1) of the Act.

241. A provision that is located in a penalty section, and that is intended to support the CCI's dealing with contraventions relating to furnishing of information, cannot be used to create a power which effectively nullifies, suspends, or re-opens a concluded approval granted under a different chapter and under a self-contained decision-making framework. If Section 45(2) of

the Act were construed as conferring such a wide power, it would convert a penal adjunct into a general power of review over combination approvals, thereby re-writing the statutory scheme.

242. Such an interpretation would also defeat the structure of finality embodied in the Act. It would permit the CCI to revisit approvals long after they have been granted and acted upon, by styling the exercise as an order "as it deems fit" under Section 45(2) of the Act. That would enable precisely what the proviso to Section 20(1) of the Act prohibits in substance, namely the belated re-opening of combination scrutiny after the statutory period has elapsed. The correct construction is that Section 45(2) of the Act permits only such ancillary or consequential directions as are necessary to give effect to the CCI's dealing with contraventions relating to information, within the statutory field in which Section 45 of the Act operates. It cannot be expanded to support a power to keep an earlier Section 31(1) of the Act approval in abeyance or to require a fresh Form II filing for a combination already reviewed and approved.

243. The position is further reinforced by the scheme of the Act which separately provides for penalties and consequences for distinct defaults, including those under Section 43A of the Act, Section 44 of the Act and Section 45 of the Act. Where the legislature has provided specific consequences for false statements or omissions in the combination process, it is not open to transform Section

45(2) of the Act into a substitute for a review or suspension power which the combination provisions do not confer.

F.26. Regulation 5(5) of the Combination Regulations cannot confer, and does not supply, a power to suspend an approval or require a fresh Form II filing after approval

244. The CCI and the NCLAT also relied on the scheme of Regulation 5(5) of the Combination Regulations to support the direction to file a fresh notice in Form II. That reliance is misconceived.

245. The Combination Regulations are subordinate legislation. They operate within the confines of the Act and cannot create substantive powers that the parent statute does not confer. Even if Regulation 5(5) of the Combination Regulations is understood as part of the procedural machinery governing the filing and scrutiny of notices, it cannot be interpreted as authorising the CCI to suspend or keep in abeyance an approval already granted under Section 31(1) of the Act, nor can it be treated as an independent source of a power to compel a fresh notice for a consummated and approved combination.

246. A direction to file Form II is part of the information-gathering and assessment apparatus of *ex ante* review. The CCI may, in an appropriate case and within the review process, require a notifying party to furnish further information or to furnish information in the format contemplated by Form II if the statutory and regulatory conditions for such filing are attracted. However, once the CCI has concluded its review and granted approval under

Section 31(1) of the Act, the notice process is exhausted. Regulation 5(5) of the Combination Regulations cannot be pressed into service to revive a concluded review by mandating a fresh Form II filing for the same combination.

247. Any construction of Regulation 5(5) of the Combination Regulations that authorises post-approval re-notification would not only be ultra vires the Act, but would also undermine the finality and certainty that the statutory scheme seeks to secure. Such an interpretation would allow the procedural regulation to enlarge the CCI's jurisdiction beyond the limits imposed by the parent statute, including the limitation contained in the proviso to Section 20(1) of the Act.

F.27. The condition recorded in the approval order cannot create a power to keep the approval in abeyance or to compel re-notification

248. It was also suggested that the condition recorded in the approval order itself supports the CCI's later decision to keep the approval in abeyance and require a fresh notice. This contention cannot be accepted. An approval order under Section 31(1) of the Act is a statutory determination. A condition recorded in such an order cannot enlarge the CCI's jurisdiction beyond what the Act authorises. A statutory authority cannot, by inserting a condition or reservation, confer upon itself a power which Parliament has not granted. If the Act does not confer a power of suspension or review of an approval, that deficiency cannot be cured by drafting. The validity and

enforceability of any condition must be tested against the statute. A condition cannot be a substitute for statutory power.

