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

% **Date of decision: 28th September, 2022**

\+ W.P.(C) 14059/2022, CM APPLs. 42941/2022, 42942/2022

FACEBOOK INDIA ONLINE SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr. Parag Tripathi, Sr. Adv. with Mr. Ajit Warrier, Mr. Yaman Verma, Mr. Vishesh Sharma and Ms. Mishika Bajpai, Advs.

versus

COMPETITION COMMISSION OF INDIA & ORS.

..... Respondents

Through: Mr. Samar Bansal, Mr. Madhav Gupta and Mr. Vedant Kapur, Advs. for R-1.
Mr. Tejas Karia and Ms. Mitali Daryani, Advs. for R-2.
Mr. Gauhar Mirza, Ms. Nitika Dwivedi and Ms. Amee Rana, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. The petitioner has approached this Court assailing the order dated 12 October 2021 passed by the **Competition Commission of India**[1] in exercise of powers conferred by Section 26 of the **Competition Act, 2002**[2]. That order which directs the Director

[1] Commission

[2] the Act

General to commence an investigation has essentially clubbed the information which had been received by the Commission along with **Suo Motu Case No. 01/2021**[3].

2. The Commission while considering the information which had been received by it, has in Para 2 of the impugned order observed thus:-

> "2. The Commission considered the Information in its ordinary meeting held today and noted that the subject matter of the allegations made in the instant Information is substantially the same, which is currently under examination before the Director General ('DG') in the ongoing investigation in Suo Motu Case No. 01 of 2021. Accordingly, in terms of proviso to Section 26(1) of the Act, the Commission decided to club the present matter with Suo Motu Case No. 01 of 2021. No separate order or further direction is required to be passed on the instant Information and the same shall abide by the decision of the Commission in Suo Motu Case No. 01 of 2021. It is clarified that the scope of the Order dated 24.03.2021 passed under Section 26(1) of the Act, in Suo Motu Case No. 01 of 2021, remains unaltered by virtue of the clubbing of the present matter with Suo Motu Case No. 01 of 2021."

3. Consequent to the aforesaid direction of the Commission, the Director General had issued a notice on 26 October 2021, calling upon the petitioner here to submit requisite information. The Suo Motu Case came to be registered by the Commission against WhatsApp LLC and Facebook, Inc. (now known as "Meta Platforms, Inc".). By an order of 24 March 2021, the Commission taking note of the issues which arose from the updated privacy policy and terms of service for WhatsApp users had proceeded to form the opinion that an investigation was merited. That order was challenged by

[3] Suo moto case

WhatsApp LLC and Facebook, Inc. by way of writ petitions preferred before this Court being W.P.(C) 4378/2021 & W.P.(C) 4407/2021 which came to be dismissed on 22 April 2021. The judgment rendered by the learned Judge on the aforesaid writ petitions was thereafter assailed by WhatsApp LLC and Facebook, Inc. by way of Letters Patent Appeals being L.P.A. Nos. 163/2021 and 164/2021. Those Letters Patent Appeals were ultimately dismissed by a Division Bench of the Court in terms of the judgment rendered thereon on 25 August 2022.

4. While the present petitioner did not assail the order dated 12 October 2021, which is impugned in the present writ petition initially, it appears to have moved an application for impleadment in the aforenoted Letters Patent Appeals. While dealing with the said application for impleadment and the contentions which were addressed on behalf of the petitioner in those appeals, the Court entered the following observations: -

> "48. With regard to the submissions on behalf of Facebook India Online Services Pvt. Ltd., this Court does not find any merit on the aspect of impleading the said party on account of the fact that the decision of the DG to issue notice to the Applicant, designating it as an "Opposite Party", stems from the information it has secured from Internet Freedom Foundation in Case No. 30 of 2021 regarding its relevance in the investigation. The decision taken by the DG lies in the fact that a thorough investigation can only be conducted in the Applicant cooperates in the same.
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> 49. Furthermore, it is not contemplated in law that a party should be impleaded at the stage of an appeal when it has not been a party to the matter at the stage when the decision from which the appeal arises has been given, and the remedy of the Applicant only lies by way of a writ against the Order by which it is aggrieved. The contention of Mr. Tripathi that the Applicant has chosen to implead

