



JSA Newsletter Competition Law

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Supreme Court

Committee of Creditors cannot approve resolution plan prior to Competition Commission of India's approval

On January 29, 2025, the Supreme Court of India ("SC") in the case of *Independent Sugar Corporation Limited vs. Girish Sriram Juneja, inter alia* ruled that the Committee of Creditors ("CoC") cannot approve the resolution plan involving a combination prior to the Competition Commission of India's ("CCI") approval.

Background

In October 2021, the Corporate Insolvency Resolution Process ("CIRP") under the Insolvency and Bankruptcy Code, 2016 ("IBC") was initiated against Hindustan National Gas and Industries Limited ("HNG"). An Expression of Interest ("EOI") was floated in March 2022 by the Resolution Professional ("RP"), which also prescribed a mandatory approval from the CCI.

In April 2022, Independent Sugar Corporation Ltd. ("INSCO") and AGI Greenpac Ltd. ("AGI") submitted their respective resolution plans for consideration. AGI requested an exemption from the RP on obtaining prior CCI's approval for the resolution plan. The RP while approving it, required AGI to secure the CCI approval after the CoC approval but before submitting the application to the National Company Law Tribunal ("NCLT").

On September 27, 2022, AGI filed an application before the CCI under Form I (short form), however, the same was invalidated by the CCI on October 22, 2022, with a direction to file a notice in Form II (long form) as the parties' combined market shares in certain markets exceeded 45–50%.

On October 28, 2022, the CoC approved the resolution plan submitted by AGI. Notably, as of the AGI CoC approval date, AGI neither had the CCI approval nor a pending notice with the CCI, whereas INSCO had already obtained the CCI approval under green channel route.

On November 3, 2022, AGI resubmitted its application to the CCI under Form II, which was conditionally approved by the CCI on March 15, 2023 ("CCI Order"). Summary of the CCI Order is available at [JSA Competition Law Newsletter April 2023](#).

INSCO challenged the CoC's approval of AGI's resolution plan before the NCLT, Kolkata, which rejected the challenge, upholding CoC's decision. INSCO then appealed to the National Company Law Appellate Tribunal ("NCLAT"), which dismissed the appeal *inter alia* holding that while the CCI approval is mandatory, obtaining it before the CoC approval is only directory ("**September Judgement**"). In a separate appeal, INSCO challenged the CCI Order before NCLAT, which upheld the CCI Order ("**July Judgement**"). Summary of the July Judgement is available at [JSA Competition Law Newsletter September 2023](#).

The SC Observations

Aggrieved, INSCO challenged the September Judgement and the July Judgement before the SC. The SC *inter alia* held that:

1. Interpretation of proviso to Section 31(4) of IBC: The NCLAT in the September Judgement concluded that under IBC, though the CCI approval is mandatory, obtaining the CCI approval before the CoC approval is merely directory. The SC rejected NCLAT's observation and emphasised the *plain meaning rule*, holding that the legislature deliberately inserted the requirement of 'prior' approval to ensure that any anti-competitive concerns are resolved before a resolution plan is approved. The SC also stressed that while the IBC aims to speed up corporate insolvency

resolutions, it must still follow legal procedures. They stated that bypassing statutory procedures would undermine the legal system and erode confidence in the regulatory framework. While they recognised that delays are unfortunate, they emphasised that this does not justify disregarding legal requirements.

