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COMPETITION COMMISSION OF INDIA

Case No. 91 of 2013

In Re:

Pan India Infraprojects Private Limited

(formerly known as Essel Sports Private Ltd.) Essel House,
B-10, Lawrence Road, Industrial Area, New Delhi
Regd. Office: 135, Continental Building, Annie Besant
Road, Worli, Mumbai – 400018

Informant

And

Board of Control for Cricket in India (BCCI)

Brabourne Stadium (North Stand), Veer Nariman Road,
Mumbai – 400020

Opposite Party

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U.C. Nahta
Member

Appearance

For Informant: Shri Arun Kathpalia, Sr. Advocate
Shri Ravi Sekhar Nair, Advocate
Ms. Krushika Nayan Choudhary, Advocate

Order under Section 26(1) of the Competition Act, 2002

1. The information in the instant matter was filed by Pan India Infra Projects Private Limited [Earlier known as Essel Sports Pvt. Ltd.] (**'Informant'**), in the year 2013, under Section 19(1)(a) of the Competition Act, 2002, (**'Act'**) against



Board of Control for Cricket in India ('BCCI'/'Opposite Party'), alleging contravention of provisions of Section 4 of the Act.

2. The Commission originally considered the present information on 20th November, 2013 and decided to have a preliminary conference with the parties on 7th January, 2014. After hearing the parties on the said date, the Commission was primarily of the view that the Informant was aggrieved by the conduct of BCCI that was already found to be in contravention of Section 4(2)(c), *i.e.* denial of market access to organisation of domestic private professional cricket leagues/events, in the order dated 08th February, 2013, in the *Surinder Singh Barmi v. BCCI* in Case No. 61/2010 (*Surinder Singh Barmi* case). Since the Commission's order in the said case was under appeal at that point of time, the Commission opined that if the erstwhile COMPAT upholds the Commission's order in *Surinder Singh Barmi* case, the Informant could move an application under Section 42 of the Act. Thus, the matter was closed by the Commission under Section 26(2) of the Act, *vide* Order dated 16th January, 2014.
3. Aggrieved by the order of the Commission dated 16th January, 2014, the Informant filed an appeal before the erstwhile COMPAT (Appeal No. 31/2014). In the meantime, the COMPAT, *vide* its order dated 23rd February, 2015, set aside the Commission's order under Section 27 of the Act passed in *Surinder Singh Barmi* case and remanded back the case to the Commission for further necessary action. Subsequently, the COMPAT, *vide* another order dated 30th March, 2015, allowed the appeal filed by the Informant in the present case and directed the Commission to consider the matter afresh to see whether there is a *prima facie* case warranting investigation by the Director General. The operative portion of the order is as under:

"In view of the findings recorded and observations made in order dated 23.02.2015 passed in Appeal No. 17/2013, which shall be read as part of this order, this appeal is allowed, the impugned order is set aside and



the matter is remitted to the commission to consider afresh, whether or not, the information filed by the appellant discloses prima facie case warranting an investigation by the Director General.”

4. After a detailed investigation and hearing of the parties in *Surinder Singh Barmi* case, the Commission passed an order dated 29th November, 2017, under Section 27 of the Act.
5. Following this, the Informant moved an application dated 08th January, 2018 seeking update of the proceedings in Case No. 91/2013 *i.e.* the present matter. The Commission considered the said application on 01st February, 2018 and decided to have a preliminary conference with the Informant. Accordingly, the preliminary conference was held on 02nd May, 2018. Before going into the observations and findings of the Commission, it is relevant to recapitulate the facts and allegations as stated in the information.
6. The Informant is a promoter of Indian Cricket League (**‘ICL’**). BCCI is a society registered under the Tamil Nadu Societies Registration Act, 1975 and is also a full member of International Cricket Council (**‘ICC’**). As per the Informant, BCCI is controlling and promoting the game of cricket in India, by virtue of framing the laws of cricket in India and selecting teams to represent India in test matches, ODIs and 20-20 matches in India and/or abroad.
7. The Informant launched ICL as a first of its kind tournament in India in the year 2007. Season 1 of the ICL commenced in December, 2007 and concluded in April, 2008. Season 2 commenced in the last quarter of 2008 but came to a premature end on account of Mumbai terrorist attacks. Season 3 of ICL was allegedly thwarted on account of the malpractices and blatant use of regulatory power by BCCI. Indian Premier League (**‘IPL’**), which is being promoted by BCCI, was only a belated move to adopt a similar format of the game and thereby thwart ICL and its first mover advantage in the relevant market.