> itself in the appeal filed by Facebook cannot be accepted by this Court. The Applicant will have to first make out a prima facie case before the learned Single Judge that there is no allegation against it in the Order of the CCI. The case of the Applicant would involve independent application of mind by the learned Single Judge. The instant appeals are primarily on the issue as to whether the CCI ought to wait till final adjudication of the issues which are pending before the Apex Court. The impleadment Application cannot be entertained in the instant appeals which have been filed by Facebook Inc. and WhatsApp. This Court, therefore, does not deem it fit to scuttle the investigation at a nascent stage and defers to the wisdom of the DG and the CCI, and rejects the Impleadment Application. However, the Applicant is granted the liberty to take all such steps as required by it, in accordance with law, to impugn the CCI order."

5. It is in the aforesaid backdrop that the instant writ petition has come to be preferred. Before proceeding further to record the submissions which were addressed on this petition, it would be pertinent to note that the petitioner asserts to be a private limited company whose current role is explained to be limited to providing sales and marketing services relating to advertising in India as well as other support services to Meta Platforms, Inc. As was noted in the introductory parts of this judgment, the Commission, while passing the direction for clubbing of the information which had been received by it pertaining to the present petitioner, had noted that the allegations were substantially the same and related to the same subject matter which formed part of the ongoing investigation which had commenced pursuant to the directions issued on the Suo Motu Case.

6. In view of the above, the Commission observed that it would be appropriate for the information submitted in respect of the present

petitioner being clubbed with the aforesaid Suo Motu case. It further observed that no separate order or direction was required and that the information provided in respect of the petitioner would abide by the decision of the Commission in the Suo Motu Case.

7. The Commission had in terms of its order of 24 March 2021, exercising powers under Section 26(1) of the Act, initiated an investigation against WhatsApp LLC and Facebook Inc. As would be evident from a reading of the aforesaid order, a copy of which was placed for the perusal of the Court, the principal issue which the Commission took cognizance of were questions arising from the updated Privacy Policy and Terms of Service for WhatsApp users as introduced by WhatsApp LLC. The Commission noted that it had been reported that the new policy makes it mandatory for users to accept the terms and conditions in order to retain their WhatsApp account information and also made provisions as to how it would share personalized user information with *"Facebook Inc. and its subsidiaries"*. The Commission further observed that the new privacy policy terms required users to mandatorily accept the same in its entirety including the terms with respect to sharing of their data across all the information categories *"with other Facebook Companies"*. It further observed that acceptance of the policy terms would by implication result in the data of users, who may otherwise not be availing of any other services *"within the Facebook family of companies",* being now shared across *"Facebook companies"*.

8. It proceeded to observe that the acceptance of the policy terms would amount to the user consenting to the sharing and integration of user data *"with other Facebook companies"* for a variety of purposes including marketing and advertising. The Commission noted that users, as owners of their personal data, were entitled to be informed about the extent, scope and sharing of such data by WhatsApp *"with other Facebook companies"*. It further recorded that it was unclear whether the historical data of users would also be shared with *"Facebook companies"*. It went on to observe that prima facie the conduct of WhatsApp in sharing the personalized data of its users with *"other Facebook companies"* appeared to be lacking in transparency, unfair to users and not based on a voluntary and specific user consent. It was in the aforesaid backdrop that the Commission proceeded to frame directions for the Director General to commence an investigation.

9. Mr. Tripathi, learned Senior Counsel appearing in support of the writ petition, principally contended that a reading of Section 26(1) of the Act would establish that the framing of a direction by the Commission to cause an investigation to be made must be premised on it coming to the conclusion that a prima facie case exists and which warrants an investigation. According to Mr. Tripathi, a reading of the impugned order would establish that no such satisfaction had either been recorded or arrived at by the Commission. Learned Senior Counsel contends that before framing

of directions for an investigation being undertaken by the Director General, it was incumbent upon the Commission to record its prima facie conclusion that the activities of the petitioner warranted investigation and examination under the Act. Mr. Tripathi argued that the instant writ petition has been preferred by the petitioner based on the liberty that was accorded to it by the Division Bench of the Court which had while disposing of the Letters Patent Appeals preferred by WhatApp LLC and Facebook, Inc., specifically observed that any challenge that the present petitioner may choose to institute would have to be considered independently. It was submitted that the Division Bench had in unequivocal terms provided that the petitioner here would have the liberty to take all steps as may be permissible in law to impugn the order passed by the Commission against it.

