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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 13482/2025**

Date of Decision: **14.05.2026**

IN THE MATTER OF:

KSD ZONNE ENERGIE LLP THROUGH ITS PARTNER S KANDASAMY

.....Petitioner

Through: Mr. Percival Billimoria, Sr. Advocate with Ms.Anu Monga, Mr. Rahul Goel, Ms. Aditi Sharma, Mr. Yash Agarwal and Ms. Shweta Yadav, Advocates.

versus

COMPETITION COMMISSION OF INDIA THROUGH ITS SECRETARY MR INDER PAL SINGH BINDRA & ANR.

.....Respondents

Through: Mrs. Madhavi Divan, Sr. Advocate, with Mr. Ranjan Sardana, Ms. Nidhi Khanna, Ms. Aishani Narain Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The Petitioner, M/s KSD Zonne Energie LLP, a Limited Liability Partnership incorporated on 03.07.2015 and registered as a "small" enterprise under the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSME Act**"), engaged in the generation of electric power

through solar energy has presented this petition challenging the order dated 19.05.2025 ("**Impugned Order**") passed by the Competition Commission of India ("**CCI**") in Case No. 35 of 2024, under Section 26(2) of the Competition Act, 2002 ("**Act of 2002**").

2. The Commission *vide* the Impugned Order closed the complaint filed by the Petitioner holding that no *prima facie* contravention of Section 3 and 4 of the Act of 2002 is made out against Respondent No. 2, Canara Bank Limited ("**Canara Bank**").

3. For the purpose of commissioning a 3 MW solar plant project under the Priority Sector Lending Guidelines, the Petitioner approached Canara Bank and availed a term loan of Rs.13.25 crores, sanctioned *vide* letter dated 12.07.2016. The sanction letter stipulated an initial interest rate of 16.20% per annum, which was stated to be "subject to review" by Bank keeping in view DSCR, Debt/Equity, Margin, Repayment schedule, past experience etc. and also further changes as may be decided by the bank and 'subject to changes as decided by the bank from time to time.

4. At the behest of the Petitioner's request and a Credit Approval Committee order dated 02.03.2018, the interest rate was revised to 11.00% per annum, with an annual reset date of 03.09.2018, *vide* letter dated 06.03.2018. Canara Bank *vide* a separate letter dated 11.01.2021 allegedly retrospectively imposed an interest rate of 14.45% for the period 04.09.2018 to 16.07.2020, demanding an additional sum of approximately Rs.76,75,894/- as back interest, attributing the 11% rate to a "branch error".

5. On 29.04.2021, Canara Bank offered the Petitioner a switch from the Marginal Cost of Funds-based Lending Rate ("**MCLR**") to the Repo Linked Lending Rate ("**RLLR**") regime at a reduced rate of 10.80% per annum, a

transition mandated by the Reserve Bank of India ("**RBI**") from 01.10.2019 onwards but with a *caveat* of prior payment of the disputed back-interest demand of approximately Rs.73 lakhs, which the Petitioner failed to comply with.

6. Under the RBI's Resolution Framework 2.0, on 22.07.2021, Canara Bank converted the accumulated interest arrears of Rs.1,11,67,000/- into a Funded Interest Term Loan ("**FITL**") at 11% interest for a tenure of 5 years, while simultaneously rescheduling the principal outstanding at a revised floating rate of 10.95%, an arrangement which the Petitioner alleges effectively constituted the charging of interest on interest.

7. When the Petitioner attempted to transfer its loan account to other lenders offering more favourable terms, Canara Bank is alleged to have withheld the original title/collateral documents which any competing lender would mandatorily require for processing a loan takeover, thereby foreclosing the Petitioner's access to the competitive credit market.

8. Demand notices under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") were issued on 24.01.2024 and 14.05.2024. The Petitioner also alleges that Canara Bank conspired with its appointed valuers to deliberately undervalue the solar plant for the purpose of facilitating its disposal in the contemplated SARFAESI auction, thereby constituting an anti-competitive agreement under Section 3 of the Act of 2002.