249. At the highest, such a condition can clarify that the approval proceeds on the correctness of the information furnished and that statutory consequences may follow if the Act so permits. But a recital in an approval order cannot, by its own force, enlarge the Commission's jurisdiction beyond the statute. Even if paragraph 16 states that the approval shall stand revoked if the information provided is found to be incorrect, that recital cannot be read as creating an independent statutory power to keep the approval in abeyance, compel a fresh Form II filing, or reopen merger review contrary to the structure and limitations of the Act.

250. It is settled that a power of review is not inherent and must be conferred by statute, either expressly or by necessary implication. In the absence of such conferment, an authority cannot revisit a concluded decision on merits merely because it later prefers a different view. The respondent side relies on broad "fraud vitiates" formulations and on reference to Section 21A of the Act to imply a recall or rescission power. Even assuming that a narrow recall power may exist in some statutory settings, it cannot be exercised to (i) bypass the time-bound finality embedded in the combination regime, or (ii) collapse the Act's careful separation between penal consequences (Sections 44/45) and merits re-examination of a

consummated combination. In the present record, the Approval Order itself demonstrates retail-market assessment and FRL-linked findings, undermining the factual premise that the Commission was disabled from reviewing the retail dimension at the ex ante stage. Even if a narrow recall power exists in cases of proved fraud, it cannot be exercised to override the Act's time-bound finality and to compel a fresh merger review after the bar contained in the proviso to Section 20(1) has come into operation. And, in any event, it cannot be used when the statutory ingredients of Sections 44/45 are not established on a reasoned finding.

F.28. Errors in the reasoning of the CCI and the NCLAT, and the respondents' contentions

251. The CCI and the NCLAT proceeded on the assumption that the power to approve a combination necessarily includes a power to annul, revoke, or keep the approval in abeyance if the regulator later forms the view that the approval was obtained on an incorrect factual premise. That reasoning is contrary to settled principles of statutory interpretation and administrative law. A power to decide in the first instance does not automatically carry with it a power to revisit or suspend the decision after it has been made, unless the statute so provides.

252. The submission that the greater power to revoke includes the lesser power to keep an approval in abeyance begs the prior question: where, under the Act, is any power to revoke an approval under Section 31(1) of the Act

conferred at all? In a statute which provides for approval (including deemed approval) and separately provides for penal consequences for misstatements, a revocation or suspension power cannot be assumed by analogy.

253. It was further urged that allegations of fraud or misrepresentation justify such a re-opening. Even assuming that a finding of fraud may have serious consequences, the question under this issue is one of jurisdiction. Allegations of fraud do not create statutory power where none exists. The Act provides specific penal mechanisms to address false statements, omissions, and suppression, including Section 44 of the Act and Section 45 of the Act, each with its own ingredients. Those provisions cannot be converted into a source of authority to suspend or re-open a concluded approval under Section 31(1) of the Act.

254. The respondents' approach, if accepted, would result in the CCI possessing an open-ended power to unsettle concluded approvals whenever it later takes a different view of the material placed before it. That would undermine the predictability and certainty that is essential to the combination control regime. It would also permit an evasion of the limitation contained in the proviso to Section 20(1) of the Act, by allowing the CCI to achieve indirectly, through a fresh Form II direction, what it cannot do directly through a belated inquiry into a consummated combination.

255. It was also urged, as an ancillary contention, that recourse could have been taken by reference to Section 21A of the Act or through inter-agency consultation. For the purposes of the present appeal, it is sufficient to observe that no such statutory route forms the basis of the CCI's impugned directions. A statutory authority must stand or fall by the reasons it records, and cannot seek to sustain jurisdiction or consequences by introducing at the appellate stage an altogether new statutory foundation not reflected in the impugned order.