10. Mr. Tripathi then submitted that the act of clubbing could have been justified provided the Commission had come to the conclusion that the activities of the petitioner per se required investigation and that a prima facie case stood made out against it. It was his submission that unless the information received and pertaining to the activities of the petitioner disclosed facts which warranted examination and enquiry under the Act, the Commission would be wholly unjustified in initiating an investigation or clubbing the petitioner in the Suo Moto Case.

11. Mr. Tripathi also placed reliance upon the principles relating to Section 26(1) which were enunciated by the Supreme Court in

Competition Commission of India v. Steel Authority of India Limited[4] and to the following passages as appearing in that decision:-

> "37. As already noticed, in exercise of its powers, the Commission is expected to form its opinion as to the existence of a prima facie case for contravention of certain provisions of the Act and then pass a direction to the Director General to cause an investigation into the matter. These proceedings are initiated by the intimation or reference received by the Commission in any of the manners specified under Section 19 of the Act. At the very threshold, the Commission is to exercise its powers in passing the direction for investigation; or where it finds that there exists no prima facie case justifying passing of such a direction to the Director General, it can close the matter and/or pass such orders as it may deem fit and proper. In other words, the order passed by the Commission under Section 26(2) is a final order as it puts an end to the proceedings initiated upon receiving the information in one of the specified modes. This order has been specifically made appealable under Section 53-A of the Act.
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> 97. The above reasoning and the principles enunciated, which are consistent with the settled canons of law, we would adopt even in this case. In the backdrop of these determinants, we may refer to the provisions of the Act. Section 26, under its different sub-sections, requires the Commission to issue various directions, take decisions and pass orders, some of which are even appealable before the Tribunal. Even if it is a direction under any of the provisions and not a decision, conclusion or order passed on merits by the Commission, it is expected that the same would be supported by some reasoning. 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. Such opinion should be formed on the basis of the records, including the information furnished and reference made to the Commission under the various

[4] (2010) 10 SCC 744

> provisions of the Act, as aforereferred. However, 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 Commission by the parties. In other words, the Commission is expected to express prima facie view in terms of Section 26(1) of the Act, without entering into any adjudicatory or determinative process and by recording minimum reasons substantiating the formation of such opinion, while all its other orders and decisions should be well reasoned."

12. Mr. Tripathi laid stress on the fact that while Section 26(1) may not oblige the Commission to record detailed reasons, it must be held in law to be obliged to record reasons, even if they be rudimentary, which may indicate and evidence that there were certain factors which were taken into consideration by the Commission for the purposes of formation of an opinion and which in turn warranted the commencement of an investigation by the Director General. It was in the aforesaid background that learned Senior Counsel contended that in the absence of the Commission having formed, expressed or recorded even a prima facie satisfaction, the impugned order is clearly rendered unsustainable. .

13. Refuting the aforesaid contentions, Mr. Bansal learned counsel appearing for the Commission, submitted that the formation of opinion by the Commission under Section 26(1) of the Act is primarily based upon the *"subject matter"* in respect of which information may be received and not necessarily relating to a particular party or entity. According to learned counsel, the subject matter in question was the various issues which arose out of the Privacy Policy framed by WhatsApp LLC and the sharing of data of

its users amongst Facebook and its related companies. Learned counsel submitted that the Commission had recorded detailed reasons in support of its ultimate conclusion of an investigation being merited in its order of 24 March 2021. Referring the Court to the said order, learned counsel highlighted the fact that the principal issue of sharing of personalised user information by WhatsApp was being considered in relation to Facebook and its subsidiaries as well as other Facebook companies. Learned counsel also argued that the petitioner has only been called upon to join the investigation and that no rights have been adjudicated upon or decided. It was urged that, in the absence of any prejudice having been caused to the petitioner, the challenge as raised in the impugned writ petition, is liable to be rejected.

