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CCI issues important order under Lesser Penalty Provisions in the cartel case by leading Indian Zinc-Carbon Dry Cell Battery Manufacturers

The Competition Commission of India ('CCI') passed final order imposing penalty on three leading Indian zinc-carbon dry cell battery manufacturers - Eveready Industries India Ltd. ('Eveready'), Indo National Ltd. ('Nippo'), Panasonic Energy India Co. Ltd. ('Panasonic') and their association AIDCM (Association of Indian Dry Cell Manufacturers) for colluding to fix prices of zinc-carbon dry cell battery in India. CCI invoked the provisions of Section 46 of the Competition Act, 2002 ('the Act') read with the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('Lesser Penalty Regulations') to reduce the penalty imposed upon Panasonic, Eveready and Nippo by 100 percent, 30 percent and 20 percent respectively .

The case against these battery manufacturers was taken up by CCI *suo motu* under Section 19 of the Act based on the disclosure by Panasonic under Section 46 of the Act read with the Lesser Penalty Regulations. During investigation, DG in exercise of the powers vested with it under Section 41(3) of the Act carried out simultaneous search and seizure operations at the premises of Eveready, Nippo and Panasonic on 23 August 2016 and seized incriminating material and documents therefrom. Subsequently, while the investigation was in progress and report from the DG was pending, Eveready and Nippo, approached CCI as lesser penalty applicants.

From the evidence collected in the case, CCI found that the three battery manufacturers, facilitated by AIDCM, had indulged in anticompetitive conduct of price coordination, limiting production/ supply as well as market allocation in contravention of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) read with Section 3(1) of the Act. It was observed that the conduct was continuing from 2008, which is prior to 20 May 2009, the date on which Section 3 of the Act became enforceable, and up till 23 August 2016 *i.e.* the date of search and seizure operations by the DG.

Considering contravention of provisions of the Act, an amount of INR 245.07 Crores, INR 52.82 Crores and INR 74.68 Crores was computed as leviable penalty on three battery manufacturers *i.e.* Eveready, Nippo and Panasonic, respectively, in terms of proviso to Section 27 (b) of the Act. While



computing leviable penalty, CCI took into consideration all relevant factors including duration of cartel, industry conditions, *etc.* and decided to levy penalty on the three battery manufacturers at the rate of 1.25 times of their profit for each year from 2009-10 to 2016-17. Also, penalty of INR 1.85 Lakh was levied on AIDCM at the rate of 10 percent of average of its receipts for preceding three years. Additionally, considering totality of facts and circumstances of the case, penalty leviable on individual officials/ office bearers of the three battery manufacturers and AIDCM was computed at the rate of 10 percent of the average of their income for preceding three years.

Keeping in view the stage at which the lesser penalty application was filed, co-operation extended in conjunction with the value addition provided in establishing the existence of cartel, CCI granted Panasonic and its individuals 100 percent reduction in the penalty than was otherwise leviable. Eveready and Nippo, along with their individuals, were granted 30 and 20 percent reduction in penalty respectively. Pursuant to reduction, penalty imposed on Eveready was INR 171.55 Crores (Rupees One Hundred Seventy-One Crores and Fifty-Five Lakhs) and on Nippo was INR 42.26 crores (Rupees Forty-Two Crores and Twenty Six Lakhs). No penalty was imposed on Panasonic.