9. On 27.11.2024, the Petitioner filed a complaint under Section 19(1)(a) of the Act of 2002 before the CCI, alleging contravention of Sections 3 and 4 of the Act of 2002 by Canara Bank, and seeking interim relief under Section 33 of the Act of 2002.

10. The Petitioner's case before the CCI was that. ***First***, the relevant market was the market for the provision of banking and loan services in India. ***Second***, Canara Bank holds a dominant position and has abused the same by arbitrarily altering interest rates, retrospectively imposing back-interest, and refusing loan transfer. ***Third***, there existed an anti-competitive agreement between Canara Bank and its valuers contrary to Section 3 of the Act. ***Fourth***, Canara Bank withheld collateral documents to prevent loan transfer, thereby foreclosing competition.

11. The Petitioner seems to have inspected the case records on 06.02.2025, at which point no order had yet been passed. The Petitioner inspected again on 21.04.2025, and upon that inspection discovered that an order dated 05.03.2025 had been passed by the Commission on that date, recording that "*the Commission considered the Information and decided to pass an appropriate order in due course.*"

12. The Petitioner contends that the order dated 05.03.2025 was never served upon the Petitioner by the CCI. No notice of the date of the ordinary meeting in which the information was considered was issued to the Petitioner at any point prior to the passing of the Impugned Order. On 19.05.2025, the CCI passed the Impugned Order under Section 26(2) of the Act of 2002.

13. The Commission, in the Impugned Order, perused the information and the material on record and held that; (i) that Canara Bank, holding the 6th rank among public sector banks with a 5.73% share in the banking sector, is not dominant in the relevant market, given the large number of players including SBI, HDFC Bank, PNB, Bank of Baroda, ICICI Bank, Indian Bank, Central Bank and Indian Overseas Bank, and accordingly no case

under Section 4 arises; (ii) that the sanction letter dated 12.07.2016 itself specifically stated that interest rates were "*subject to changes as decided by the bank from time to time*", the rate changes were agreed contractual terms, and the back-interest dispute appears to be a dispute between the parties with respect to the agreed terms and conditions and does not fall under the purview of the Act; (iii) that the Petitioner had not provided any evidence in support of the allegation of an anti-competitive agreement between Canara Bank and its valuers; and (iv) that the retention of collateral documents until full repayment is a standard banking practice. The operative paragraph no. 26 of the Impugned Order reads as follows:-

> "*26. In light of the above, the Commission is of the view that no prima facie contravention of Section 3 and 4 of the Act is made out in the present matter. The Commission directs that the matter be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant of relief(s) as sought under Section 33 of the Act arises and the same is also rejected."*

14. Ms. Divan, learned Senior Counsel for CCI, raises a preliminary objection to the maintainability of the present petition. She submits that an order passed under Section 26(2) of the Act of 2002 is specifically enumerated as appealable under Section 53A, and a specific, efficacious, comprehensive statutory remedy of appeal before the NCLAT is available to the Petitioner.

15. She urges that the Petitioner cannot bypass this statutory remedy by approaching this Court. She submits that neither the Act of 2002 nor the CCI (General) Regulations, 2024 mandates any prior notice or hearing to the informant before the Commission passes a Section 26(2) order.

16. Mr. Billimoria, learned Senior Counsel for the Petitioner, submits that the invocation of writ jurisdiction is fully justified because the Impugned

Order is vitiated by violation of the principles of natural justice. He submits that the CCI, being a quasi-judicial body, is bound by Section 36(1) of the Act of 2002 to be guided by the principles of natural justice in the discharge of all its functions, including the prima facie screening function under Section 26(2).

17. He further argues that there is a fundamental distinction between an order under Section 26(1), which is a direction simpliciter to investigate, and an order under Section 26(2), which is a final order closing the complaint and determining the Petitioner's rights. He contends that the finality of a Section 26(2) order is compounded by Section 26(2A) of the Act of 2002, which operates as a statutory bar on the Commission entertaining a fresh information on the same or substantially the same facts, thereby rendering the closure under Section 26(2) permanently irreversible in its consequences for the Petitioner.