256. As already discussed while answering Issue (IV), the show cause notice dated 04.06.2021 and the eventual order dated 17.12.2021 were issued well beyond one year from the date the combination took effect. Even apart from the absence of substantive power to suspend an approval, the statutory bar on initiating an inquiry under Section 20(1) of the Act after one year underscores the impermissibility of directions whose practical effect is to re-open the competition review of an implemented combination after the statutory period.

257. For these reasons, Issue (V) is answered in favour of the appellant. The CCI did not possess statutory power to keep the approval order dated 28.11.2019 in abeyance or to direct the filing of a fresh notice in Form II in respect of the same approved and implemented transaction. No such power can be traced to Section 45(2) of the Act. No such power can be sourced in Regulation 5(5) of the Combination Regulations, which in any event cannot

enlarge the CCI's jurisdiction beyond the Act. Nor can such power be created or sustained by reliance on a condition recorded in the approval order itself. The contrary view taken by the CCI and affirmed by the NCLAT cannot be sustained.

Issue (VI): Whether the impugned proceedings are vitiated for breach of principles of natural justice, including whether the final findings and directions travelled beyond the show cause notice dated 04.06.2021 and whether the appellant was denied a fair opportunity to meet the case against it.

258. This issue concerns procedural fairness in a statutory process which culminated in serious civil consequences, including adverse findings of suppression and misrepresentation, imposition of penalties, and directions affecting the efficacy of an approval granted under Section 31(1) of the Act. Even where the regulator is entrusted with wide responsibilities, the legitimacy of its adjudicatory conclusions depends upon adherence to the minimum requirements of natural justice. These requirements include fair notice of the case to be met, disclosure of the material to be relied upon, and a real opportunity to answer that case before adverse findings and consequences are imposed.

F.29. What the principles of natural justice require in proceedings of this nature

259. The foundational requirement is that the person proceeded against must know, with reasonable clarity, the precise case that is being set up. Where proceedings are

initiated through a show cause notice, the notice must disclose, in substance, the allegations which are proposed to be examined, the material basis on which those allegations rest, and the consequences that may follow if the allegations are established. This requirement is not satisfied by vague or general references. It is satisfied only where the notice, read fairly, enables the noticee to understand what it must answer.

260. Natural justice also requires that adverse findings should not be founded on material that was not put to the affected party in a manner that permits a meaningful response. If the authority proposes to rely on documents, internal communications, or other materials which form the basis of the alleged suppression or misrepresentation, the party must be given a fair chance to explain those materials in their proper context. Where the authority's final reasoning shifts from the premise in the show cause notice to a materially different factual and legal basis, fairness ordinarily requires a supplemental notice and a reasonable opportunity to meet the new case.

261. A further aspect of fairness is that the authority must not impose consequences that were never put in issue. Where the final order contains directions of a kind that the party had no reason to anticipate from the notice, the opportunity to be heard becomes illusory in relation to those directions. This is particularly so where the directions are not merely incidental procedural steps, but

operate as substantive measures affecting legal rights and settled positions.

F.30. The controversy under Issue (VI)

262. The controversy is whether the show cause notice dated 04.06.2021, and the procedure adopted thereafter, afforded a fair and adequate opportunity to the appellant, having regard to the manner in which the CCI ultimately decided the matter. This includes two linked questions.

263. The first question is whether the CCI's final conclusions, including the basis on which findings of suppression and misrepresentation were recorded and the nature of the consequential directions issued, travelled beyond the case set out in the show cause notice dated 04.06.2021.

264. The mismatch may be stated shortly. The show cause notice put in issue the asserted non-notification or defective disclosure in respect of FRL-linked arrangements, including why the FRL SHA was not notified, and framed that case through alleged contradictions and disclosure defaults. The final order, however, went further in both evidentiary reliance and consequence. It kept the approval order in abeyance, compelled a fresh Form II filing, and rested decisive conclusions on internal documents that assumed a sharper and more central role in the final reasoning than was clearly foreshadowed at the notice stage. The latter course, especially the directions concerning approval

abeyance and Form II re-filing, required explicit notice because they raised distinct questions of power, limitation, and prejudice.

