



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment reserved on:25.08.2026*

%

Judgment delivered on:08.09.2026# **CNR No. DLHC010575912023**+ **LPA 8/2024 & CM APPL. 440/2024, CM APPL. 25142/2024****ULTRATECH CEMENT LTD**

.....Appellant

Through: Dr.Abhishek Manu Singhvi,
Sr.Adv. with Ms.Nisha Kaur
Oberoi, Ms.Shambhavi Sinha,
Mr.Sarthak Pande, Ms.Shivangi
Chawla, Ms.Afreen Abbassi,
Mr.Mehar Singh Dang,
Mr.Sudhanshu Prakash Singh,
Mr.Uday Bhatia, Advs.

versus

COMPETITION COMMISSION OF INDIA & ANR.

...Respondents

Through: Ms.Aakanksha Kaul, Adv. for R-1.
Mr.Percival Billimoria, Sr.Adv.
with Ms.Anu Monga, Mr.Rahul
Goel, Ms.Aditi Sharma, Ms.Palak
Nigam, Ms. Rachita Sood,
Ms.Anandi Katiyar, Advs. for R-
2.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TEJAS KARIA**



J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

C H A L L E N G E

1. Heard Dr.Abhishek Manu Singhvi, learned Senior Advocate for the appellant, Ms.Aakanksha Kaul, learned counsel for the respondent no.1 and Mr.Percival Billimoria, learned Senior Counsel for the respondent no.2 and perused the records available before us on this *intra-court* appeal.

2. The appellant-M/s Ultratech Cement Ltd, a company incorporated under the provisions of Company Act, 1956 and engaged in the business of manufacturing and marketing grey cement and building and/or cement related products, by instituting the proceedings of this *intra-court* appeal under Clause X of the Letters Patent seeks to assail the judgment dated 18.12.2023 passed by the learned Single Judge, whereby W.P.(C) 9854/2023 preferred by the appellant challenging the order dated 05.07.2023 passed by the respondent no.1-Competition Commission of India (hereinafter referred to as the Commission) has been dismissed.

Under challenge before the learned Single Judge in the proceedings of the writ petition was the order dated 05.07.2023 passed by the Commission in *Suo Moto* Case No.2/2019, whereby the impleadment application moved by the Builders' Association of India (hereinafter referred to as BAI)-respondent no.2 in the proceedings of the said *Suo Moto* Case, was allowed, holding therein that the BAI has substantial interest in the outcome of the said proceedings and, therefore, it was necessary to allow it to present its



opinion in the matter for a meaningful inquiry. By the said order the Commission also permitted the BAI to inspect the non-confidential records and further it was also allowed to file its opinion on the investigation report.

BACKGROUND FACTS

3. For appropriate adjudication of the issue involved in this appeal certain relevant background facts need to be noted, which are as under: -

a) Between December 2018 and May 2019 multiple complaints were received by the Commission with the allegation regarding conduct of certain grey cement manufacturers, which according to the complainants, resulted in adverse competitive effects. The complaints during the aforesaid period were received by the Commission from various Customers, Trade Associations and Dealers etc., which included a letter dated 08.02.2019 from the BAI, wherein allegations of cartelization by grey cement manufacturers resulting in abnormal increase of price of cement in the market were made.

b) Accordingly, an order of 01.07.2019 was passed by the Commission under Section 26 (1) of the Competition Act, 2002 (hereinafter referred to as the Act, 2002) on its own motion, whereby Director General (hereinafter referred to as DG) appointed under Section 16 of the Act, 2002, was directed to conduct an investigation in the matter. On 07.12.2021, the BAI moved an application seeking its impleadment in the proceedings, which was rejected by the Commission *vide* its order dated 29.12.2021 noting therein that since the matter was at advance stage of investigation by the DG therefore, the Commission was not inclined to accede to the request made by the BAI for its impleadment as an informant. The BAI, however, challenged the said



order rejecting its impleadment, dated 29.12.2021 by instituting W.P.(C) No.8958/2022 before this Court. During pendency of the said writ petition, the DG completed his investigation and submitted his report on 01.07.2022.

c) Learned Single Judge *vide* order dated 26.09.2022 disposed of the said writ petition granting liberty to BAI to apply to the Commission in terms of Regulation 25 of the Competition Commission of India (General) Regulations, 2009 (hereinafter referred to as Regulations, 2009) seeking a right to make its submissions with a further prayer for being provided a copy of the investigation report.

d) The learned Single Judge while passing the said order dated 26.09.2022 noticed that upon conclusion of the investigation, the report of the DG will be taken up by the Commission for its consideration and at such stage it becomes open to any party, person or enterprise having substantial interest or a party able to establish that its presence before the Commission is necessary in public interest, to make a prayer seeking right of hearing before the Commission and to present its opinion for its consideration. Learned Single Judge also observed that since on conclusion of the investigation the DG has already submitted a report, which would be considered by the Commission and, therefore, prayer of the BAI, to the extent it sought to be impleaded in the investigation proceedings, had been rendered infructuous.