18. The sole ground raised by Mr. Billimoria to invoke the jurisdiction of this Court is alleged violation of principles of natural justice. He submits that since the CCI has not afforded an opportunity of hearing to the petitioner before closing the complaint, therefore, the order suffers with the violation of principles of natural justice. According to him, the decision in the case of ***Competition Commission of India v Steel Authority of India Ltd***.[1] (hereinafter '***SAIL decision'***), would reinforce the marked distinction between both the provisions.

19. I have heard learned counsel appearing for the parties and have perused the record.

20. Section 26 of the Act of 2002, which governs the procedure for

inquiry, in herein reproduced as under:-

> *26. Procedure for inquiry under section 19.*
>
> *(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:*
>
> *Provided that if the subject-matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.*
>
> *(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.*
>
> *[(2A) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order.]"*

21. Section 36(1) of the Act of 2002, upon which the Petitioner relies, in herein reproduced as under:-

> *"36. Power of Commission to regulate its own procedure.—*
>
> *(1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure…"*

22. The appellate remedy available to the Petitioner under Sections 53A

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[1] (2010) 10 SCC 744

and 53B of the Act of 2002 is also material. Section 53A designates the NCLAT as the Appellate Tribunal and confers upon it jurisdiction to hear and dispose of appeals against orders of the Commission under Section 26(2), *inter alia*. Section 53B(1) provides that any person aggrieved by such an order may prefer an appeal. Section 53B(2) prescribes a period of sixty days from receipt of the order for filing such appeal, extendable upon sufficient cause. Section 53B(3) empowers the NCLAT to confirm, modify or set aside the order under challenge. It is thus seen that the Impugned Order, being an order under Section 26(2) of the Act of 2002, is an appealable order within the meaning of Section 53A.

23. The doctrine of natural justice embodies two fundamental rules: *nemo debet esse judex in propria causa* (no one shall be a judge in their own cause) and *audi alteram partem* (no decision shall be made against a party without a fair hearing). In the evolution of this doctrine, the House of Lords in ***Ridge v. Baldwin***,[2] delivered by Lord Reid, rejected the rigid limitation of natural justice to judicial and quasi-judicial decisions, and affirmed that the question is whether the decision-maker is duty-bound to observe procedural fairness having regard to the nature of the power exercised and the consequences for the affected party. ***Ridge*** (supra) has been characterised as the "Magna Carta of natural justice" owing to the abovementioned reasoning.

24. According to Mr. Billimoria, a plain reading of paragraph 91 of SAIL decision coupled with other paragraphs would clearly indicate that the Supreme Court was conscious of the marked distinction between both the provisions. According to him, the repeated observations made by the

Supreme Court in different paragraphs would reinforce that the adjudication was limited to the provisions of Section 26(1) of the Act of 2002.

25. The Supreme Court gave full effect to this evolution in ***A.K. Kraipak v. Union of India***,[3] holding that the dividing line between administrative and quasi-judicial functions had become thin and was being gradually obliterated:-

> *"13.The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised…"*
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> *"20. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative enquiries."*

26. The Division Bench of this Court, in ***Mahindra Electric Mobility Limited v. Competition Commission of India,***[4], while upholding the constitutional validity of the Competition Act and examining the nature of the CCI, held that the CCI is "*a body that is in parts administrative, expert (having regard to its advisory and advocacy roles) and quasi-judicial when it proceeds to issue final orders, directions and/or penalties*." This characterisation of the CCI, as partaking of administrative, expert and quasi-judicial attributes at different stages of its functioning, is directly relevant to

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[2] [1964] AC 40.
[3] (1969) 2 SCC 262.
[4] (2019) SCC OnLine Del 8032.

the question of the degree of natural justice that attaches to each stage.