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Fair Competition
For Greater Good

Enraged with the prospect of a rival league, BCCI issued several warning letters to players, office bearers and affiliated entities and to stadiums, through June to August, 2007, restricting them from participating in any unauthorised tournament/matches or else they shall lose their benefits and privileges.

8. Apart from withdrawal of several benefits to ICL players, BCCI also imposed a virtual ban on them and also pressurised various PSUs and companies to terminate the employments of players associated with ICL. The Informant has cited two instances to substantiate its contention which are as follows:

8.1. Air India sent a letter dated 22nd August, 2007 to Mr. Dinesh Jadhav stating that whilst he has been *“recruited in Air India on supernumerary basis under sports quota to play for Air India in tournaments affiliated to MCA and BCCI. However, on joining ICL you will be banned by BCCI as a result of which you will not be able to represent Air India in any corporate tournaments which is not acceptable to Air India as per Sports Policy.”* and;

8.2. A letter dated 11th August, 2007 to Mr. Pranab Roy from the Cricket Association of Bengal stating that any present or former members of BCCI shall stand to lose their privileges and benefits should they associate with any tournament or match without the approval of BCCI.

9. The Informant filed a suit before the Hon’ble Delhi High Court (**‘ICL Suit’**) (CS (OS) No. 1566 of 2007), *inter alia*, contesting the said conduct of BCCI against ICL. When the aforesaid conduct was being pointed out to the Hon’ble Delhi High Court in the ICL Suit, the Ld. Single Judge was convinced to restrain Government of India and PSUs, through an interim order dated 27th August, 2007, from terminating the services or taking disciplinary action against the players associated with ICL.



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10. Given the strong-arm tactics of BCCI, the Informant, *vide* Letter dated 2nd April, 2008 addressed to ICC, sought recognition of ICL. However, upon the alleged influence of BCCI, ICC rejected the application of the Informant *vide* letter dated 20th April, 2009. The Informant has highlighted a series of correspondences exchanged between it and ICC during April, 2008 and April, 2009 to substantiate its claim. On 29th April, 2009, BCCI released an ‘amnesty scheme’ by way of which it sought to grant amnesty to the players / office bearers, support staff and other persons, associated with ICL with the promise to restore benefits and lift embargos on selection, pension, *etc.*
11. Meanwhile, in June, 2009, ICC amended its regulations with a view to grant complete discretion to BCCI in the process of granting approval for unofficial cricket events *i.e.* events not organised by ICC or its members. Aggrieved therefrom, the Informant instructed its counsel in UK to institute substantive proceedings against ICC, BCCI and ECB under the UK Competition Act, 1998.
12. BCCI filed a Civil Suit (CS (O.S.) No. 2312 of 2009) before the Delhi High Court seeking an anti-suit injunction against the Informant to prevent it from instituting proceedings against ICC, BCCI and ECB before the courts in UK. An ad-interim relief was granted to BCCI by the Single Judge of the Hon’ble Delhi High Court *vide* an Order dated 7th December, 2010. On appeal by the parties, the Division Bench, *vide* an Order dated 4th February, 2010, modified the Order of the Single Judge and granted an interim injunction preventing the Informant from proceeding with the action against ICC and ECB, pending in the Chancery Division, London. An SLP was filed by the Informant on 13th July, 2011 against the Order of the Division Bench which was pending before the Hon’ble Supreme Court at the time of filing the Information.
13. Highlighting the aforesaid facts, the Informant submits that ICL continues to be plagued with the unfair conduct of BCCI’s denial of permission to host the ICL



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matches. It is further stated by the Informant that in addition to disruption of organization of ICL, BCCI attempted to dislodge and sabotage the revival of ICL by filing concocted documents before the Hon'ble Delhi High Court. As per the Informant, BCCI prepared self-serving documents in the case of Mr. Kapil Dev and Mr. Kiran More, to inculcate its illegal and anti-competitive conduct. However, as stated, the Hon'ble Delhi High Court *vide* an Order dated 26th August, 2013, dismissed the application of BCCI seeking interrogatories from the Informant on the above two purported Letters dated 24th July, 2012 and 07th July, 2012.