2. Anomalous situations and conditional approvals: The Competition Act, 2002 ("**Competition Act**") grants CCI the authority to mandate modifications to a combination. Consequently, if the CCI approval is not secured before the CoC approval, there is a possibility that the CCI may require changes to a resolution plan that has already been approved by the CoC. This could compel the CoC to assess a resolution plan without the opportunity to review the modifications directed by the CCI. Additionally, conditional approvals may create uncertainty, necessitate further revisions, and potentially undermine the integrity of the resolution framework.
3. Procedural lapses under the Competition Act: The Competition Act read with applicable regulations mandate the CCI to issue a Show Cause Notice ("**SCN**") to the 'parties' to the combination in cases where the CCI is of the view that the combination will cause competition concerns. In the present case, the CCI had only issued SCN to AGI and not to HNG. The SC rejected the CCI's argument that the RP did not object, stating that the CCI had violated statutory requirements. It emphasised that issuing an SCN to the parties is a mandatory procedural step that cannot be bypassed.
4. Discrepancies in the data submitted to the CCI: The SC noted that INSCO pointed out significant discrepancies in the data AGI and HNG provided to the CCI, which misrepresented key facts and affected competitive analysis. It stated that the NCLAT should have considered these inconsistencies in its July Judgment and that the CCI Order should have been revoked.

Accordingly, the SC directed: (a) AGI's resolution plan to be quashed as it was obtained prior to the CCI's approval; (b) any action taken pursuant to the resolution plan be nullified; (c) the rights of all stakeholders were to be restored to their pre-CoC approval status; and (d) the resolution plan of INSCO and others to be reconsidered by the CoC.

(Source: SC Judgement dated January 29, 2025)

Competition Commission of India

Enforcement

The CCI closes case against IREL (India) Limited for alleged abuse of dominant position

On October 18, 2022, the CCI ordered an investigation against IREL (India) Limited ("**IREL**")¹ for allegedly imposing unfair and discriminatory conditions in the supply of Beach Sand Ilmenite ("**Ilmenite**"), in contravention of Section 4 of the Competition Act. Summary of the said order is available at [***JSA Competition Law Newsletter October 2022***](#).

The complainant² *inter alia* alleged that IREL abused its dominant position by imposing discriminatory conditions and charging unfair prices, for the supply of Ilmenite in the market. Basis the complaint, the CCI directed the Director General ("**DG**") to investigate the matter.

After a detailed investigation, the DG concluded that IREL, with a market share of more than 90%, is dominant in the market for mining and supply of Ilmenite in India and has abused its dominant position in the said relevant market by:

¹ It is a Central Public Sector Undertaking, designated as a Mini Ratna, engaged in mining and production of minerals, rare earths and chemicals.
² It is a society registered under the Tamil Nadu Societies Registration Act, 1975 comprising members engaged in industries relating to beach minerals.

1. Imposition of discriminatory conditions and denial of market access: Ilmenite was not supplied to VV Titanium Pigments Private Limited (“VTPPL”) but continuous supplies were made to Dharangadhara Chemical Works Limited (“DCW”), thereby adopting a discriminatory approach between two customers.
2. Unfair/excessive prices: The DG undertook a price-cost analysis and noted that IREL raised Ilmenite prices 24 times between April 2015 and March 2022, significantly boosting its profit margin. Since this increase was not linked to production costs, the DG concluded that IREL's pricing was unfair and excessive.
3. Discriminatory pricing: The price discrimination between international and domestic consumers was unsubstantiated, and there was no abuse of dominant position to this end.

The CCI Observations:

The CCI agreed with the findings of the DG in relation to the dominance of IREL, however, it disagreed with the DG's findings regarding the abuse of dominant position and noted that:

1. there was no refusal to deal/supply by IREL to VTPPL due to lack of evidence;
2. IREL's pricing decisions were based on market dynamics, demand-supply balance, alternative procurement options, and buyer-seller bargaining power. A comparison of Ilmenite prices for domestic and foreign consumers, as well as import prices, showed no clear evidence of excessive/unfair pricing; and
3. the comparison of prices of Ilmenite charged by IREL between international and domestic consumers could not be substantiated and, hence the DG correctly rejected this allegation.

Accordingly, the CCI dismissed the case.

(Source: CCI order dated January 17, 2025)

The CCI dismisses complaint against Bhagyanagar Gas Limited for alleged abuse of dominant position

The CCI received a complaint against Bhagyanagar Gas Limited (“BGL”)³ for indulging in alleged abuse of dominant position, in contravention of Section 4 of the Competition Act.