e) Paragraphs 11, 14, 15 and 16 of the judgment and order dated 26.09.2022 passed by the learned Single Judge disposing of the W.P.(C) No.8958/2022 are relevant to be extracted here, which read as under: -



“11. Having noticed the rival submissions which have been addressed, the Court firstly bears in mind the undisputed fact that upon conclusion of investigation, the Director General has already submitted a report which is to be taken up by the Commission for consideration on 28 September 2022. Viewed in that light it is evident that the prayer of the petitioner to the extent that it sought to be impleaded in the investigation proceedings has rendered infructuous.

14. Undisputedly and upon conclusion of investigation, the report of the Director General is to now come up for consideration before the Commission. At that stage, it becomes open to any party, person or enterprise which has a substantial interest in the outcome of proceedings or who is able to establish that its presence before the Commission is necessary in the public interest, to seek a right of audience before the Commission and to present its opinion for its consideration. That is a right which is still open to be asserted by the petitioner. The Court also bears in mind the fact that the report that may be drawn by the Director General is neither determinative nor conclusive since it is ultimately for the Commission to take all aspects including views that may be expressed before it into consideration before passing final orders.

15. Both Regulations 21 as well as 25 thus provide an opportunity to parties to address all submissions before the Commission for its consideration. In view of the above, the Court finds that not only would it be open for the petitioner to apply to the Commission in terms of Regulation 25 and to seek a right to address submissions, it could also, if so chosen and advised, address a prayer for being provided a copy of the investigation report or the extracts thereof. Ultimately the interest of bodies like the present petitioner is limited to providing inputs and information to the Commission which may enable it to come to a just conclusion. Since that right is still available to be exercised, the Court finds no justification to issue any peremptory directions except to observe that it would be open to the petitioner to move the Commission under Regulation 25 and to address all issues before the said body.



16. Consequently, the writ petition along with the pending application shall accordingly stand disposed of with liberty to the petitioner reserved to the aforesaid extent. Since the matter is stated to be posted before the Commission on 28 September 2022, it shall be open to the petitioner to apply to the Commission prior to the aforesaid date. Any such application that may be ultimately made by the petitioner, may be considered by the Commission in accordance with law. All contentions of respective parties on merits are otherwise kept open to be addressed before the Commission.”

f) In terms of the liberty granted to the BAI by the learned Single Judge *vide* its order dated 26.09.2022 passed in W.P.(C) 8958/2022, an application was moved on 27.09.2022 by BAI seeking its impleadment in the proceedings before the Commission.

g) At this juncture, it may be noticed that the said application seeking impleadment, dated 27.09.2022 was moved by BAI not only in terms of the liberty granted to it by the learned Single Judge *vide* its order dated 26.09.2022, but also at a stage when the DG had already completed his investigation and submitted report on 01.07.2022. We may also note that the earlier application dated 07.12.2021 seeking impleadment moved by the BAI, which was rejected by the Commission *vide* its order dated 29.12.2021 was at the stage when the investigation as directed under Section 26(1) of the Act, 2002 was pending before DG, whereas the fresh application dated 27.09.2022 was moved by the BAI at a stage when the investigation report dated 01.07.2022 was already submitted to the Commission for its further consideration and, therefore, the learned Single Judge had granted liberty *vide* its order dated 26.09.2022 to the BAI to seek its impleadment observing therein that it would be open to the BAI to apply to the Commission in terms of Regulation 25 to seek a right to make its submissions. The two different



stages at which the BAI moved its application seeking impleadment, the one on 07.12.2021 and the other on 27.09.2022 need to be taken note of for appreciating the submissions made by the learned counsel for the parties.

h) The application dated 27.09.2022 was allowed by the Commission *vide* order dated 05.07.2023 which became the subject matter of challenge in the underlying W.P.(C) 8954/2023 filed by the appellant. By the said order dated 05.07.2023, as already observed above, BAI was allowed to present its opinion in the matter having been found that it had substantial interest in the outcome of the proceedings before the Commission and it was also allowed to inspect the non-confidential records in terms of Regulation 37(1) of the Regulations, 2009. The BAI was further allowed to file its opinion on the investigation report submitted by the DG.

i) The learned Single Judge negated the challenge mounted by the appellant to the said order dated 05.07.2023 passed by the Commission *vide* impugned judgment dated 18.12.2023, which is under challenge before us in this *intra-court* appeal.

SUBMISSION ON BEHALF OF THE APPELLANT

4. Mr.Singhvi, learned Senior Counsel representing the appellant, impeaching the order dated 05.07.2023 passed by the Commission as also the impugned judgment dated 18.12.2023 passed by the learned Single Judge, has argued that the order dated 05.07.2023 is unreasoned and *ex parte* in the sense that the Commission while passing the said order did not disclose any reason as to why BAI is a necessary party to the proceedings before it and further that while allowing the impleadment sought by the BAI,



the appellant was not afforded an opportunity of hearing, which amounted to violation of principles of natural justice.