14. Placing reliance on the aforesaid background facts, the Informant has alleged that BCCI has abused its dominant position and is continuing to do so through its conduct. Relying upon the *Surinder Singh Barmi* case, the Informant has contended that BCCI holds a dominant position in the relevant market of 'organization of private professional league cricket in India' and has abused its dominant position by indulging in conduct that has led to denial of market access to the Informant. In the said Order, the Commission held that "[t]hus, owing to regulatory role, monopoly status, control over infrastructure, control over players, ability to control entry of other leagues, historical evidences, BCCI is concluded to be in a dominant position in the market for organizing private professional league cricket events in India." As per the Informant, BCCI has consistently, and with *malafide* intention, blacklisted the Informant from participating in the bids for allocation of broadcast rights for IPL. The Informant has relied upon the Minutes of ICC Board Meeting held in January, 2013 to substantiate this allegation, wherein the President of BCCI *viz.* Shri N. Srinivasan had specifically raised a concern regarding award of broadcast rights to companies within Essel Group which had engaged in litigation with BCCI, ICC and ECB.



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15. The Informant has further alleged that BCCI formulated the eligibility conditions in such a manner that the Informant cannot participate in the tender for allocation of media rights of IPL. The relevant tender condition read as follows: “3.4 (iii) Any potential bidder should also be aware that if it is: (a)....; or (b) involved in any litigation proceedings of any kind (whether civil or criminal) or other dispute of any kind with the BCCI and/or BCCI-IPL; then unless BCCI-IPL, in its absolute discretion decides otherwise, such potential bidder is ineligible to submit a Bid and accordingly any bid submitted by such Bidder, shall, unless BCCI-IPL exercises said discretion, be rejected.”
16. Further, in an arbitration, Zee Entertainment Enterprises Limited contested the BCCI’s termination of exclusive media rights for its overseas events in the year 2007. In an Award dated 03rd November, 2012, the arbitral tribunal, *inter alia*, dealt with the blacklisting of the Informant on account of its efforts to launch ICL wherein the aspect of blacklisting was extensively frowned upon by the arbitral tribunal.
17. The Informant has further alleged that pursuant to the *Surinder Singh Barmi* case, the Informant wrote to ICC seeking revision of its decision regarding ICL. ICC responded *vide* Letter dated 11th August, 2013 stating that it has forwarded the Letter to its lawyers and indicating that a response shall be given in due course. It is submitted that neither has the ICC granted the approval sought for nor has it placed any sanctions on BCCI in relation to its anti-competitive conduct. The Informant further submitted that ICC, *vide* its communication dated 20th April, 2009, had categorically refused permission to the Informant to conduct ICL, pursuant to the resolution of BCCI, expressing its resolve against the hosting of ICL. Thus, the evasion to provide appropriate response/resolution by ICC in the year 2013 has to be seen in the context of the express denial in the year 2009. Based on this, it has been alleged that the decision of BCCI to boycott ICL and its refusal to accord permission for



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hosting the matches of ICL is in gross violation of Section 4(2)(c) of the Act, as it denies market access to the Informant.

18. The Informant has also contended that BCCI has abused its regulatory power to protect its interests in the commercial sphere, where it organises IPL. This, as per the Informant, amounts to contravention of Section 4(2)(e) of the Act. In fact, BCCI prevailed upon the ICC to change the import of Regulations 32 and 33 of the ICC Regulations with a view to thwart ICL and emergence of any rival cricket league. Rule 32, which explains the concept of '*unofficial cricket event*', was amended and a section on '*Disapproved Cricket*' was inserted. Because of this amendment/modification, any cricket match not approved by the member in whose territory it is being played will be deemed as 'disapproved cricket'. Citing reference to Section 28 of the Act; the Commission's decisions in Case No. 73 of 2011 [*Sh. Dhanraj Pillai and Ors. v. Hockey India*] and *Surinder Singh Barmi* case (*supra*) and the decision of the European Court of Justice [*Continental Can Company Inc. v. Commission of the European Communities, (1973) ECR 215*], the Informant has contended that the Commission is well within its jurisdiction to divest BCCI of its power to sanction competing leagues in as much as the same relates to exercise of regulatory powers to further BCCI's vested commercial interest.
19. The Informant further submitted that in its order in *Surinder Singh Barmi* case, the Commission held that ICL, the first attempt to create a private professional league cricket event, relates to a period when the provisions of Sections 3 and 4 of the Act were not notified and, was therefore, not factored into the decision. The Informant has alleged that the instant case is not one where the acts of the BCCI ceased prior to the date of notification of the enforcement provisions of the Act, rather the said abusive conduct has only increased over the passage of time and continues till date.