The complainant⁴ executed a Gas Sale Agreement (“**Agreement**”) with BGL to purchase 30,000 (thirty thousand) Standard Cubic Meters Per Day (“**SCMD**”) of natural gas in Hyderabad for its operations. The complainant *inter alia* alleged that BGL abused its dominant position by: (a) charging an unreasonably high price for supplying natural gas since May 2022 and the same is higher than the price of natural gas supplied in Telangana; (b) not revealing the methodology to arrive at the price of natural gas in contravention of the terms of the Agreement; and (c) refusing to enter into a tripartite agreement with a third party to enable the complainant to purchase natural gas from such third party at a cheaper price and use BGL's pipelines for supply of the natural gas to its plant for a reasonable transportation price to BGL, in return.

³ It is engaged in distribution and marketing of natural gas and implementation of city gas distribution projects in states of Andhra Pradesh and Telangana.

⁴ It is engaged in the production of various packaging products including glass containers, speciality glass, security caps and closures, etc.

The CCI defined the relevant market as the *market for supply of natural gas to consumers having a requirement up to 50,000 (fifty thousand) SCMD of gas in Hyderabad* and held BGL to be in a dominant position in the said market for *inter alia* being the exclusive provider of natural gas in the said region.

On abuse, the CCI *inter alia* noted that: (a) BGL has not engaged in excessive pricing since the comparison drawn by the complainant was between two separate geographic markets (i.e., Hyderabad and Telangana) characterised by different regulatory conditions; (b) the allegation regarding failing to share the basis of fixation of prices of natural gas is a subject matter of a contractual arrangement between the parties with no competition law concerns; and (c) given that BGL, is not a 'common carrier' under the Petroleum and Natural Gas Regulatory Board Act, 2006, it could not enter into a tripartite agreement and this was not a competition law concern.

Accordingly, the CCI rejected the allegations under Section 4 of the Competition Act.

(Source: CCI order dated December 30, 2024)

The CCI dismisses complaint against Coal India Limited for alleged abuse of dominant position

The CCI received a complaint against Coal India Limited ("**CIL**")⁵ for indulging in alleged abuse of dominant position, in contravention of Section 4 of the Competition Act. The complaint focused on CIL's new e-auction scheme introduced on December 21, 2022 ("**2022 Scheme**"), which replaced the 2007 Spot E-Auction Scheme ("**2007 Scheme**"). The complainant argued that certain provisions of the new scheme were unfair, overly complex, and discriminatory.

The CCI defined the relevant market as the *market for the production and sale of non-coking coal to bidders under e-auction scheme in India* and found CIL to be in a dominant position. However, after reviewing the clauses of the 2022 Scheme, the CCI found no abuse of dominance, as the provisions largely addressed administrative and operational concerns rather than restricting competition.

The CCI's findings on key clauses are as follows:

1. **Pending payments**: Buyers must clear outstanding payments before their bids are accepted. The CCI deemed this a reasonable and standard business practice.
2. **Bid security**: Bidders must provide a non-interest-bearing security deposit. The CCI found this necessary to ensure payment security and prevent defaults.
3. **Auction timing**: A minimum of 7 (seven) days must be given between auction notification and the event. The CCI classified this as an administrative matter with no competition concerns.
4. **Bank guarantee**: Buyers receiving coal via rail must provide full payment through a bank guarantee, e-transfer, or demand draft. The CCI noted this is a standard safeguard against payment defaults and a similar clause existed in the 2007 Scheme, which was upheld by the CCI in another matter which is currently pending before the SC.
5. **Coal lifting validity**: Buyers must lift coal within 45 (forty-five) days of the sale order, with penalties for overloading borne by them. The CCI found this to be an administrative requirement that does not impact competition.

⁵ It is a 'Maharatna' Public Sector Undertaking under Ministry of Coal, Government of India and is the single largest coal producing company in the world.

6. Third-party coal sampling: Buyers cannot reject coal for quality issues but can request third-party sampling. If the quality is higher, buyers bear the cost difference; if lower, sellers cover the adjustment. The CCI found this to be a fair, reciprocal clause.