5. It has also been argued that the earlier application made by the BAI seeking its impleadment was rejected *vide* order dated 29.12.2021 and in this view of the matter, it was not open to the BAI to again seek impleadment in the proceedings before the Commission, however, the Commission as also the learned Single Judge have not taken into consideration the impact of earlier rejection of prayer for impleadment, which vitiates the order dated 05.07.2023 passed by the Commission as also the impugned judgment dated 18.12.2023.

6. Mr.Singhvi referred to substitution of the provisions of Section 36 of the Act, 2002 by Act 39 of 2007 (w.e.f. 12.10.2007), whereby the power, ‘to dismiss the application in default or deciding it *ex parte*’, which was available to the Commission under Section 36(2)(f) before its substitution w.e.f. 12.10.2007, was taken away. He has thus submitted that prior to 12.10.2007, the Commission was vested with the power to decide an application *ex parte*, however after substitution of Section 36 the Commission could not have decided the application moved by BAI seeking its impleadment without affording an opportunity of hearing to the appellant.

7. The submission on behalf of the appellant further is that Commission though earlier rejected the application seeking impleadment moved by the BAI *vide* its order dated 29.12.2021, however taking a *volte face* the Commission ignoring its own earlier order allowed the impleadment by the



order dated 05.07.2023, which according to Mr.Singhvi was not permissible under law.

8. Placing reliance on ***Ujjam Bai v. State of Uttar Pradesh***, 1962 SCC OnLine SC 8 and ***Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota Versus M/s Shukla & Brothers***, 2010 SCC OnLine SC 466, Mr.Singhvi has submitted that any order of a quasi-judicial authority in violation of principles of natural justice is an order without jurisdiction. It has been argued that the principles of natural justice require that any person who is likely to be adversely affected by the action of the authority, should be given notice and granted opportunity of hearing and further that orders to be passed by the authority concerned should give reasons for arriving at any conclusion showing proper application of mind.

9. On the aforesaid count the submission on behalf of the appellant is that in violation of the principles of law as laid down by the Hon'ble Supreme Court in ***Ujjam Bai (supra)*** and ***M/s Shukla & Brothers (supra)***, the Commission while passing the order dated 05.07.2023 has not only violated the principles of natural justice by not affording an opportunity of presenting its case to the appellant but has also not based its conclusions by giving reasons and, accordingly, such an order would be untenable.

10. Mr.Singhvi has submitted that mere narration of facts does not become reasons for arriving at conclusion in an order passed by an authority and, therefore, since the order passed by the Commission dated 05.07.2023 does not reflect any reason, the same is vitiated, which aspect has not been considered by the learned Single Judge. Referring to the judgment of the



Hon'ble Supreme Court in ***Union of India v. Mohan Lal Capoor***, (1973) 2 SCC 836, it has been submitted that reasons are the links between the materials on which certain conclusions are based and further that the reasons disclose how the mind is applied by a decision maker. He has also stated that the reasons reveal a rational nexus between the facts considered and conclusions drawn. His submission is that the order dated 05.07.2023 passed by the Commission does not reflect the reasons and in absence of the said causal bridge, because of absence of reasons, between the facts and the conclusions, the order by the Commission cannot be justified.

11. Further submission on behalf of the appellant is that the order dated 05.07.2023 amounts to review by the Commission of its earlier order dated 29.09.2021, whereby the application seeking impleadment made by the BAI was rejected, which in view of the judgment of this Court in ***Eaton Power Quality Pvt Ltd v. Competition Commission of India*** (2021 SCC OnLine Del 4337) was not legally permissible for the reason that the Commission lacks unilateral power to review/recall its order without giving opportunity of being heard to those who are likely to be affected by such an order.

12. Reference has also been made by Mr.Singhvi to the judgment of the Hon'ble Supreme Court in ***Competition Commission of India v. Steel Authority of India Ltd.***, (2010) 10 SCC 744), wherein it has been held that except in case of an administrative order to be passed under Section 26(1) of the Act, 2002, all other orders or decisions should be reasoned.

13. It has further been argued on behalf of the appellant that BAI is a hostile body and by its impleadment, it will be made privy to confidential



and non-confidential materials in the proceedings before the Commission and, therefore, opportunity ought to have been given to the appellant before passing the order dated 05.07.2023.