265. This Court has repeatedly emphasised that in penal or punitive proceedings, the show cause notice is the foundation of the adjudicatory exercise. The notice must clearly set out the precise allegations and the proposed basis for action so that the noticee has a real and effective opportunity to respond. Where the notice is vague, or where material grounds are not put to the noticee, the opportunity to meet the case becomes illusory. The following portions from ***Gorkha Security Services v. Govt. (NCT of Delhi)***[26] echo the same principles:

> *"16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.*
>
> *17. Way back in the year 1975, this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , highlighted the necessity of giving an opportunity to such a person by serving a show-cause notice thereby giving him opportunity to meet the allegations which were in the mind of the authority contemplating blacklisting of such a person. This is*

[26] (2014) 9 SCC 105

clear from the reading of paras 12 and 20 of the said judgment. Necessitating this requirement, the Court observed thus: (SCC pp. 74-75)

"12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

*****

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

……

20. Thus, there is no dispute about the requirement of serving show-cause notice. We may also hasten to add that once the show-cause notice is given and opportunity to reply to the show-cause notice is afforded, it is not even necessary to give an oral hearing. The High Court has rightly repudiated the appellant's attempt in finding foul with the impugned order on this ground. Such a contention was

specifically repelled in Patel Engg. [Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445]

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action."

Though the context in **Gorkha Security Services (Supra)** was blacklisting, the governing principle, fair notice of both the allegations and the proposed adverse action, is of general application in punitive administrative proceedings, and applies with equal force where serious civil and penal consequences are contemplated under the Act.

F.31. Findings on the scope of the show cause notice and the course of the proceedings

266. The show cause notice dated 04.06.2021 initiated proceedings on a defined footing. It called upon the appellant to explain, inter alia, why the FRL SHA was not notified to the CCI. The notice was thus centred on a

particular asserted deficiency in notification and disclosure.

267. The final order, however, proceeded on a wider and sharper plane. While the broad themes of the show cause notice did concern purpose, relationship between the agreements, and nature of rights over FRL, the final reasoning rested substantially on internal documents and communications, including earlier-period materials, as furnishing the decisive basis for findings of suppression and misrepresentation. In a matter of this nature, where such internal materials were to assume central significance, fairness required procedural clarity and adequate opportunity directed specifically to their use and to the consequences proposed to be founded upon them.

268. The final order also issued directions of a character that were not fairly foreshadowed by the show cause notice. In particular, the show cause notice did not put the appellant on notice that the CCI proposed to keep the approval order under Section 31(1) of the Act in abeyance, or that it proposed to require a fresh notice in Form II in respect of a transaction that had already been approved and consummated. Those directions were not merely ancillary to the allegations as framed. They constituted substantive measures which the appellant was entitled to meet by focused submissions on power, jurisdiction, and prejudice.

269. The procedural course also demonstrates that third party participation and belated introduction of material

played a role in the manner and pace with which the proceedings were taken to their conclusion. The proceedings were influenced by requests made after the show cause notice stage for access, inspection, and participation. The record indicates that the timeline for the proceeding was altered and compressed by external developments, and the process ultimately moved to a final order under a shortened schedule. In a matter of this complexity and consequence, fairness required that the appellant have adequate time and a clear opportunity to respond to any expanded factual basis and any new proposed directions.

270. The combined effect of these features is that the appellant was ultimately visited with findings and directions that rested on a materially sharpened case, without the benefit of a correspondingly clear supplemental notice defining the expanded factual reliance and the consequential powers proposed to be exercised.