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20. Based on the aforesaid facts, the Informant has prayed that the BCCI be directed to cease and desist from indulging in abusive conduct and that the regulatory functions of BCCI be separated from the commercial aspects of the sport of cricket. Besides, the Informant has also prayed for an imposition of penalty on BCCI for abuse of dominant position in contravention of Sections 4(2)(c) and 4(2)(e) of the Act.

Observations and findings

21. The Commission has carefully perused the facts of the present case and the arguments made by the Informant in the preliminary conference held on 02nd May, 2018.
22. During the preliminary conference held on 02nd May, 2018, the learned senior counsel representing the Informant submitted that though the exclusionary conduct on the part of BCCI started before May, 2009, it continued thereafter as shown in the information by way of various events/happenings that took place after May, 2009. Thus, the Commission has jurisdiction to investigate the present matter. It was further argued that the present case is not covered by the order of the Commission in *Surinder Singh Barmi* case. While the allegations in *Surinder Singh Barmi* case pertained to irregularities in the grant of media rights, franchise rights and sponsorship rights for IPL, the present case pertain to limiting market access to organization of private professional cricket league and leveraging. It was further argued that the Commission has already held BCCI dominant in the *Surinder Singh Barmi* case and since the facts and allegations of present case are different from those alleged in *Surinder Singh Barmi* case, a fresh investigation is warranted. The Informant has argued that the issue of blacklisting by BCCI continues till date. BCCI introduced the said restriction in the year 2010 and even the latest tender of 2018 contains the same clause. Incorporation of such restriction by a dominant player amounts to abuse



of dominant position. Based on these facts, the learned counsel prayed that an investigation be directed into the matter under Section 26(1) of the Act.

23. The allegations in the present case pertain to abuse of dominant position under Section 4 of the Act. Thus, delineation of the relevant market is of significance as it sets out the boundaries for competition analysis and identifies, in a systematic manner, the competitive constraints faced by the enterprise under scrutiny.
24. In the instant case, the Informant has proposed the relevant market to be the market for '*organization of private professional league cricket in India*'.
25. The Commission had the occasion to delineate the relevant market in context of similar facts in the *Surinder Singh Barmi* case. In the said case, based on distinctive characteristics and consumer preferences, the Commission found the relevant market to be the market for '*organization of professional domestic cricket leagues/events in India*'. At this stage, based on the reasons elucidated in the said decision as well as the averments made by the Informant, the Commission observes that the relevant market in the present case would be market for '*organization of professional domestic cricket leagues/events in India*'.
26. The Commission notes that BCCI is the de facto regulator of cricket in India on account of the pyramid structure of sports governance and endorsement from ICC as the national body for cricket in India. The historical evolution of BCCI has enabled it to attain a monopoly status in the organization of cricket events in India. Further, the provisions laid down in the ICC Manual (*i.e.* Section 32) and various rules relating to organisation of cricket, clearly indicate the regulatory role of BCCI which empowers it to create entry barriers for cricket leagues, other than those organized by it, in the form of requiring approval.



Further, owing to such role, BCCI also has control over the other functions like granting of ancillary rights.

