MONOPOLIES & RESTRICTIVE TRADE PRACTICES COMMISSION
NEW DELHI

CORAM

Mr. Justice O.P. Dwivedi
Chairman

Shri M.M.K. Sardana
Member

Shri D.C.Gupta
Member

Restrictive Trade Practices Enquiry No. 99 of 1990

In the matter of:

The Director General
(Investigation and Registration),
Bikaner House Barracks,
Shahjahan Road,
NEW DELHI – 110011. **….Complainant**

Versus

(1)	**M/s. Cement Manufacturers' Association,** **Express Building, 1st Floor,** **Indian Merchants Chamber Marg,** **MUMBAI – 400020**
(2)	**44 Cement Producers** **….Respondents**

	ORDER OF THE BENCH DELIVERED BY HON'BLE MEMBER, SHRI M.M.K. SARDANA
Para 1	A Notice of Enquiry (NOE) was issued on 12.10.1990 under Section 10(a) (iii) and Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969 [hereinafter referred to as "the Act"] and Regulations thereunder against the respondents on an application filed by the Director General (Investigation and Registration) [the DG for convenience] under Section 10(a)(iii) of the Act alleging that respondent No.1 is an association of respondents Nos.2 to 45 who are engaged in the manufacture and sale of cement and the respondents have been fixing the price of cement in an arbitrary and unjustified manner keeping the prices of several cement manufacturers in the same region uniform in spite of the fact that cost of production of different units would be different …….
Para 2	The contents of the DG's application filed under Section 10(a)(iii) of the Act are summarized as below: Respondent No. 1 i.e. Cement Manufacturers' Association is an apex association of cement manufacturers and the remaining 44 respondents are cement manufacturing companies. In addition, there are seven public sector companies manufacturing units. In all, there are 96 cement factories. Thus, all the companies not in public sector were made the respondents……

Para 7	The prices are determined in different states on the basis of prevailing market conditions by the local management of the manufacturers and the stockists are given intimation of the prices as fixed from time to time (Emphasis added)……..
Para 10	With the decontrol of cement, the prices of cement have been shown an upward trend; a bag of cement which was priced at Rs. 70/- in November, 1989 was being sold at Rs. 78/- in March, 1990 in Delhi. After the new budget in 1990, the price of cement shot-up to Rs. 85/- per bag and at the time of filing the compliant in September, 1990, the price of cement was being quoted at Rs. 95/- per bag.
Para 15	On being approached by DG, cement manufacturers have represented that they were selling cement at prices below the cost of production because of price-control. During the de-controlled regime, they had increased the prices to recover the full cost of production with reasonable profit margin. This argument of the manufacturers is based on entirely fallacious assumption since at the time of partial de-control of cement as far back as March, 1982, the manufacturers were under no obligation not to charge higher prices in respect of levy free cement. The loss, if any, incurred by the cement manufacturer in the sale of levy cement was thus to be compensated adequately from the sale of non-levy cement in the open market. Thus, cement manufacturers have been recovering their full cost of production with reasonable profit margin in the month of March, 1990 before the presentation of the Union Budget.
Para 28. (xv)	For dealing with various issues relating to marketing besides CMA Apex Committee on Marketing, there are five Zonal Marketing Committees which are the only Committees which can be regarded as area-wise committees. These Zonal Marketing Committees deal with issues like promoting cement demand in semi-urban and rural areas, stepping up of cement consumption in important sector like roads, canal lining, housing and in general giving a boost to cement consumption within the country. These committees continue to be active.
Para 29.	On the basis of above submissions, respondent No. 1, CMA, found no merit in any of the allegations levelled by the DG in its application.
Para 37.	On the basis of pleadings the following issues were framed on 14.11.1991:
	1. Whether the Notice of Enquiry (NOE) is not maintainable for the reasons stated in the written replies of the Respondents? **2. Whether the Respondents or any of the respondent have/has indulged in the restrictive trade practice(s) as alleged in the Notice of Enquiry or the application filled by the DG?** **3. If Issue No. 2 is proved, whether such practice is not prejudicial to the public interest?** 4. **Relief.**
Para 108.	**Such statements by witnesses of the respondents which are towards denial of existence of area-wise committees of CMA and statements of the witnesses who have not denied the existence of such committees but have claimed non-familiarity with their functions are to be taken with a grain of salt. A number of such witnesses are high functionaries or have been high functionaries with their organizations. Their denials on such basics relating to an association which has been there for several years would lead to an inevitable conclusion that there is something which is sought to be kept away. Similarly, denial of knowledge of meeting in the PMO expressing concern about the rise in price of cement despite**

	the fact that their own managements had participated in that meetings is also indicative of similar frame of mind.
Para 118.	**Applying the test of balance of probabilities and liaison of intentions and also superimposing these tests on the facts observed in the market, we believe that there is sufficient evidence both direct and indirect to establish the culpability of all the respondents except respondents Nos. 15, 34 and 39 who had ceased to operate before the relevant period of enquiry.** The culpability so established would travel to their successor companies as well if there is change in the management of the companies since the start of the enquiry.
Para 129.	**In the present case, we have found direct as well as indirect evidence of concert.** The existence of a common platform in the form of respondent No.1 which frequently reviews the price-situation is a strong pointer towards existence of a cartel. Admittedly, respondent No.1 has been fixing prices during the control regime. The same apparatus continues even now without any change. In this scenario, the simultaneous and frequent rise in prices by the respondents, although within a narrow band, would clearly indicate that the respondents acted in a concert. In para 3 of the complaint, DG has alleged "it is gathered that the prices are determined in different states on the basis of prevailing market conditions by the local management of manufactures and the stockiest are given intimation of the prices so fixed from time to time".
Para 134.	**In view of our discussion above, we have come to the conclusion that all the respondents excepting the respondents mentioned in the preceding paragraph have been indulging in restrictive trade practices and have been acting concertedly as envisaged under Section 33(1)(d) of the MRTP Act and thereby expose themselves to 'cease and desist' order from the restrictive trade practices which have been alleged against them.**
Para 135.	Issues Nos. 2, 3 and 4 are decided accordingly.
Para 136.	Before we part with this order, we cannot fail to observe that NOE which was issued in 1990 and pertained to an economic situation should have been addressed expeditiously as interest of large number of consumers was involved and thus should have been concluded in a much shorter time frame. However, mandatory procedural requirements including adjournments granted have been time-consuming. DG on its part, who is custodian of public interest, also would be updating itself by having access to international literature particularly the manual on investigation of cartels as brought out by the International Competition Agencies. Such initiatives would enable DG to go through the investigations in a systematic and scientific manner and pre-arranging to include necessary material which becomes relevant in such enquiries.
Para 137.	In the result, we issue a 'cease and desist' order against the respondents except respondents Nos. 15, 34 and 39, and direct them not to indulge in any arrangement directly or indirectly through the instrumentality of CMA, respondent No. 1, or otherwise in fixing the prices of their produce in concert or in follow up of a concert. We further direct them to file an affidavit of compliance of the above directions within eight weeks of the pronouncement of this order.
	Pronounced in open court on this 20th day of December, 2007

[O.P.Dwivedi]
Chairman

[M.M.K. Sardana]
Member

[D.C.Gupta]
Member