27. Importantly, however, natural justice is not a monolithic, uniform standard. As the Supreme Court held in ***Maneka Gandhi v. Union of India***,[5] the locus classicus on procedural fairness under the Constitution, the procedure must be right and just and fair, but the specific requirements of natural justice are calibrated to the nature of the function being exercised and the availability of remedies. The relevant paragraph no. 7 is reproduced as under:-

> *"7.The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be 'right and just and fair' and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."*

28. A gate-keeping, screening function, at which an expert regulatory body forms a preliminary opinion on whether a matter warrants investigation, does not carry the same procedural obligations as a full adjudicatory determination. This principle was further crystallised in ***Swadeshi Cotton Mills v. Union of India***,[6] where the Supreme Court articulated the doctrine of pre-decisional and post-decisional hearing in paragraph no. 44:-

> *"44. In short, the general principle, as distinguished from an absolute rule of uniform application, seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage*

[5] (1978) 1 SCC 248.
[6] (1981) 1 SCC 664.

29. This principle from ***Swadeshi Cotton Mills*** (supra) is of direct and decisive application in the present case. Section 53A read with Section 53B provides, after the Section 26(2) order, a post-decisional hearing before the NCLAT amounting to a full review on the merits, encompassing findings of fact, legal analysis, and market definition. Such a comprehensive appellate remedy, specifically designed for challenges to Section 26(2) orders, is precisely the mechanism that Swadeshi Cotton Mills holds excludes the pre-decisional hearing requirement at the screening stage.

30. The nature of the Commission's function at *the prima facie* stage under Section 26, and the question of whether parties are entitled to notice or hearing before the Commission forms its opinion, fell for comprehensive determination before the Supreme Court in ***Competition Commission of India v. Steel Authority of India Ltd.,***[7] (hereinafter as "**SAIL decision"**). This is the foundational and controlling authority on the subject matter under consideration.

31. The Supreme Court in ***SAIL*** (supra) framed, *inter alia*, the following question for determination. "What is the ambit and scope of power vested with the Commission under Section 26(1) of the Act and whether the parties, including the informant or the affected party, are entitled to notice or hearing, as a matter of right, at the preliminary stage of formulating an opinion as to the existence of the prima facie case."

32. The Supreme Court answered this question by holding that the Commission's function at the *prima facie* stage is administrative, inquisitorial and departmental in character, and that neither the informant

nor the opposite party is entitled to notice or hearing as a matter of right at this stage. Paragraph 91 of the SAIL decision, the relevant paragraph, is extracted hereunder:-

> *"91. The jurisdiction of the Commission, to act under this provision, does not contemplate any adjudicatory function. The Commission is not expected to give notice to the parties i.e. the informant or the affected parties and hear them at length, before forming its opinion. The function is of a very preliminary nature and in fact, in common parlance, it is a departmental function. At that stage, it does not condemn any person and therefore, application of audi alteram partem is not called for. Formation of a prima facie opinion departmentally (the Director General, being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself) does not amount to an adjudicatory function but is merely of administrative nature. At best, it can direct the investigation to be conducted and report to be submitted to the Commission itself or close the case in terms of Section 26(2) of the Act, which order itself is appealable before the Tribunal and only after this stage, there is a specific right of notice and hearing available to the aggrieved/affected party. Thus, keeping in mind the nature of the functions required to be performed by the Commission in terms of Section 26(1), we are of the considered view that the right of notice or hearing is not contemplated under the provisions of Section 26(1) of the Act."*

33. Paragraph 97 of the SAIL decision holds that the Commission must nonetheless express its prima facie opinion in clear terms, with reference to the information furnished:-

> *"97.At the stage of forming a prima facie view, as required under Section 26(1) of the Act, the Commission may not really record detailed reasons, but must express its mind in no uncertain terms that it is of the view that prima facie case exists, requiring issuance of direction for investigation to the Director General. Such view should be recorded with reference to the information furnished to the Commission. Other decisions and orders, which are not directions simpliciter and determining the rights of the parties, should be well reasoned analysing and deciding the rival contentions raised before the CCI by the parties."*

[7] (2010) 10 SCC 744.

34. Two propositions of binding force emerge from ***SAIL*** (supra) for the purposes of the present case. ***First,*** neither the informant nor the opposite party is entitled, as a matter of right, to notice or hearing before the Commission forms its *prima facie* opinion and passes an order under Section 26, whether that results in a direction to investigate under sub-section (1) or a closure under sub-section (2).