14. On the aforesaid grounds it has been argued on behalf of the appellant that the impugned judgment rendered by the learned Single Judge as also the order dated 05.07.2023 passed by the Commission are liable to be quashed and matter need to be remitted to the Commission to decide the application moved by BAI seeking its impleadment afresh.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.2-BAI

15. Mr. Percival Billimoria, learned Senior Counsel for the respondent no.2-BAI has opposed the submissions made on behalf of the appellant and has submitted that BAI is not a hostile body and as a matter of fact it sought is impleadment only to help the Commission to arrive at a correct conclusion. Further submission is that the BAI is the largest consumer of grey cement in the country and as such it has substantial interest in the outcome of the proceedings pending before the Commission and its impleadment is necessary in public interest as well, thus, his submission is that since Regulation 25 of the Regulation, 2009 empowers the Commission to permit a person or enterprise to take part in the proceedings, if the person or the enterprise concerned has sufficient interest in the outcome of the proceedings and further the Commission finds that it is necessary in public interest to allow such person or enterprise to present its opinion in the matter and, therefore, the Commission finding that the BAI has sufficient interest in the outcome of the proceedings and its impleadment will be in public



interest, has rightly passed the order dated 05.07.2023. Emphasis by Mr. Billimoria is that the BAI being the largest consumer in the country of grey cement, has sufficient interest in the proceedings before the Commission and its outcome. He has also stated that the opinion and views of the BAI in the matter are not only relevant but are necessary to be considered by the Commission for arriving at correct conclusion. It is also the argument on behalf of the respondent no.2 that principles of Order I Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) for impleadment of party to a suit will have no application in a case where a party seeks its impleadment in the proceedings initiated by the Commission, for the reason that ordinarily in the proceeding of a suit, it is the plaintiff which is *dominus litis*, where the plaintiff decides who will be a defendant, however, considering the nature of proceedings under the Act, 2002 such principle will have no application as BAI in this case is to assist the Commission like *Amicus Curiae*.

16. It has been contended further on behalf of the respondent no.2 that the instant letters patent appeal has been rendered infructuous on the Hon'ble Supreme Court passing the order dated 26.02.2024 in SLP(C) No.4100/2024, ***Dalmia Cement (Bharat) Ltd. v. Competition Commission of India & Ors.*** Referring to the said order dated 26.02.2024 passed by the Hon'ble Supreme Court, it has been stated that the said order has recorded a statement made on behalf of the BAI that it will not apply for inspection of documents which have been marked by the M/s Dalmia Cement (Bharat) Limited as confidential. His submission is that since a statement on behalf of the BAI has already been made, which stands recorded by the Hon'ble



Supreme Court in its order dated 26.02.2024 to the effect that it will not apply for inspection of documents marked confidential, the apprehension of the appellant stands allayed and, therefore, in view of the said order of the Hon'ble Supreme Court the instant LPA need not be adjudicated any further.

17. Learned Senior Counsel for the respondent no.2 has stated that the SLP (C) No.4100/2024 was filed by M/s Dalmia Cement (Bharat) Ltd. against an order dated 29.09.2023 passed by a Division Bench of the High Court of Judicator at Madras in W.A. No. 2218/2023 & 2227/2023. The W.A. No. 2218/2023 & 2227/2023 before the Hon'ble Madras High Court had arisen out of the order dated 14.08.2023 passed by the learned Single Judge of Madras High Court in certain writ petitions instituted by M/s Dalmia Cement (Bharat) Ltd. and M/s India Cement Limited, where the BAI was a party respondent. It is also stated on behalf of the respondent no.1 that the aforesaid writ petitions and writ appeals had arisen out of proceedings of *Suo Moto* Case No.02/2019 instituted by the Commission against various cement manufacturers including the appellant. The appellant instituted the underlying writ petition against the order of impleadment dated 05.07.2023 before this Court, whereas certain other cement manufacturers such as M/s Dalmia Cement (Bharat) Ltd. and M/s India Cement Limited instituted writ petitions before Madras High Court challenging the same order dated 05.07.2023. The writ petitions were dismissed by the learned Single Judge *vide* order dated 14.08.2023, which became subject matter of challenge before the Division Bench of Madras High Court in W.A. No. 2218/2023 & 2227/2023, which were also dismissed by the Division Bench of Madras High Court *vide* order dated 29.09.2023. The order passed by the Division



Bench of Madras High Court dated 29.09.2023 was challenged by M/s Dalmia Cement (Bharat) Ltd. by instituting the proceedings of SLP(C) 4100/2024, which was dismissed by the Hon'ble Supreme Court *vide* order dated 26.02.2024 and while passing the said order a statement made on behalf of the respondent no.2-BAI was recorded that it shall not apply for inspection of documents, which have been marked as confidential in the proceedings before the Commission. On account of the aforesaid developments, it has been submitted on behalf of the respondent no.2-BAI that the present LPA deserves to be dismissed.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1-COMMISSION

18. Ms.Aakanksha Kaul learned counsel representing the Commission has firstly supported the submissions made by Mr.Billimoria that in view of the order passed by the Hon'ble Supreme Court on 26.02.2024, this appeal is not required to be adjudicated any further.