Accordingly, the CCI dismissed the case.

(Source: CCI order dated 30 December, 2024)

Merger Control

The CCI approves 8 (eight) combinations in January 2025

1. Combination involving Roop Automotives Limited, CA Carob Investments, UM Holdings, Mohit Oswal and Gaurav Jain.
2. Combination involving Gentari Renewables and certain special purpose vehicles.
3. Acquisition of shareholding of Pegatron Technology India Private Limited by Tata Electronics Private Limited.
4. Acquisition of shareholding of Manjushree Techopack Limited by Magesty II Pte. Ltd, Ashoka India Equity Investment Trust plc, Nuvama Private Investment Trust, and InCred Growth Partners Fund – I.
5. Acquisition of shareholding of Del Monte Foods Private Limited by Agro Tech Foods Limited.
6. Acquisition of shareholding of Ashoka Concessions Limited and Jaora Nayagaon Toll Road Company Private Limited by Ashoka Buildcon Limited.
7. Combination involving Sequent Scientific Limited and certain other entities.
8. Acquisition of shareholding of IDT Cementation India Limited by Renew Exim DMCC.

(Source: CCI Website)

The CCI finds Torrent Power Limited guilty of gun-jumping

The CCI found Torrent Power Limited (“**TPL**”)⁶ guilty of consummating the acquisition of 51% shareholding in Dadra and Nagar Haveli and Daman and Diu Power Distribution Corporation Limited (“**Target**”)⁷ without seeking the CCI approval (referred to as the “**Transaction**”).

Brief background

In February 2022, TPL consummated the Transaction without notifying the CCI. On January 25, 2024, the CCI issued a SCN questioning TPL on why it did not notify the Transaction to the CCI. TPL primarily contended that the CCI does not have jurisdiction as the Transaction is subject to the exclusive jurisdiction of the appropriate commission, i.e., Joint Electricity Regulatory Commission (“**JERC**”) under the Electricity Act, 2003 (“**Electricity Act**”).

⁶ It is a public listed company engaged in business of power generation, transmission and distribution.

⁷ It is a 100% subsidiary of the Union Territory of Dadra and Nagar Haveli and Daman and Diu. It has been set up to undertake the business of power distribution and retail supply of electricity in the said Union Territory.

The CCI Observations

The CCI held that it has jurisdiction to adjudicate the present matter and JERC cannot be said to have exclusive jurisdiction for the following reasons:

1. while the Electricity Act governs electricity-related matters, it does not cover all issues within the industry. It aims to promote competition and does not exclude the CCI's jurisdiction;
2. although special statutes generally override general ones, and newer special laws prevail over older ones, these principles are not absolute. When statutes appear to conflict, they should be harmonised rather than rendered redundant;
3. the Electricity Act regulates the electricity sector, whereas the Competition Act promotes competition across all sectors. These statutes are not inherently conflicting, and their jurisdictions can be reconciled through harmonious interpretation; and
4. the Competition Act empowers the CCI to regulate combinations based on their impact on competition, including in the electricity sector, affirming its authority in this matter.

The CCI found that the relevant financial thresholds were breached, and the Transaction was not eligible for any exemptions, and therefore, should have been notified prior to consummation regardless of it having Appreciable Adverse Effect on Competition in India ("**AAEC**"), in light of the mandatory regime of notifying a combination to the CCI, in India.

The CCI refrained from imposing any monetary penalty due to the presence of several mitigating factors such as: (a) structural issues inherent to the bidding process like TPL's obligation to comply with the strict bid timelines (failure of which would result in TPL losing its security deposit and right to acquire the Target etc); (b) ambiguity due to overlapping provisions in the two special acts, i.e., Competition Act and Electricity Act; (c) the Transaction not resulting in AAEC in the relevant market; and (d) TPL extending full cooperation in respect of the ongoing proceedings.