14. Learned counsel also placed reliance upon the judgment rendered by a Division Bench of the Court in **Cadila Healthcare Limited and Anr. v. Competition Commission of India and Ors.**[5] It becomes pertinent to note that the aforesaid decision dealt with the validity of a direction issued by the Director General impleading Cadila Healthcare in an ongoing investigation even though it had not been joined as a party by the Commission in the directions which were issued by it under Section 26(1) of the Act. While negating the challenge as raised to the directions of the Director General in that matter, the Division Bench made the following pertinent observations:-

[5] 2018 SCC OnLine Del 11229

"43. Cadila's argument, that in Excel Crop Care the issue was inclusion of more than one instance or incident within the ambit of investigation (given that the complaint was in respect of one tender only) is distinguishable, is in this court's opinion, insubstantial and needs to be rejected. Its reliance on Grasim Industries, is no longer apt. At the stage when the CCI takes cognizance of information, based on a complaint, and requires investigation, it does not necessarily have complete information or facts relating to the pattern of behaviour that infects the marketplace. Its only window is the information given to it. Based on it, the DG is asked to look into the matter. During the course of that inquiry, based on that solitary complaint or information, facts leading to pervasive practises that amount to abuse of dominant position on the part of one or more individuals or entities might unfold. At this stage, the investigation is quasi inquisitorial, to the extent that the report given is inconclusive of the rights of the parties; however, to the extent that evidence is gathered, the material can be final. Neither is the DG's power limited by a remand or restricted to the matters that fall within the complaint and nothing else. Or else, the Excel Crop Care would not have explained the DG's powers in broad terms : ("if other facts also get revealed and are brought to light, revealing that the 'persons' or 'enterprises' had entered into an agreement that is prohibited by Section 3 which had appreciable adverse effect on the competition, the DG would be well within his powers to include those as well in his report….If the investigation process is to be restricted in the manner projected by the Appellants, it would defeat the very purpose of the Act which is to prevent practices having appreciable adverse effect on the competition"). The trigger for assumption of jurisdiction of the CCI is receipt of complaint or information, when the "Commission is of the opinion that there exists a prima facie case" exists (per Section 26(1)). The succeeding order is administrative (per SAIL); however that order should disclose application of mind and should be reasoned (per SAIL). Upto this stage, with that enunciation of law, no doubt arguably Cadila could have said that absent a specific order as regards its role, by CCI, the DG could not have inquired into its conduct. However, with Excel Crop Care specifically dealing with the question of alleged "subject matter" expansion (in the absence of any specific order under Section 26(1)) and the Supreme Court clarifying that the subject matter included not only the one alleged, but other allied and unenumerated ones, involving others (i.e. third parties), the issue is no longer untouched; Cadila, in the opinion of this court, is precluded from stating that a specific order authorizing transactions by it, was a necessary condition for DG's inquiry into its conduct. This court is further reinforced in its conclusion in this

regard by the express terms of the statute : Section 26(1) talks of action by CCI directing the DG to inquire into "the matter". At this stage, there is no individual; the scope of inquiry is the tendency of market behaviour, of the kind frowned upon in Sections 3 and 4. The stage at which it CCI can call upon parties to react is when it receives a report from DG stating there is no material calling for action, it has to issue notice to the concerned parties (i.e. the complainant) before it proceeds to close the case (Sections 26(5) and (6)). On the other hand, if the DG's report recommends otherwise, it is obliged to proceed and investigate further (Sections 26(7) and (8)). Again Section 27 talks of different "parties" ["enterprise or association of enterprises or person or association of persons"- per Section 27(a)]. Likewise, the steps outlined in Section 26 are amplified in the procedure mandated by Regulation 20 and 21, which requires participation by "the parties" in the event a report after DG's inquiry, which is likely to result in an adverse order, under Sections 27-34 of the Act. Consequently Cadila's argument that a specific order by CCI applying its mind into the role played by it was essential before the DG could have proceeded with the inquiry, is rejected.