27. Such facts were also considered by the Commission in the *Surinder Singh Barmi* case, wherein the Commission took cognizance of the authority vested in BCCI under the pyramid structure of sports governance, the undisputable market share and strong position of BCCI in terms of size, resources and economic power. The Commission observed that BCCI is the only association for cricket in India at national level and in that capacity, ICC vests it with certain rights. Prime amongst them is the right to sanction/approve cricket events in India. Based on all these factors, the Commission found BCCI to be holding a dominant position in the relevant market for organization of professional domestic cricket leagues/events in India.
28. Undoubtedly, the sports federations engaged in organization of tournaments/ leagues are put to advantage if they also possess the authority to grant approval for organization of similar events by others and set conditions for such organization. This is so in the present case. Thus, in view of the facts of the present case, the Commission is convinced that BCCI *prima facie* enjoys a dominant position in the relevant market for organization of professional domestic cricket leagues/events in India.
29. With regard to abuse, it has been argued that BCCI has systematically excluded the Informant from participating in the relevant market by not recognizing ICL. As per the information, after the initial denial in April, 2009 by BCCI, the Informant approached ICC seeking revision of its decision regarding ICL. However, ICC gave evasive reply. It neither granted the approval sought for nor did it place any sanctions on BCCI in relation to its anti-competitive conduct. Thus, the Commission observes that though the exclusionary actions of BCCI started prior to May 2009, *i.e.* prior to the enforcement of Section 4 of the Act, such conduct seem to have continued thereafter.



30. Further, the Commission notes that the evidence on record shows that BCCI blacklisted the Informant from participating in the bids for allocation of broadcast rights for IPL. The Minutes of ICC Board Meeting held in January, 2013, which have been relied upon by the Informant, has a categorical noting that the President of BCCI viz. Shri N. Srinivasan had specifically raised a concern regarding award of broadcast rights to companies within Essel Group which had remained in litigation with BCCI, ICC and ECB. The relevant excerpt is reproduced below:

“Essel Sports litigation. Mr. Srinivansan reminded directors that Essel Sports remained in litigation with the BCCI, ICC and ECB, which, if successful would cause significant damage to all Member. In that respect, he raised a concern that members are still awarding broadcast rights to companies within the Essel Group”

31. Further, the formulation of the eligibility conditions by BCCI in the year 2010 seems to be aimed at excluding the Informant from the bidding process. The relevant tender condition read as follows: *“3.4 (iii) Any potential bidder should also be aware that if it is: (a)....; or (b) involved in any litigation proceedings of any kind (whether civil or criminal) or other dispute of any kind with the BCCI and/or BCCI-IPL; then unless BCCI-IPL, in its absolute discretion decides otherwise, such potential bidder is ineligible to submit a Bid and accordingly any bid submitted by such Bidder, shall, unless BCCI-IPL exercises said discretion, be rejected.”* The sequence of events and the nature of restriction suggests that the conditions were specifically targeted to the Informant due to its involvement in establishing a competing professional cricketing league and the said modification was intended to prevent the Informant from bidding for the media rights for IPL. It was highlighted by the Informant in the preliminary conference held on 02nd May, 2018 that the BCCI is continuing with such restriction as a similar/identical clause is still present in the tenders issued by BCCI [e.g. clause 3.6.5 and 3.6.6 of the recent invitation



to tender for Media Rights for IPL (2018-2022)] whereby the Informant and its group companies have been foreclosed from participating in any media rights tenders issued by BCCI.

32. Thus, it appears that BCCI has abused its dominant position in the market of organization of professional domestic cricket leagues in India by excluding the Informant or any of its group companies from participating in tenders for media rights for IPL.
33. Based on the foregoing discussion, the Commission is of the view that apart from restraining the organisation of a competitive league (*i.e.* ICL) by the Informant, the BCCI appears to have excluded the Informant in the downstream market by disallowing it to bid for the media rights for IPL. Such denial *prima facie* appears to be in contravention of the provisions of Section 4(2)(c) of the Act. As stated earlier, the sports federations engaged in organization of tournaments/ leagues are put to advantage if they also possess the authority to grant approval for organization of similar events by others and set conditions for such organization. BCCI seems to have taken advantage of such a situation.
34. In view of the foregoing discussion, the Commission finds that a *prima facie* case of abuse of dominant position within the meaning of Section 4(2)(c) has been made out against the Opposite Party. This case needs to be sent for investigation to the Director General (the 'DG') under the provisions of Section 26(1) of the Act. The DG is directed to carry out a detailed investigation into the matter and submit a report to the Commission, within 60 days.
35. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observations made herein.



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36. The Secretary is directed to send a copy of this order, along with the information and the documents filed therewith, including the responses filed by the parties, to the DG.

**Sd/-
(Devender Kumar Sikri)
Chairperson**

**Sd/-
(Sudhir Mital)
Member**

**Sd/-
(Augustine Peter)
Member**

**Sd/-
(U.C. Nahta)
Member**

**New Delhi
Dated: 01/06/2018**