271. The respondents also urged that the appellant misrepresented the scope of the approval order before other fora, and that an arbitral tribunal made observations on the approval order without the CCI being a party, raising a submission based on the character of approvals as operating *in rem*. Reliance was placed on ***Vidya Drolia v. Durga Trading Corporation*** *(Supra)* to submit that disputes *in rem* are non-arbitrable.

272. These submissions do not determine the legality of the impugned action under the Act. The validity of the CCI's penal findings and consequential directions must be tested on the statutory ingredients, the contemporaneous record of the Section 6(2) of the Act review, and the requirements of fair notice and hearing in the proceedings initiated by the show cause notice dated 04.06.2021.

273. In any event, even assuming that positions taken before other fora are relied upon to suggest a broader narrative, they cannot enlarge statutory power or cure breach of natural justice. A statutory authority must sustain its adverse findings and directions on the case put in the show cause notice and on reasons recorded in its own order. The present proceedings cannot be justified by collateral controversies or by characterisation of the approval order in other proceedings, when the show cause notice itself did not set out, with the required specificity, the expanded factual and consequential case on which the final order ultimately proceeded.

F.32. Errors in the approach of the CCI and the NCLAT

274. The CCI and the NCLAT treated the proceedings as procedurally sound on the basis that the appellant had been heard and had filed responses. That approach does not answer the real question. The test is not whether a hearing in some form was afforded. The test is whether the hearing was meaningful in relation to the case that

ultimately formed the basis of the adverse findings and directions.

275. Where the show cause notice proceeded on broad themes and the final order came to rest decisively on internal communications and on consequential directions of approval abeyance and compelled Form II filing, the proceeding required greater procedural clarity than what is disclosed by the record. The absence of a focused supplemental opportunity in relation to those aspects meant that the appellant was not fairly put on notice of the full weight and consequence of the case it ultimately had to meet.

276. The respondents sought to sustain the process by contending that the CCI is not bound by the characterisation adopted by the notifying party, and that it is entitled to examine the transaction in substance. That proposition, stated at a general level, is unobjectionable. It does not, however, answer the objection of procedural fairness. The entitlement to examine substance does not dilute the duty to give fair notice of the allegations and the material on which adverse findings will be recorded. The more the authority seeks to move from the narrow premise of the notice to a broader theory of suppression or fraud, the greater is the need for specificity and clarity in notice.

277. The respondents also sought to justify the consequential directions as merely flowing from the alleged contraventions. That submission cannot be accepted. A direction that affects the operative status of

an approval granted under **Section 31(1) of the Act**, and a direction requiring a fresh Form II filing in relation to a consummated transaction, raise distinct questions of power, jurisdiction, and statutory design. Fairness required that these proposed directions be clearly disclosed as part of the case to be met, so that the appellant could address them directly and fully.

278. The NCLAT's endorsement of the CCI's approach does not cure these defects. An appellate forum may affirm or reverse a decision on the materials properly on record, but it cannot retrospectively supply the notice and opportunity that natural justice requires at the stage when the first-instance authority forms adverse findings of fact and imposes serious consequences.

279. Reference can be made **to *Kapra Mazdoor Ekta Union v. Birla Cotton Spg. and Wvg. Mills Ltd.*[27],** in the following portion:

> *"19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had*

[27] (2005) 13 SCC 777

been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal [1980 Supp SCC 420 : 1981 SCC (L&S) 309] it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again."

280. In view of the above, the impugned proceedings are vitiated for breach of principles of natural justice. The final findings and consequential directions rested, to a material extent, on a case whose evidentiary emphasis and proposed consequences were materially sharper than what the show cause notice had clearly put the appellant on notice to meet. In particular, the directions concerning approval abeyance and compelled re-notification were not preceded by the kind of focused notice and opportunity that principles of natural justice required in a proceeding

of this gravity. Issue (VI) is, therefore, answered in favour of the appellant.