35. The observation in paragraph 91, "*close the case in terms of Section 26(2) of the Act, which order itself is appealable before the Tribunal and only after this stage, there is a specific right of notice and hearing*", is the Supreme Court's articulation of when the hearing right accrues: after the Section 26(2) stage, before the Appellate Tribunal. ***Second***, a Section 26(2) order, being one that puts an end to the proceedings initiated upon receiving the information and where closure of the case causes determination of rights and affects a party, i.e. the informant, is specifically made appealable under Section 53A, thereby conferring upon the informant a full remedy before the NCLAT.

36. Mr. Billimoria submits that the observations in paragraph 91 of the SAIL decision with respect to Section 26(2) constitute *obiter dicta*, the primary controversy having arisen in respect of a Section 26(1) direction. He relies upon ***State of Orissa v. Sudhansu Sekhar Misra,***[8] wherein the Supreme Court, approving the dictum of ***Earl Halsbury L.C. in Quinn v. Leathem***[9], held that a case is an authority only for what it actually decides. This submission, however, cannot be accepted.

37. The Supreme Court in paragraph 91 of SAIL addressed both possible

[8] 1967 SCC OnLine 17.
[9] [1901] AC 495.

outcomes of the Commission's *prima facie* examination and deliberately located the hearing right as arising only after the Section 26(2) stage. This forms an integral part of the reasoning in identifying why hearing rights do not attach before the Commission. Such an observation, being part of the ratio and not a tangential remark on a different matter, carries binding authority.

38. The SAIL decision's characterisation of the Commission's prima facie function as administrative and the resulting limitation on writ jurisdiction has been recognised and applied by this Court in a series of decisions.

39. The Division Bench of this Court in ***Mahindra Electric*** (supra) decided a batch of writ petitions filed by automobile manufacturers challenging the constitutional validity of the Competition Act and orders passed by the Commission. The Division Bench, in a comprehensive judgment running over 150 pages, held that the CCI is a body that is in parts administrative, expert (having regard to its advisory and advocacy roles) and quasi-judicial when it proceeds to issue final orders, directions and/or penalties.

40. Relying on ***SAIL*** (supra), the Court reaffirmed that the initial stages of the Commission's process, including formation of *prima facie* opinion and directing investigation under Section 26(1), are administrative and inquisitorial in nature, and not judicial. The adjudicatory character of the Commission's function arises only after investigation and hearing of parties on the Director General's report. The Court upheld the constitutional validity of the Act and rejected the challenges to procedural safeguards.

41. This Court also considered the procedural framework of the

Competition Act in ***Cadila Healthcare Limited v. Competition Commission of India***,[10] decided by a Division Bench. This Court, while declining to interfere in an ongoing inquiry, observed that the Commission is an expert regulatory body whose functioning "*should not be crippled by technical procedural rules*" and that the Commission's statutory framework is designed to enable effective enforcement of competition law. The Court held that questions of jurisdiction and procedure are, in the ordinary course, matters to be raised before the Commission and, thereafter, before the Appellate Tribunal under Section 53A of the Act of 2002.

42. The Supreme Court in ***Competition Commission of India v. Bharti Airtel Limited***,[11] (hereinafter "***Bharti Airtel decision***") reaffirmed that the extraordinary writ jurisdiction of the High Court against orders of the Commission under Section 26 is very narrow and is to be exercised in exceptional cases. The controversy in Bharti Airtel arose from a challenge by major telecom operators to a Section 26(1) direction.

43. Supreme Court, after noting that an order under Section 26(1) is administrative in nature and constitutes only a *prima facie* view, held that the writ jurisdiction against such orders is narrow and exceptional, and that the appropriate remedy for parties aggrieved by the Commission's prima facie assessment is the statutory appeal before the Appellate Tribunal. While the primary facts of ***Bharti Airtel*** (supra) concerned a Section 26(1) direction, the underlying principle, that writ jurisdiction against Section 26 orders is limited and the statutory remedy before the Appellate Tribunal is the appropriate avenue, applies equally to Section 26(2) closure orders and

[10] (2018) 252 DLT 647.
[11] (2019) 2 SCC 521

reinforces the analysis emerging from the SAIL decision.