19. She has also argued that the learned Single Judge as also the Commission while passing the orders permitting impleadment of the respondent no.2 have given sufficient reasons as is reflected from the impugned judgment passed by the learned Single Judge and also from the order dated 05.07.2023 passed by the Commission. In this view, the submission is that the arguments made on behalf of the appellant are not tenable.

20. It has further been argued that so far as the confidentiality of the material and document is concerned, the same is adequately protected in



view of the order dated 26.02.2024 passed by the Hon'ble Supreme Court, wherein statement made on behalf of the BAI stands recorded that it will not apply for inspection of documents which are marked confidential and, therefore, no prejudice is going to be caused to the appellant if the BAI is allowed to participate in the proceedings before the Commission.

21. On the aforesaid submissions, it has been urged by Ms.Kaul that appeal be dismissed.

ARGUMENTS IN REJOINDER BY THE APPELLANT

22. Reiterating the submissions made in support of the appeal, it has been stated in rejoinder on behalf of the appellant that the appeal cannot be said to have been rendered infructuous on the basis of order dated 26.02.2024 passed by the Hon'ble Supreme Court for the reason that the Hon'ble Supreme Court in the said order has specifically kept the question of law open. Referring to the judgment in ***Kunhayammed v. State of Kerala***, (2000) 6 SCC 359 and ***Yogendra Narayan Chowdhury v. Union of India***, (1996) 7 SCC 1, it has been contended that it is well settled principle of law that dismissal of an SLP *in limini* without assigning reasons does not operate as *res judicata*.

23. Reference has also been made to yet another judgment of the Hon'ble Supreme Court in ***State of Punjab v. Davinder Pal Singh Bhullar***, (2011) 14 SCC 770, where the Hon'ble Supreme Court has observed that the submission that the SLP against the impugned judgment by some other party stood dismissed and, therefore, any other matter arising out of same



impugned judgment ought to be dismissed at the threshold without entering into merit is, not worth acceptance.

24. In this regard the judgment in ***Experion Developers (P) Ltd. v. Himanshu Dewan***, 2023 SCC OnLine SC 1029 and ***Indian Oil Corpn. v. State of Bihar***, (1986) 4 SCC 146 have also been cited. The submission is that in view of the aforesaid settled principle of law, the order passed by the Hon'ble Supreme Court in ***Dalmia Cement (Bharat) Ltd. (supra)*** does not foreclose the instant appeal since the order of the Hon'ble Supreme Court is a non-speaking order, which will not constitute binding precedent under Article 141 of the Constitution of India. It is also argued that the Hon'ble Madras High Court did not deal with the issue on merits rather the writ petitions filed by M/s Dalmia Cement (Bharat) Ltd. and M/s India Cement Limited were dismissed on the principle of *forum conveniens*. Referring to the Division Bench judgment of Madras High Court, it has been stated that the writ appeals were dismissed by the Division Bench noting erroneously that BAI had already been granted inspection of documents, which rendered the arguments of M/s Dalmia Cement (Bharat) Ltd. and M/s India Cement Limited, in the said matters, as futile.

25. On the aforesaid counts, it has been argued that the instant appeal still requires to be adjudicated by this Court considering that pertinent questions of law have arisen in these proceedings, which have not been considered by Hon'ble Madras High Court or the Hon'ble Supreme Court while passing orders in the case of ***Dalmia Cement (Bharat) Ltd. (supra)***.



ANALYSIS

26. On the basis of the pleadings available on record and the submissions made by the learned Senior Counsel/Counsel for the respective parties, the first issue which arises for our consideration and decision is as to whether proceedings of the instant appeal need to be continued further in view of the order dated 26.02.2024 passed by the Hon'ble Supreme Court in SLP, which had emanated from the judgment of Hon'ble Madras High Court, wherein challenge was made by another cement company namely M/s Dalmia Cement (Bharat) Limited to the order dated 05.07.2023 passed by the Commission permitting impleadment of the BAI.

27. So far as the judgments relied upon on behalf of the appellants in the case of *Kunhayammed (supra)*, *Yogendra Narayan Chowdhury (supra)* and *Davinder Pal Singh Bhullar (supra)*, *Experion Developers (P) Ltd.(supra)* and *Indian Oil Corpn. (supra)* are concerned, there cannot be quarrel of the legal principles laid down therein. The order dated 26.02.2024 passed by the Hon'ble Supreme Court in *Dalmia Cement (Bharat) Ltd. (supra)* dismissed the SLP instituted against the order passed by the Madras High Court, however the Court has kept the question of law open. The Supreme Court has also recorded a statement in the said order, made on behalf of the BAI to the effect that it will not apply for inspection of documents, which have been marked as confidential. The challenge, as already noted above before the Madras High Court was to the order dated 05.07.2023 passed by the Commission permitting impleadment of BAI in the proceedings before the Commission. It is this very order, which was



challenged by the appellant before the learned Single Judge by instituting the writ petition, which has been dismissed *vide* impugned judgment and the appeal has been preferred against this judgment of dismissal before us.