44. The next question relating to a facet of the same issue is whether given that an order requiring production of materials or cooperate in the inquiry is of such a nature that some form of fair procedure in the nature of hearing is necessary. Cadila's reliance on Rohtas Industries and Barium Chemicals is, in the opinion of this court, irrelevant given the facts of this case. Granted, administrative orders should be reasoned; however, where they trigger investigative processes that are not conclusive, having regard to the clear enunciation in SAIL, that notice is inessential, accepting the argument, that inquiry would harm the market or commercial reputation of a concern, would be glossing over the law in SAIL. Moreover, the Rohtas Industries related to the affairs of a company, which implicated its internal management. Allowing inquiry, even an innocuous one, without application of mind, is a different proposition altogether from acting on the information of someone who alleges either direct or indirect or tacit dominance in the market place in the course of one's business. The latter is regulatory of the marketplace rather than the core management of the concern; it is akin to adjudicating a tax or commercial dispute, or a regulatory dispute. As stated by Justice Brennan, natural justice in such instances should not "unlock the gate which shuts the court out of review on the merits." (in this case, preclude or chill the exercise of jurisdiction by the DG into a potential abuse of dominant position of a commercial entity). Therefore, this court finds no

> merit in the argument that the procedure adopted by the DG in going ahead with the inquiry and investigating into the market behaviour of Cadila in anyway affects it so prejudicially as to tarnish its reputation. The CCI has not as yet examined the investigation report in the light of Cadila's contentions; all rights available to it, to argue on the merits are open."

15. Before proceeding to deal with the submissions which were addressed by learned counsels appearing for respective parties, the Court deems it apposite to extract the following passages from the decision of the Supreme Court in **Steel Authority of India** where the scope and ambit of Section 26(1) of the Act was lucidly explained in the following terms:-

> "38. In contradistinction, the direction under Section 26(1) after formation of a prima facie opinion is a direction simpliciter to cause an investigation into the matter. Issuance of such a direction, at the face of it, is an administrative direction to one of its own wings departmentally and is without entering upon any adjudicatory process. It does not effectively determine any right or obligation of the parties to the lis. Closure of the case causes determination of rights and affects a party i.e. the informant; resultantly, the said party has a right to appeal against such closure of case under Section 26(2) of the Act. On the other hand, mere direction for investigation to one of the wings of the Commission is akin to a departmental proceeding which does not entail civil consequences for any person, particularly, in light of the strict confidentiality that is expected to be maintained by the Commission in terms of Section 57 of the Act and Regulation 35 of the Regulations.
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> 39. Wherever, in the course of the proceedings before the Commission, the Commission passes a direction or interim order which is at the preliminary stage and of preparatory nature without recording findings which will bind the parties and where such order will only pave the way for final decision, it would not make that direction as an order or decision which affects the rights of the parties and therefore, is not appealable.
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> 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.

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93. We may also usefully note that the functions performed by the Commission under Section 26(1) of the Act are in the nature of preparatory measures in contrast to the decision-making process. That is the precise reason that the legislature has used the word "direction" to be issued to the Director General for investigation in that provision and not that the Commission shall take a decision or pass an order directing inquiry into the allegations made in the reference to the Commission."

16. The Division Bench in the Letters Patent Appeals preferred by the WhatsApp LLC and Facebook, Inc. while elucidating the scope of Section 26(1) had also pertinently observed that the said provision does not contemplate the Commission discharging an adjudicatory function. The Court had held that the function as discharged by the Commission under Section 26(1) is essentially administrative in character and in the nature of a preparatory measure which merely requires the Director General to commence an investigation.

Proceeding further to explain the scope of a prima facie case, the Division Bench while following the principles enunciated in **Steel Authority of India** observed that it would only require the Commission taking into account all material present without entering into any adjudicatory or determinative process. It becomes pertinent to note that the Division Bench while dealing with the validity of the order dated 24 March 2021 had observed that the Commission had assigned sufficient reasons for arriving at a conclusion that a prima facie case of violation of Section 4 of the Act was made out.