G. Synthesis of Conclusions on Issue (I) to Issue (VI)

281. When we consider the findings above together, the central basis of the impugned action cannot be accepted. The CCI proceeded on the footing that the appellant had, in substance, failed to notify the complete combination. However, Section 6(2) of the Act read with Regulation 9(4) and Regulation 9(5) of the Combination Regulations is concerned with whether the CCI was given a complete picture of the inter-connected transaction at the stage of *ex ante* review. As already discussed, the contemporaneous regulatory record shows that the CCI had before it the executed agreements and the connected arrangements as part of the same Form I filing and review. It was on that record that the CCI undertook scrutiny and granted approval under Section 31(1) of the Act. In these circumstances, a later and more formal view of how the same material ought to have been described cannot convert an approved filing into a case of non-notification or suppression in substance.

282. This has direct consequences for the penalties and adverse findings. This remains so even after taking due account of the internal communications relied upon by the Commission, which, though relevant, do not displace the legal significance of the executed agreements and the contemporaneous review record. The conditions for

invoking Section 43A of the Act, Section 44 of the Act and Section 45 of the Act are not satisfied merely because, at a later point, the CCI prefers a different description or analytical framing of documents that were already on record. Section 43A of the Act is attracted only where the statutory defaults specified in it are established. Section 44 of the Act and Section 45 of the Act require strict satisfaction of their ingredients, including materiality and the mental element prescribed. As already analysed, the impugned approach treated differences of characterisation, and the non-furnishing of internal materials without a clear demonstration of statutory requirement and materiality, as sufficient to impose penal consequences. That approach cannot be sustained, and the findings and penalties resting on it must fail.

283. Further, the Act does not contemplate an "approval in abeyance" after approval has been granted under Section 31(1) of the Act, nor does it confer a power to compel a fresh Form II notice for the same approved and implemented transaction. Such directions lack a statutory basis and, in substance, reopen concluded combination scrutiny contrary to the jurisdictional limit contained in the proviso to Section 20(1) of the Act. In any event, the impugned proceedings are also vitiated on grounds of natural justice, since the final findings and consequential directions travelled beyond the show cause notice dated 04.06.2021 without the appellant having a fair opportunity to meet that expanded case.

284. Certain submissions were advanced to suggest that the transaction structure also raised issues relating to compliance with the foreign direct investment regime and that, had fuller disclosure been made, inter-agency inputs could have been sought. These contentions do not supply jurisdiction or power which the Act does not confer. The present appeal concerns the legality of action taken under Sections 43A, 44 and 45 of the Act and the statutory limits on post-approval measures under the combination framework. Questions of compliance with other regulatory regimes, if any, lie in their own statutory domain and cannot be used to enlarge the CCI's powers to suspend an approval or compel re-notification where the Act and the Combination Regulations do not confer such authority.

285. For all these reasons taken together, the order dated 17.12.2021 and the judgment of the NCLAT affirming it cannot be sustained, and the appeal is liable to be allowed, with consequential operative directions to follow.

H. Role of the regulator and standards of fair regulatory conduct

286. At this juncture, we believe it is necessary to emphasise the role of the regulator and the standards of fair regulatory conduct that must guide the exercise of power under the Competition Act, 2002 (hereinafter referred to as "the Act"). Combination control is a form of economic regulation that carries immediate commercial consequences. The CCI is entrusted with specialised functions, including the *ex ante* assessment contemplated

by Section 6(2) of the Act and the determination under Section 31(1) of the Act. At the same time, the CCI's authority is statutory. Its actions must therefore satisfy the minimum standards of legality, fairness, and reasoned decision-making that apply to all public authorities. These standards are not technicalities. They are the basis on which regulatory legitimacy is maintained, compliance is encouraged, and market participants can plan their affairs with confidence.

H.1. The statutory purpose: the Act promotes as well as protects

287. The preamble of the Act sets out the statute's orientation in clear terms. The Act is enacted, keeping in view the economic development of the country, to prevent practices having adverse effect on competition, to promote and sustain competition, to protect the interests of consumers, and to ensure freedom of trade carried on by other participants in markets in India. The Act is therefore not designed as a purely punitive instrument. It is equally intended to sustain competitive market structures through a stable and credible regulatory framework.