44. The SAIL decision's (supra) holding on the absence of a notice or hearing requirement at the Section 26 *prima facie* stage has received its most recent and explicit reaffirmation from the Supreme Court in ***Competition Commission of India v. Kerala Film Exhibitors Federation & Ors.***,[12] decided on 26.09.2025 (hereinafter "***KFEF decision***"). Although the primary question in the ***KFEF decision*** (supra) concerned the adequacy of notice for imposing penalties on individual office-bearers under Sections 27 and 48 of the Act of 2002, the Supreme Court while referring to **SAIL** conducted a comprehensive survey of the procedural framework under Section 26 and made the following observations at paragraph 38, which are directly applicable to the present case:-

> *"71. The intimation received by the Commission from any specific person complaining of violation of Section 3(4) read with Section 19 of the Act, sets into motion, the mechanism stated under Section 26 of the Act. Section 26(1), as already noticed, requires the Commission to form an opinion whether or not there exists a prima facie case for issuance of direction to the Director General to conduct an investigation.* ***This section does not mention about issuance of any notice to any party before or at the time of formation of an opinion by the Commission on the basis of a reference or information received by it. Language of Sections 3(4) and 19 and for that matter, any other provision of the Act does not suggest that notice to the informant or any other person is required to be issued at this stage.*** *In contradistinction to this, when the Commission receives the report from the Director General and if it has not already taken a decision to close the case under Section 26(2), the Commission [must afford a hearing before passing final orders]."*
>
> [Emphasis Supplied]

45. The Supreme Court in the ***KFEF*** (supra) thus confirmed, in the most express terms, that no provision of the Act of 2002, whether Section 26(1),

26(2), or any other provision requires the Commission to issue notice to the informant or any other party at the stage of forming its prima facie opinion. The KFEF decision proceeds from the SAIL decision as its foundation and applies the same reasoning to the contemporary statutory framework.

46. Beyond judicial authority, the statutory architecture independently and conclusively supports the conclusion that no prior hearing is required at the Section 26(2) stage. As extracted above, Section 26(9) of the Act of 2002, inserted by the Competition (Amendment) Act, 2023 effective from 19.09.2024, contains an express and mandatory hearing requirement in its proviso, "*the Commission shall issue a show-cause notice... and give a reasonable opportunity of being heard to the parties concerned*." This requirement applies at the post-investigation closure stage. By the very same Amendment, Parliament did not introduce any corresponding hearing requirement in Section 26(2), which operates at the anterior *prima facie* screening stage.

47. The differential treatment of these two closure provisions is the clearest possible expression of legislative intent. Where Parliament wanted to mandate a hearing, it did so expressly, in Section 26(9), in the proviso to Section 6(6), and in the show-cause notice requirements under Sections 27 and 31. Where it did not, as at the Section 26(2) stage, the omission is intentional and must be given full effect. This Court, in terms of the interpretive principle applied in ***CIT v. Tara Agencies***,[13] must interpret the statute as it stands and cannot add words that Parliament chose not to use. The maxim *expressio unius est exclusio alterius* (the express mention of a

[12] 2025 INSC 1167.
[13] (2007) 6 SCC 429.

requirement in one provision implies its exclusion from another) operates with full force here.

48. Therefore, the Commission was not required to issue notice or afford an opportunity of hearing to the Petitioner before passing the Impugned Order under Section 26(2) of the Act of 2002. The natural justice obligation under Section 36(1) is, at this stage, discharged by the requirement to pass a speaking, reasoned order and by the availability of a comprehensive appellate remedy before the NCLAT.

49. The legal position declared in the SAIL decision, as reaffirmed in the KFEF decision, has received specific and direct affirmation in a matter factually and legally identical to the challenge raised in the present petition. The NCLAT, in Competition Appeal (AT) No. 05/2018, ***Karnataka Power Corporation Ltd. v. Competition Commission of India and Anr***., decided on 13.01.2026 (hereinafter "***KPCL decision***"), was directly confronted with the question of whether the Commission is obligated to issue notice and grant a hearing to an informant before passing a Section 26(2) closure order.