28. Since the question of law has been kept open by the Hon'ble Supreme Court while passing the order dated 26.02.2024, the instant appeal though can still proceed to decide the issues raised by the appellant, however the final outcome of the appeal cannot be contrary to the order dated 26.02.2024 passed by the Hon'ble Supreme Court as a result of which the BAI has been allowed to be impleaded and further to inspect the non-confidential records in the matter and file its opinion on the investigation report. It is also to be noted that in terms of the order dated 26.02.2024 passed by the Hon'ble Supreme Court, BAI will not apply for inspection of documents marked confidential and, therefore, the apprehension of the appellant stands allayed.

29. Thus, though we are of the opinion that no useful purpose will be served in continuing with the proceedings of the instant appeal in the wake of the order dated 26.02.2024 passed by the Hon'ble Supreme Court in the matter of M/s Dalmia Cement (Bharat) Limited, however considering the insistence on behalf of the learned Senior Counsel for the appellant, we proceed to decide the instant appeal on merits as well.

30. The first submission made on behalf of the learned Senior Counsel for the appellant is that the order dated 05.07.2023 passed by the Commission is a non-speaking order because it does not disclose any reasons. However, if we peruse the order dated 05.07.2023 what we find is that the Commission in paragraph 13 of the said order has recorded its satisfaction that BAI has



substantial interest in the outcome of the proceedings and further that it is necessary to allow it to present its opinion in the matter for a meaningful inquiry. Para 13 of the order dated 05.07.2023 passed by the Commission is extracted herein below:-

“13. On an overall appreciation of the reasons mentioned by BAI in its application dated 27.09.2022, the Commission is satisfied that BAI has substantial interest in the outcome of the proceedings and that it is necessary to allow it to present its opinion in this matter for a meaningful inquiry. The Impleadment Application of BAI is, thus, allowed in terms of Regulation 25(1) of the General Regulations and it is made a party to the matter henceforth.”

31. Before recording the said satisfaction, the Commission has noticed the submissions made on behalf of the BAI in the application seeking its impleadment and has also referred to Regulation 25(1) of the Regulations, 2009. Regulation 25(1) of the said Regulations, 2009 is extracted herein below:-

25. Power of Commission to permit a person or enterprise to take part in proceedings.-(1) While considering a matter in an ordinary meeting, the Commission, on an application made to it in writing, if satisfied, that a person or enterprise has substantial interest in the outcome of proceedings and that it is necessary in the public interest to allow such person or enterprise to present his or its opinion on the matter, may permit that person or enterprise to present such opinion and to take part in further proceedings of the matter, as the Commission may specify.



32. A perusal of the aforequoted provisions of Regulation 25(1) would reveal that if the Commission, on an application to be made to it in writing is satisfied that a person or enterprise has substantial interest in the outcome of the proceedings and that it is necessary in public interest to allow such person or enterprise to present his or its opinion on the matter, it may permit the said person or enterprise to present such opinion and to take part in further proceedings of the matter. Thus, what is permissible for the Commission while it exercises its power under Regulation 25(1) is that if any application is made in writing by a person or any enterprise seeking its participation in the proceedings, the Commission has to record its satisfaction that the person or the enterprise, as the case may be, has substantial interest in the outcome of the proceedings. Such satisfaction has been recorded by the Commission while passing the order dated 05.07.2023 and before recording such satisfaction the submissions made by BAI to the effect that it is an all-India association of builders and is directly and substantially affected by anti-competitive conduct of the cement manufacturers, has been noted. It has also been noted by the Commission while passing the order dated 05.07.2023 that BAI is the largest consumer of cement and, therefore, it suffers a direct impact every time the cement manufacturers engage in anti-competitive and unfair practices. In our opinion considering the interest of BAI as it is the largest consumer of cement and is an association of builders, the Commission while passing the order dated 05.07.2023 has, in no uncertain terms, recorded its satisfaction that it has substantial interest in the outcome of the proceedings.



33. Even otherwise BAI being an all-India association of builders and largest consumer of cement, will, in any case, have sufficient interest in the proceedings, which have been instituted by the Commission *suo moto* under Section 26 (1) of the Act, 2002. The interest of the BAI is discernible on the basis of the mere fact that its members are the largest consumers of grey cement and once any anti-competition inquiry or investigation is instituted into the conduct of the cement manufacturers in the country, such an association will obviously have sufficient interest in the proceedings instituted by the Commission. In our opinion there cannot be any denial of the simple fact that the BAI has sufficient interest in the proceedings and, therefore, its opinion will also have a bearing on the final outcome of the proceedings and hence permitting the BAI by giving an opportunity to submit its opinion would be in public interest. For these reasons, we do not find any force in the submission made by the learned Senior Counsel representing the appellant that the order dated 05.07.2023 passed by the Commission is non-speaking in the sense that it does not give any reason permitting impleadment of BAI.