288. This dual objective has a direct bearing on regulatory conduct. A regulator that focuses only on punitive outcomes, without corresponding attention to predictability, procedural fairness, and proportionality, risks undermining the "promote and sustain" dimension of the statute. Conversely, a regulator that is unwilling to enforce the law against conduct that genuinely harms

competition risks undermining consumer welfare and market integrity. The statutory balance is achieved only when regulatory power is exercised firmly, but within law, and through processes that are fair, transparent, and proportionate to the statutory purpose.

H.2. Principles that must guide a regulator exercising statutory power

289. There are certain settled principles which a regulator, entrusted with statutory powers and affecting rights and commercial outcomes, must observe while acting under the Act.

290. First, the regulator must act within the four corners of the statute. Regulatory expertise does not enlarge jurisdiction. The CCI's authority, whether to initiate proceedings, impose penalties, or issue consequential directions, must be traceable to the Act and the Combination Regulations. A course of action that appears desirable from a regulatory standpoint cannot substitute for statutory power.

291. Second, procedural fairness is integral to lawful regulation, especially where adverse civil consequences follow. Fair notice of the case to be met, disclosure of the material to be relied upon, and a meaningful opportunity to respond are not dispensable. As noted in ***Gorkha Security Services v. Govt. (NCT of Delhi)*** (supra), when proceedings are initiated through a show cause notice, the notice must convey, with reasonable clarity, the allegations and the consequences proposed so that the

noticee can answer them effectively. Where the final decision rests on a materially different factual or legal basis from what was put in issue, fairness ordinarily requires an appropriate supplemental opportunity.

292. Third, reasoned decision-making is a safeguard against arbitrariness. Regulatory conclusions must be supported by reasons demonstrating application of mind to the statutory ingredients, the relevant record, and the submissions made. This requirement assumes particular importance where penal provisions are invoked, as held by this Court in ***Siemens Engineering & Mfg. Co. of India Ltd. v. Union of India***[28].

293. Fourth, proportionality and restraint are essential to fair economic regulation. Penalties, particularly those that are substantial, cannot rest on hindsight-driven disagreement with drafting or emphasis. They must follow only when the statute's ingredients are clearly established. Deterrence is a legitimate objective, but deterrence operates within legality and proportionality, and the same has been reiterated by this Court in ***Excel Crop Care Ltd. v. Competition Commission of India***[29].

H.3. Regulatory certainty, equal treatment, and confidence in the legal system

294. Economic regulation operates not only through prohibitions and penalties, but also through certainty and predictability. A combination regime is designed to

[28] (1976) 2 SCC 981
[29] (2017) 8 SCC 47

encourage parties to come forward, disclose, and submit proposed transactions for *ex ante* review. That cooperative architecture functions effectively only if the process is stable, time-bound, and administered with fairness. If approvals remain indefinitely exposed to reopening through methods not clearly anchored to statutory power, regulatory certainty is weakened and incentives for early, voluntary engagement with the regulator are diminished.

295. This has an important constitutional and institutional dimension. The guarantee of equality before law extends to all persons. The discipline against arbitrary administrative action applies irrespective of whether the participant is domestic or foreign. A predictable and rule-bound regulatory environment strengthens confidence in the legal system and fosters compliance. It also ensures that domestic market participants do not gain from unfair practices merely because another participant is foreign or because the transaction has a cross-border dimension.

H.4. Foreign investment, global economic realities, and the Act's promote function

296. The importance of a stable and fair regulatory framework is heightened in the present global economic climate. In an era where trade and investment flows are often influenced by tariffs, counter-tariffs, supply-chain realignments, and heightened geopolitical and market uncertainty, jurisdictions are increasingly assessed by the credibility of their institutions and the predictability of their regulatory systems. Where external conditions

introduce uncertainty, domestic institutions must not add to it. A regulator that acts within law, with fairness and reasoned consistency, reduces the risk premium associated with investment and strengthens market confidence.

