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Analysing developments impacting business

The Delhi High Court plays the balancing act: Lawyers' presence ensured during a competition investigation, but with riders

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In a case connected to the Competition Commission of India's (CCI) cartel investigation in the conveyor belt market, an appellate bench of the Delhi High Court (Court) (LPA 607/2016; Judgment dated 24 May 2018) has confirmed a single judge bench judgment of the Court (WP(C) 11411 of 2015; Judgment dated 22 April 2016) which permitted officials of a company being investigated by the CCI to be accompanied by an advocate while appearing before the Director General, Competition Commission of India (DG).

The Court held that as the DG is a person "*legally authorized to take evidence*" under the Competition Act, 2002 (Competition Act), therefore, in terms of Section 30 of the Advocates Act, 1961, an advocate has a right to practice before the DG and a litigant has a right to engage the services of an advocate when appearing before the DG. The Court also noted that this right is not restricted under the Competition Act. Further, the Court observed that the DG has wide powers and the consequences of any investigation could be drastic and, therefore, it seemed necessary to protect the right of a person to be accompanied by an advocate when appearing before the DG for recording of evidence.

However, with a view to balance the interests of the DG in conducting an investigation and that of the persons appearing before it, the Court also declared that the investigation of the DG should not be unnecessarily hindered because of the presence of an advocate. Accordingly, the Court has directed the CCI to formulate appropriate procedures and incorporate them as regulations. Additionally, the Court has ordered the DG to ensure that the advocate accompanying a witness appearing before it should maintain some distance from the witness, so that the witness is not able to consult the advocate during the deposition.

Comment

This is a welcome judgment in light of the long-standing confusion surrounding competition investigations. This judgment seeks to create a fine balance between the right of a person appearing before the DG and the ability of the DG to conduct an investigation without hindrances.

While the judgment does not detail to what extent an advocate can interfere during deposition, it is clear that an advocate can object on grounds of violation of constitutional or other legal rights and privileges.

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