50. The Petitioner in ***KPCL*** (supra) herein preferred a statutory appeal before the NCLAT specifically urging, as its primary ground, the same contention that is urged in the present petition, that the Commission was obligated to notify the Peititoner and grant it an opportunity of hearing before passing the final closure order, and that the failure to do so amounted to a violation of principles of natural justice. The NCLAT, after a thorough examination of the statutory scheme and the SAIL decision, rejected this contention. The NCLAT held that the statute does not require the Commission to issue notice to the informant before closing the complaint under Section 26(2) of the Act of 2002, and specifically characterised the

allegation of violation of natural justice as completely untenable.

51. KPCL challenged the NCLAT's order before the Supreme Court in Civil Appeal No. 6670 of 2026. The Supreme Court, by order dated 24.04.2026, dismissed the civil appeal. The order of the Supreme Court is extracted hereunder:-

> *"1. Delay condoned.*
>
> *2. Having heard Mr. Balbir Singh, the learned Senior Counsel appearing for the appellant and having gone through the materials on record, we find no good ground to interfere with the impugned Order passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi in Competition Appeal (AT) No. 05/2018.*
>
> *3. The Appeal is, accordingly, dismissed.*
>
> *4. Pending applications, if any, also stand disposed of."*

52. Since the order passed by the Supreme Court is in a civil appeal, the principles of merger will be attracted, as has been held by the Supreme Court in ***Kunhayammed & Ors. v. State of Kerala & Anr.***[14].

53. The doctrine of merger was expounded by the Supreme Court in ***Kunhayammed*** (supra). The Court stated the foundational logic of the doctrine as follows: The logic underlying the doctrine of merger is that there cannot be more than one decree or operative order governing the same subject matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority is subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the *lis* before it either way, whether the decree or order under appeal is set aside or modified

or simply confirmed, it is the decree or order of the superior court which is the final, binding and operative decree or order wherein merges the decree or order passed by the court below.

54. The Supreme Court in ***Kunhayammed*** (supra) drew a precise and legally consequential distinction between two stages of jurisdiction under Article 136 of the Constitution of India.

55. The ***first*** stage is the stage of disposal of the prayer for special leave to appeal. At this stage, the Supreme Court exercises its discretionary jurisdiction, it merely decides whether the case is deserving of the Court's attention. A dismissal at this stage does not attract the doctrine of merger. The order of the subordinate court retains its independent existence. A dismissal of the SLP, whether by a speaking or non-speaking order, does not constitute a determination on the merits of the inferior court's order, does not operate as res judicata, and does not prevent the aggrieved party from pursuing other available remedies

56. The ***second*** stage commences when leave to appeal is granted and the special leave petition stands converted into a civil appeal. At this stage, the Supreme Court exercises its appellate jurisdiction. The hearing is on the merits of the matter before the Court. If the appeal is dismissed at this stage, whether by a speaking order or otherwise, the doctrine of merger applies. The subordinate court's order merges into the Supreme Court's order, and it is the latter that subsists as the final, binding and operative order.

57. The question that arises for determination is at which of these two stages did the Supreme Court exercise its jurisdiction in Civil Appeal No. 6670/2026. The answer is conclusively provided by the order itself and by

[14] (2000) 6 SCC 359.

the caption of the proceedings. Three features are determinative. ***First***, the proceedings before the Supreme Court are captioned as a civil appeal, not a special leave petition. ***Second,*** the Supreme Court condoned the delay, thereby entertaining the appeal on its merits. ***Third,*** and most importantly, the Supreme Court heard Learned Cou on behalf of KPCL, who specifically advanced the argument that a Section 26(2) order terminates proceedings, impacts the informant's rights, and thereby attracts the principles of natural justice under Section 36 of the Act of 2002, and, after such hearing, found no good ground to interfere. This is, in every essential respect, an exercise of appellate jurisdiction at the second stage under the ***Kunhayammed*** (supra) framework, not a discretionary dismissal at the first stage.

58. Applying the doctrine of merger as enunciated in ***Kunhayammed*** (supra), the order dated 13.01.2026 of the NCLAT in Competition Appeal (AT) No. 05/2018 stands merged into the order dated 24.04.2026 of the Supreme Court in Civil Appeal No. 6670/2026. The NCLAT's order ceases to have independent existence.