(Source: CCI order dated January 14, 2025)

The CCI imposes a penalty on a financial investor for gun-jumping

The CCI found a leading Financial Investor guilty of consummating the subscription of Optionally Convertible Debentures ("**OCDs**"), equivalent to less than 5% shareholding of Biocon Biologics Limited ("**Target**") without obtaining the CCI's approval (referred to as the "**Transaction**").

Pursuant to the Transaction, the Financial Investor was entitled to: (a) certain reserved matter rights⁸ (b) information rights including access to minutes of the board, committee, and shareholder meetings ("**Minutes Right**"), change in shareholdings and latest capitalisation table of Target; and (c) inspection rights including access to premises and personnel of the Target ("**Access Right**").

Brief background

On December 9, 2020, the Financial Investor consummated the Transaction without obtaining the CCI's approval. On February 4, 2022, the CCI issued a SCN questioning the Financial Investor on why it did not notify the Transaction to the CCI.

⁸ Two categories of reserved matters: (i) rights which would be exercised only with the prior written consent of the investor majority, and (ii) rights requiring the prior written consent of all the investors.

The Financial Investor argued that the Transaction qualifies for the (erstwhile) item 1 (one) exemption of the CCI (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011 (“**Item 1 Exemption**”) because:

1. it was made solely as an investment and in the Ordinary Course of Business (“**OCB**”) since it acquired less than 10% of the Target’s shares, with no director or observer appointment rights and no involvement in the affairs and management of the Target. The Minutes Rights and Access Rights were standard shareholder rights, available to all investors of the Target. Further, the Transaction is in the OCB as it routinely makes investments in India;
2. minority investor protection rights do not negate the Item 1 Exemption, as investors require safeguards to protect their investments from value erosion; and
3. investors need access to Minutes Rights and Access Rights to ensure proper use of funds invested by them. The Financial Investor is bound by confidentiality under the shareholders’ agreement and cannot disclose such information except as required for fulfilling its obligations.

The CCI Observations

The CCI *inter alia* noted as follows:

1. the Financial Investor contention that the Minutes Rights and Access Rights are ordinary rights available to all investors, cannot be accepted as the same potentially implies that if any entity grants control conferring rights/strategic rights to a class or classes of investors, the same will be treated as ordinary rights;
2. one has to consider the nature of rights and not that the rights have been granted to all or a class of investors. Minutes Right and Access Right go beyond the rights available to an ordinary shareholder. Minutes Rights provide access to Target’s strategic and Commercially Sensitive Information (“**CSI**”) including financial data, strategic plans, business forecasts, proprietary technology and other confidential matters crucial to the competitive advantage and market position of the Target. These rights are not provided to an ordinary shareholder and is indicative that the Financial Investor considered this Transaction as strategic; and
3. in this case, the acquisition of reserved matter rights, information rights, etc. along with the right to convert the OCDs over a period of 6 (six) years indicate that the Financial Investor did not invest in the Target in the OCB.

Accordingly, the CCI noted that Item 1 Exemption cannot be claimed and imposed a penalty of INR 40,00,000 (Indian Rupees forty lakhs) (USD 46,000 (US Dollar forty-six thousand)) for gun-jumping.

(Source: CCI order dated January 14, 2025)

The CCI conditionally approves acquisition of shareholding of STT Global Data Centres India Private Limited by Ruby Asia Holdings II Pte. Ltd. and Singtel Interactive Pte. Ltd.

The CCI conditionally approved the acquisition of up to 26% shareholding of STT GDC Pte. Ltd. (“**STT GDC**”) by Ruby Asia Holdings II Pte. Ltd. (“**Ruby**”) and Singtel Interactive Pte. Ltd. (“**Singtel**”) (referred to as the ‘**Proposed Transaction**’).

STT GDC, an indirect wholly owned subsidiary of Temasek Holdings (Private) Limited (“**Temasek**”), is *inter alia* engaged in the business of providing data centre colocation services in India. Ruby is owned by the KKR group. Singtel,

a subsidiary of Temasek, is *inter alia* engaged in the business of digital infrastructure and digital businesses including data centre colocation services in India.