34. The second argument raised on behalf of the appellant is that the fact that the earlier application moved by BAI seeking its impleadment was rejected on 29.12.2021 has completely been ignored by the Commission. In this regard, it is also stated on behalf of the appellant that as a matter of fact the order dated 05.07.2023 amounted to review of the earlier order dated 29.12.2021, which under the Scheme of the Act, 2002 and the regulations framed thereunder, is legally impermissible.



35. The aforesaid submission made on behalf of the appellant is devoid of any merit for the following reasons:-

a) The order dated 29.12.2021 was challenged by BAI by instituting W.P.(C) No.8958/2022 before this Court, which was disposed of by the learned Single Judge *vide* order dated 26.09.2022. The learned Single Judge while passing the said order, dated 26.09.2022 has noticed the fact that earlier application seeking impleadment was rejected by the Commission *vide* order dated 29.12.2021, however the learned Single Judge has, after noticing the said order, granted liberty to the BAI to seek impleadment in terms of the provisions available in Regulation 25(1) of the Regulations. The liberty given to the BAI by the learned Single Judge *vide* order dated 26.09.2022 to seek impleadment afresh was granted considering the fact that before the date when the judgment was passed the DG had already completed the investigation and submitted his report on 01.07.2022. The learned Single Judge did not interfere with the earlier order rejecting the application dated 29.12.2021 considering the aforesaid developments namely, subsequent completion of the investigation by the DG and submission of his report on 01.07.2022. It is in these background facts that no interference was made by the learned Single Judge to the order dated 29.12.2021, whereby the earlier application seeking impleadment by BAI was rejected.

b) However, as already noted above, we have to be mindful of the fact that the stage at which the earlier application by the Commission was rejected on 29.12.2021. At that point of time the investigation of the DG in terms of the order under Section 26(1) was not complete, however, when the



learned Single Judge passed the order on 26.09.2022, the investigation by the DG was complete, who had also submitted the investigation report on 01.07.2022.

c) Learned Single Judge, while giving liberty to the BAI to move application afresh after noticing that investigation report by DG was submitted on 01.07.2022, has in his order dated 26.09.2022 also observed that the interest of bodies like the BAI is limited to providing inputs and information to the Commission, which may enable it to come to a just conclusion. Thus, exercising the liberty granted by learned Single Judge in his order dated 26.09.2022, the BAI had moved the application on 27.09.2022, which was allowed by the Commission *vide* order dated 05.07.2023 by recording its satisfaction that BAI has sufficient interest in the proceedings. In these circumstances, we are unable to agree to the submissions made by learned Senior Counsel for the appellant that the order dated 05.07.2023 amounts to review the earlier rejection order dated 29.12.2021.

36. The next submission made on behalf of the appellant is that the order dated 05.07.2023 passed by the Commission is an *ex parte* order as no opportunity of hearing was provided to the appellant on the prayer made by the BAI seeking its impleadment *vide* application dated 27.09.2022. It is argued that no notice of the said application dated 27.09.2022 moved by the BAI was given to the appellant as a result of which the appellant was deprived of the opportunity to put forth its defence against the said application and, therefore, the order dated 05.07.2023 passed by the Commission suffers from the vice of non-observance of principle of natural



justice. Repelling the said submission, learned Single Judge in the impugned judgment has noted *inter alia* that a fair procedure includes presentation of an appropriate notice to all involved parties, however submission on behalf of the appellant that it was not having any such notice prior to passing of the order dated 05.07.2023 by the Commission, cannot be accepted for the reason that on the application moved by BAI dated 27.09.2022 seeking permission to be impleaded as a party and participate in the proceedings of the Suo Moto Case no.02/2019, the Commission had allowed BAI to be provided a copy of the order dated 01.07.2019 passed by the Commission to initiate investigation by the DG, *vide* order dated 06.10.2022. The learned Single Judge has also noticed that the order dated 06.10.2022 also directed that a copy of the said order be forwarded to the opposite parties through their authorized representatives. We may note at this juncture that the appellant is one of the opposite parties in the proceedings of Suo Moto Case No.02/2019. The relevant extract of the order dated 06.10.2022 is extracted herein below:-

“7. Having considered the request made in BAI's application, the Commission is of the view that BAI may be provided a copy of the order dated 01.07.2019 passed by the Commission under Section 26(1) of the Act and non-confidential version of the DG report dated 01.07.2022 submitted by the DG. The Commission directs BAI to present its opinion, if any, in writing in the matter within 6 weeks of the receipt of this order.