59. It is the Supreme Court's order of 24.04.2026 that now subsists as the final, binding and operative order on the question of whether Section 26(2) of the Act of 2002 requires prior notice and hearing to be afforded to an informant before the Commission passes a closure order.

60. An important aspect of the adequacy of the statutory remedy available to the Petitioner is the question of standing. The Supreme Court in ***Samir Agrawal v. Competition Commission of India***,[15] delivered by a three-Judge Bench, settled the question of whether an informant whose information has been closed by a Section 26(2) order has *locus standi* to prefer an appeal

before the NCLAT under Section 53B of the Act of 2002.

61. In ***Samir Agrawal*** (supra), the informant had filed information alleging that cab aggregators Ola and Uber used algorithms to facilitate price-fixing among drivers, thereby violating Section 3 of the Act. The CCI passed a Section 26(2) closure order. The NCLAT dismissed the informant's appeal at the threshold on the ground that he, not being a consumer of either Ola or Uber, lacked the *locus standi* to maintain an appeal under Section 53B. The Supreme Court reversed this finding and held that The expression 'any person' in Section 53B needs to be construed liberally. Since the informant's information was dismissed, he was 'aggrieved' and entitled to appeal. Competition proceedings are actions in rem aimed at protecting public interest, and a person filing information need not demonstrate personal injury or legal grievance for the purpose of maintaining an appeal before the Appellate Tribunal.

62. The Supreme Court further held that since the Act uses the wide expression "*any person*" in Section 53B, unlike the earlier MRTP Act which confined appeals to "*aggrieved parties*" in a narrow sense, a liberal interpretation must be accorded and the informants right to appeal must be recognised. This decision conclusively establishes that the Petitioner has full and unquestionable standing to prefer a statutory appeal before the NCLAT under Section 53B of the Act of 2002. The concern, sometimes raised, that the statutory remedy under Section 53A may not be available to an informant is completely put to rest by the ***Samir Agrawal*** (supra)

63. In light of the holding that the Commission was not required to issue notice or afford a hearing to the Petitioner before passing the Impugned

[15] (2021) 3 SCC 136.

Order, it is crucial go addresses the maintainability of the present writ petition in the light of the available statutory remedy.

64. Additionally, the holding from the decision of the NCLAT in ***Maj. Pankaj Rai v. Secretary, Competition Commission of India***,[16] is instructive. In that case, the informant was aggrieved by a Section 26(2) closure order passed by the CCI. Rather than preferring a statutory appeal under Section 53B of the Act, the informant approached the Telangana High Court by way of a writ petition alleging natural justice violation, and thereafter pursued litigation before the Division Bench and then the Supreme Court, consuming a total of 693 days before finally filing an appeal before the NCLAT.

65. The NCLAT held that such time spent before the constitutional Courts in the pursuit of a remedy that was not available, while the specific statutory remedy remained unexhausted, did not constitute "sufficient cause" within the meaning of the proviso to Section 53B(2) for condoning the delay in filing the appeal. The NCLAT further held that a litigant aggrieved by a CCI order cannot be permitted to choose between remedies under the pretext of the order being against natural justice, as such conduct would amount to "forum shopping" and would defeat the legislative purpose of the special limitation under Section 53B of the Act.

66. For all the aforesaid reasons, the instant petition stands dismissed.

67. Liberty is, however, granted to the Petitioner to avail the statutory remedy of appeal under Section 53A of the Act of 2002 before the National Company Law Appellate Tribunal against the order dated 19.05.2025 passed by the Competition Commission of India under Section 26(2) of the Act of 2002.

68. This Court has not expressed any opinion whatsoever on the merits of the challenge to the Impugned Order dated 19.05.2025, or on any of the substantive contentions raised by the Petitioner with respect to the alleged contravention of Sections 3 and 4 of the Act of 2002 by the Canara Bank.

69. All rights and contentions of the parties are left open.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MAY 14, 2026
NK

[16] Competition Appeal (AT) No. 01 of 2020, decided on 29.05.2020.