Singtel has certain shareholding and rights in Nxtra Data, which competes with STT GDC in India. The CCI raised concerns that Singtel's common ownership in two major competitors could reduce competition, enable coordination, and lead to the exchange of CSI/in the colocation market.

To address the CCI's concerns, the parties *inter alia* proposed the following commitments:

1. firewalls will be implemented to prevent the sharing of STT GDC's CSI/confidential information with any Ruby or Singtel personnel involved in competing businesses;
2. Singtel will not appoint an observer on the board of STT GDC who is either a director, observer employee of other competing portfolio companies;
3. Singtel would use the CSI/confidential information of STT GDC only for the purposes of monitoring its investments in STT GDC;
4. any Singtel personnel involved in competing businesses must recuse themselves from STT GDC-related discussions in supervisory bodies, which involve discussions regarding the management or operations of STT GDC group entity;
5. if both STT GDC and competing Singtel portfolio companies pursue the same business opportunity, Singtel's board observer at STT GDC must recuse themselves from related discussions and cease receiving relevant information;
6. Singtel employees will not receive market-facing information of STT GDC but will receive aggregated/anonymised data at the STT GDC group level for Indian operations;
7. Singtel's board observer at STT GDC must recuse themselves from discussions on Indian operations to prevent access to sensitive business information; and
8. the observer appointed by Singtel to the board of STT GDC will not be a Singtel employee.

The CCI accepted the commitments and approved the Proposed Transaction in 113 (one hundred and thirteen) calendar days.

(Source: CCI order dated November 5, 2024)

Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters with its dedicated competition law practice group. The Competition team at JSA advises on all aspects of the Indian competition law including merger control, cartels, leniency, abuse of dominance, dawn raid, compliance, and other areas of complex antitrust litigation. Given the team's continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

On the **enforcement/ litigation**, the team's in-depth understanding of antitrust and the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to abuse of dominance, vertical restraints, and cartelisation (including leniency and dawn raid) before the CCI and appellate courts. On the **merger control**, the team helps clients navigate the merger control and assessment process including obtaining approval of the CCI in Green Channel Form, Form I and Form II.

The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance programs. Notably, the team has conducted forensic reviews of documents and created step-by-step procedures for companies on how to respond to both internal antitrust violations as well as investigations by the regulator, including dawn raids.

The team's expertise (including team members) has been widely recognised by various leading international rankings directories including Chambers and Partners, Who's Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, Forbes Legal Power List and the Legal 500.

This Newsletter has been prepared by:



Vaibhav Choukse

Partner



Ela Bali

Partner



Aditi Khanna

Senior Associate



Faiz Siddiqui

Associate

		
18 Practices and 41 Ranked Lawyers	7 Ranked Practices, 16 Ranked Lawyers ----- Elite – Band 1 - Corporate/ M&A Practice ----- 3 Band 1 Practices ----- 4 Band 1 Lawyers, 1 Eminent Practitioner	12 Practices and 50 Ranked Lawyers
		
14 Practices and 12 Ranked Lawyers		
		
20 Practices and 22 Ranked Lawyers	Ranked Among Top 5 Law Firms in India for ESG Practice	Recognised in World's 100 best competition practices of 2025
		
Among Top 7 Best Overall Law Firms in India and 11 Ranked Practices ----- 11 winning Deals in IBLJ Deals of the Year ----- 11 A List Lawyers in IBLJ A-List - 2024	Asia M&A Ranking 2024 – Tier 1 ----- Employer of Choice 2024 ----- Energy and Resources Law Firm of the Year 2024 ----- Litigation Law Firm of the Year 2024 ----- Innovative Technologies Law Firm of the Year 2023 ----- Banking & Financial Services Law Firm of the Year 2022	Ranked #1 The Vahura Best Law Firms to Work Report, 2022 ----- Top 10 Best Law Firms for Women in 2022
		
		7 Practices and 3 Ranked Lawyers

For more details, please contact km@jsalaw.com

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