8. The Secretary is directed to forward a copy of this order to BAI and the Opposite Parties, through their respective authorised representative(s). The Secretary is also directed to provide soft copies of the order dated 01.07.2019 passed by the Commission under Section 26(1) of the Act and non-confidential version of the DG report dated 01.07.2022 submitted by the DG.



The Secretary is further directed to list the mater thereafter before the Commission in one of the ensuing meetings.”

37. Learned Single Judge has, thus, recorded a finding that the appellant, being one of the opposite parties, through receipt of the order dated 06.10.2022 passed by the Commission had full knowledge of the BAI being provided with the copy of the non-confidential version of the report of the DG dated 01.07.2022 and permitting it to present its opinion on the said non-confidential part of the report of the DG dated 01.07.2022. The learned Single Judge has also noticed that this was all prior to passing of the order dated 05.07.2023, which only formalized impleading of the BAI as a party to the proceedings. It has also been observed in the impugned judgment that the appellant had full knowledge of the order dated 06.10.2022, which ordered for disclosure of non-confidential report of the DG to the BAI and, therefore, it cannot be said that the appellant was not having notice of the application.

38. Learned Single Judge in the impugned order has further observed that impleadment of a party to the proceedings before the Commission cannot be said to be a conclusive and effective determination of any right and obligation of the party involved rather it is merely an action which enables the Commission to reach an informed conclusion on the question of violations of the competition law framework in the country. Learned Single Judge has also observed that considering the scheme of the Competition Act, 2002 under which proceedings are in the nature of rights *in rem*, impleadment of any party cannot be said to be for the benefit of the party



being impleaded, rather such impleadment is for the benefit of the Commission itself to conclusively reach an appropriate decision in the matter.

39. We are in complete agreement with the aforesaid observations made and findings recorded by learned Single Judge and, therefore, find that the argument based on violation of principle of natural justice, in the facts of the present case, does not bear any force, which merits rejection.

40. To reflect upon the issue as to whether any prejudice would be caused to the appellant on permitting the BAI to be impleaded as a party in the proceedings before the Commission, we need to note the purpose of the Act, 2002 for which it has been enacted, duties cast on the Commission under the Act and the nature of proceedings which are drawn by the Commission. The Act, 2002 has been enacted by the Central Legislature with a view to prevent practices having adverse effect on competition and to promote and sustain competition in markets. Further object is to protect the interest of consumers and to ensure freedom of trade and for matters connected therewith or incidental thereto. Thus, the Commission has been established under Act, 2002 to enforce anti-competition regime keeping in view the purpose of bolstering economic development of the country. The Act, 2002 prohibits anti-competitive agreements and abuse of dominant position in the market and for the said purpose the Commission constituted under Section 7(1) of the Act has been tasked statutorily to perform certain duties and functions.



41. The primary function of the Commission as envisaged under Section 18 of the Act, 2002 is to check practices having adverse effect on competition and to promote and sustain competition and further to protect the interest of consumers ensuring freedom of trade. Such duties, powers and functions have been cast and conferred on the Commission, obviously, to achieve larger public interest by checking and taking action against anti-competition practices. Such a check and action against anti-competition practices are provided for by the Act, 2002 with a view to farther the economic development and to a certain extent, keep the prices of the manufactured commodities in check which is the public purpose that the Act, 2002 seeks to achieve.

42. Accordingly, having regard to the object of the Act, 2002 the proceedings drawn by the Commission under Section 19 on receipt of complaints or otherwise, are, primarily, to achieve the public interest and, therefore, if in a given case certain investigation/inquiry is conducted by the Commission against certain entities in respect of allegations of their indulgence in anti-competition practices, any party or person or entity or an enterprise having sufficient interest in the matter can be impleaded in the proceedings of the Commission, which in our opinion will be only to farther the public interest. Such impleadment would be in aid of the Commission to arrive at a correct and just conclusions of the proceedings drawn by its. In this view, the appellant cannot be said to be *dominus litis* where it is the appellant alone which can choose the defendants.

43. We may further observe that by permitting impleadment of the BAI by the Commission does not amount to determination of any right either of



the appellant or that of the BAI. Such impleadment, in the light of the aforesaid discussion, is only to aid the Commission to arrive at correct conclusion into the allegation regarding anti-competition practices of violation of the Act, 2002. Even otherwise, once a statement has been recorded by the Hon'ble Supreme Court in its order dated 26.02.2024 that BAI will not seek any permission to have access to the records marked as confidential, we do not see any prejudice, that may be caused to the appellant by impleadment of BAI. Such impleadment will only permit the BAI to furnish its opinion on the investigation report dated 01.07.2022 submitted by the DG, which, too, would be confined only to its non-confidential part.

44. For all the aforesaid reasons, we find that the appeal lacks merit.

45. Resultantly, the appeal is hereby dismissed. The applications stands disposed of.

46. However, there will be no orders as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TEJAS KARIA)
JUDGE

SEPTEMBER 08, 2026
S.Rawat