297. Foreign investment, in this sense, is not an extraneous concern. It is one of the channels through which capital, technology, managerial expertise, and efficiencies enter markets. A fair and rule-bound regulatory environment therefore serves the national interest. It protects domestic markets from anti-competitive harm, protects consumers, and assures investors, foreign and domestic, that outcomes will turn on law and evidence rather than on ad hoc approaches. In ***Vodafone International Holdings B.V. v. Union of India***[30], this Court emphasised that certainty and stability in the legal regime are essential for business decisions, particularly in cross-border investment contexts.

298. Equally, the point must be understood correctly. Fair treatment of foreign investors does not mean special treatment. It means equal treatment under the same law, administered through the same procedural safeguards and disciplined reasoning. Protecting the domestic market does not mean protecting domestic players. It means protecting the competitive process and consumer welfare,

[30] (2012) 6 SCC 613

and ensuring that no participant, domestic or foreign, can distort competition through unfair practices.

299. Economic thought has long recognised that wider markets can support greater specialisation, improved efficiencies, and stronger competitive pressure. Adam Smith's well-known observation in *An Inquiry into the Nature and Causes of the Wealth of Nations* (Book I, Chapter III), that "the division of labour is limited by the extent of the market", captures the basic point that broader markets can sustain more specialised activity and deeper rivalry. Amartya Sen has also reminded us that global economic integration is neither new nor inherently one-sided, and that the central question is whether its gains are shared in a fair and inclusive manner. These ideas are relevant in the present context. When cross-border investment and trade are shaped by tariffs, counter-tariffs, and supply-chain realignments, a predictable and fair regulatory system reduces uncertainty and supports competition through entry, scale, and innovation. A legal framework that encourages transparent participation and fair, time-bound review, rather than uncertainty or retrospectively unsettled approvals, therefore aligns more closely with the statutory objective to promote and sustain competition, while retaining full authority to protect competition where the law is truly contravened.

300. When viewed from this perspective, the standards of fair regulatory conduct are not merely procedural ideals.

They are instrumental to the Act's design. They ensure that enforcement protects competition without undermining market confidence, and that promotion of competition is not compromised by unpredictability or form-driven approaches that do not serve the statutory purpose.

301. For these reasons, consistent with the findings already recorded above, robust regulation under the Act must remain law-governed regulation. The letter of the law, read purposively within the statute's design, is paramount. That is the foundation on which consumer interest is advanced, domestic competition is sustained, and India remains a credible jurisdiction for lawful investment and enterprise in an increasingly contested global economic environment.

302. Before parting, we place on record our appreciation for the assistance rendered by learned senior counsel Mr. Gopal Subramanium and learned Additional Solicitor General Mr. N. Venkataraman. Both learned counsel argued the matter with fairness and balance, and assisted the Court as true officers of the Court.

I. Conclusion

303. In view of the findings recorded above, the appeal is allowed.

304. The impugned judgment dated 13.06.2022 passed by the NCLAT and the order dated 17.12.2021 passed by the CCI are set aside.

305. If any amount has been deposited or recovered from the appellant pursuant to the impugned order(s), the same shall be refunded to the appellant within a period of eight weeks from today, together with simple interest at the rate of 6% per annum from the date(s) of deposit/recovery until the date of actual refund. In the event the refund is not made within the aforesaid period of eight weeks, the amount remaining unpaid shall carry simple interest at the rate of 9% per annum from the expiry of eight weeks until the date of payment.

306. All pending applications, if any, stand disposed of in the above terms.

307. There shall be no order as to costs.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

NEW DELHI;
MAY 27, 2026