17. Having noticed the essential facts and the principles of law which would govern, the Court at the outset notes that the petitioner is undisputedly a subsidiary or sister concern of Facebook Inc. While the petitioner has explained its connect with Facebook Inc. to be limited to providing sales and marketing services relating to advertising in India and other support services to it, the Court finds itself unable to shut its eyes to the evident and apparent bond and association between the two. Regard must also be had to the fact that the principal order of the Commission dated 24 March 2021 had while outlining the issues which merited further investigation made repeated reference to the provisions of the Privacy Policy of WhatsApp and the disclosure and sharing of user data by it with Facebook, its subsidiaries, sister concerns and other Facebook companies. The Commission ultimately came to conclude that the sharing of data by WhatsApp with other Facebook companies raised tangible questions which warranted investigation under the Act. The

scope of the investigation is thus apparently not merely limited to the operations and conduct of business by WhatsApp and Facebook Inc. alone but also extending and stretching to the subsidiaries and other companies incorporated by the latter. The petitioner cannot possibly dispute the fact that it is a sister concern of Facebook Inc. present in India. In view of the above, the impugned order of the Commission clubbing the information received in respect of its activities with the Suo Motu Case was not only justified but also imperative for the purposes of the investigation.

18. It may be additionally noted that the enquiry is founded on the sharing of data between WhatsApp, Facebook and its other companies. The order of the Commission thus not only requires the Director General to investigate the affairs of the two principal entities noticed above but also other companies which may fall under the umbrella of control and influence of the latter. That decision presently stands confirmed by the Division Bench of the Court. If that be the scope of the matter which is envisaged to be investigated by the Director General, the Court fails to appreciate how the petitioner could possibly contend that its clubbing in the Suo Moto Case was unjustified.

19. The Court also deems it apposite to observe that **Cadila** has lucidly explained the scope of the expression *"subject matter"* as occurring in Section 26(1) as not being restricted merely to the allegations levelled but other *"allied and unenumerated"* aspects and even to include third parties. It would be pertinent to recall that

Cadila was a case where a party was joined by the Director General during the investigation even though no directions had been framed against it by the Commission in its order made under Section 26(1). While affirming that action, the Court had specifically rejected the contention that the joining of Cadila in the proceedings was liable to be preceded by the Commission applying its mind specifically to the role discharged by it. Here too, the presence of the petitioner in the investigation would clearly be necessary for the purposes of examining the issues which stand noticed in the original order of the Commission.

20. The Court notes that the order of the Commission 24 March 2021 has spelt out in some detail the issues which merit investigation. Those cover the entire gamut of questions which emanate from the sharing of user data between WhatsApp, Facebook and its other companies which would necessarily and obviously include the petitioner here. The various issues which arise out of the terms of the updated Privacy Policy of WhatsApp were duly explored and examined by the Commission in that order. The investigation of those issues would necessarily entail an examination of the nature of the data that may be shared by WhatsApp with all Facebook companies including the petitioner. The petitioner has averred that it provides sales and marketing services to Facebook Inc relating to advertising in India and other support services. The extent of the user data that may be shared and utilised by the petitioner for the

aforesaid purposes would clearly be an aspect which may be required to be examined by the Director General.

21. The investigation of all of the above in any case and in the considered opinion of the Court was clearly implicit in the direction which was issued by the Commission in its order of 24 March 2021. It was this factor which clearly appears to have guided its decision to club the information that was received in respect of the petitioner. If the aforesaid be entitled to be recognised [and as this Court so finds] as an inherent part of the original direction that was issued, there was no obligation on the Commission to independently record elaborate reasons for clubbing of the information.

22. The challenge to the order of the Commission impugned herein ultimately must also be evaluated bearing in mind that the power exercised by it at the Section 26(1) stage has been aptly described as being a "departmental function" and a "preparatory measure". This essentially since at that stage the Commission is not adjudicating upon the rights of parties. It is merely setting up the stage for the commencement of an enquiry. As was pertinently observed by the Supreme Court in **Steel Authority of India**, that order does not entail any civil consequences. While passing a direction to investigate under Section 26(1) the Commission is merely calling upon the Director General to assist it in evaluating whether an infraction of the Act has been made out. On an overall conspectus of the aforesaid discussion, the Court comes to the

conclusion that the instant challenge is misconceived and clearly lacks merit.

23. Accordingly and for all the aforesaid reasons, the writ petition along with the pending applications shall stand dismissed.

YASHWANT VARMA, J.

SEPTEMBER 28, 2022
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