



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

+91 70421 48991
editor@ijlar.com
www.ijlar.com

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

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**THE “IMPOSSIBLE CHOICE” IN ANTITRUST
APPEALS: DECONSTRUCTING THE DELHI HIGH
COURT’S STANCE ON PENALTY INTEREST IN
UNITED INDIA INSURANCE V. CCI**

AUTHORED BY - ANUSHK GARG & VRINDA

Abstract

The research paper seeks to critically analyse and understand the landmark judgement of United India Insurance Co. Ltd. v. Competition Commission of India. The case rests upon allegations of anti-competitive conduct alongside cartelization among general insurance companies. The paper not only analyses the factual matrix and rationale of the court, but also seeks to understand recommendations and loopholes persistent in such cases, which can be effectively helpful in order to enforce unity and standardisation among similar issues in future.

The issue of impossible choice has been carefully examined, since, it is something which not only causes unjust enrichment but also puts the parties so involved under serious losses, whereby they are mandated to either choose a hefty penalty amount or interest on such amount during pendency of the final decision. Additionally, the lack of a standardised framework to address the same places a massive burden upon parties, since the stance of courts becomes subject to judicial interpretation which may vary from authority to authority. The measures to avoid the same include pre-deposit interest offsetting, formal codification of the Doctrine of Merger, measures to aptly calculate interim interest in a way that suits the interests of both parties, etc.

The case explains delicate intricacies involving evidentiary standards in order to establish cartelization and applicability of competition law principles on state-owned enterprises concerning public welfare at large. Overall, by examining the jurisprudential developments governing this case, this paper seeks to strengthen enforcement against cartelization in regulated sectors and clarify the liability of public enterprises under competition law.

Keywords: Interim Interest, Competition Commission of India, Penalty, Doctrine of Merger, Notice.

Introduction

The legal enforceability of penalty amount during period of stay granted by court of law remained disputed in most of the matters, thereby questioning the limits of regulatory power and the sanctity of the appellate process in India. The recent case of United India Insurance Co. Ltd. v. Competition Commission of India (CCI), serves as a landmark judgement in this regard. The case delves into conceptual application of doctrine of merger, rejection of impossible choice and stay order's effect on enforceability.

It is a general principle that interest starts to be triggered only post demand notice has been served but if such notice is served during a period when a stay order has already been passed in the favour of the company. The same has been addressed in detail via this case. Court has taken a clear stance with respect to the Competition Act's objective, which is to punish the late payers. However, if a decision has been made by a higher authority it tends to come over and above the previous decision, which means that claiming interest over an amount which was ultimately replaced by a higher authority is futile as the said amount is presumed to be dead from the beginning.

This case explains about the compensatory and penal nature of interest imposed, invalidity of demand notice if served during a period when stay has already been granted, doctrine of merger and rejection of impossible choice that is a choice which lands the company so obligated to pay under loss situation in either of the alternatives given. The article explains the basics of the issues, later delves into specific court stance, criticisms, law applicable and recommendations to avoid such conflicts in future by creating a unified law in India.

About the case

To understand the issue in hand, it requires the exact procedural dilemma in the case of United India Insurance Co. Ltd. v. Competition Commission of India¹. The dispute initiated from a standard cartelization inquiry to a complex legal battle over the administrative and procedural overreach and the true cost of interim relief cost.

Investigation and the initial penalty

The competition Commission of India (CCI), in September 2013, initiated an investigation into the insurance officers of public sector for the alleged bid-rigging in Kerala's health insurance schemes.² The CCI concluded this inquiry on 10th of July, 2015, wherein it held the United India Insurance guilty of contravention of section 3(3) of the Competition Act, 2002.³ It further imposed a huge penalty of Rs 156.62 crore, which was calculated at 2% of the company's annual turnover.⁴

The Appellate stay and the conflicting demand

The company challenged this decision instantly in the Company Appellate Tribunal (COMPAT). On October 5, 2015, stayed the penalty subject to a 10% deposit, which was properly complied with by the company. However, a critical administrative issue occurred.⁵ The CCI on 5th of October, 2015, issued a demand notice requiring the company to pay the full amount of Rs 156.62 crore payment within a period of 30 days.⁶ Further it also warned that any failure would attract a 1.5% monthly interest rate coming at 18% annually as per the 2011 Recovery Regulations. The company received this notice 2 days after the COMPAT stayed the penalty.⁷

¹ United India Insurance Co. Ltd. v. Competition Commission of India, L.P.A. 724/2019 & C.M. Appl. 49513/2019 (Del. H.C. Nov. 1, 2025) (India).

² *In re* Cartelization by Public Sector Insurance Companies, Suo Motu Case No. 02 of 2014 (Comp. Comm'n of India 2015) (India).

³ *Id.*

⁴ *Id.* at ¶ 66.

⁵ Competition Law Updates, JSA LAW (Dec. 17, 2025, 1:30 PM), https://www.jsalaw.com/new_filters/competition-law/.

⁶ *Id.*

⁷ Delhi HC dismisses challenge to CCI's demand for interest on penalty accumulated during pendency of proceeding before the appellate tribunal, AZB & PARTNERS (Oct. 18, 2019, 12:30 PM), <https://www.azbpartners.com/bank/delhi-hc-dismisses-challenge-to-ccis-demand-for-interest-on-penalty-accumulated-during-pendency-of-proceeding-before-the-appellate-tribunal/>.

Penalty reduction and the introduction of the penalty trap

On December 9, 2016, COMPAT upheld the antitrust violation but reduced the penalty to 1% of the relevant turnover.⁸ This change drastically reduced the penalty amount to just Rs 1.56 crore which was paid by the company in January 2017.⁹ Despite this massive reduction the CCI issued a fresh notice on January 17, 2017 in which it demanded Rs. 32.76 lakh as interest.¹⁰ The regulator further alleged a 14-month delay from the original November 2015 deadline, essentially charging the penalty for the exact duration the stay provided by COMPAT was actively protecting the appellant.¹¹

The judicial trajectory

In September 2019, the Delhi High Court Single Judge upheld the interest demanded by the CCI. However, this was overturned in November 2025 by a Division Bench, which quashed the demand by ruling that a notice operating during a subsisting stay is legally inoperative, and thus halting any interest accrual.¹² Recently, in February 2026, the Supreme Court tagged the CCI's appeal on this specific interest issue with a main civil appeal, setting the stage for a definitive resolution.¹³

The present issue dealt by the court

The main dispute around the case of United India Insurance v CCI goes beyond the specific facts of this investigation. It evolves to a more fundamental question on administrative and appellate jurisprudence. One of the main questions being Does an interim stay on a regulatory penalty merely defer the recovery of amount, or does it completely suspect the underlying liability to accrue statutory interest?

⁸ *Id.*

⁹ Competition Law Updates, *supra* note 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² Competition Law Newsletter December 2025, DSK LEGAL (Dec. 2025), <https://dsklegal.com/wp-content/uploads/2025/12/DSK-Legal-Competition-Law-Newsletter-December-2025.pdf>.

¹³ United India Insurance Bid-Rigging Case: Supreme Court Tags CCI Appeal Over ₹32.76 Lakh Interest with Penalty Appeal, LIVE LAW BIZ (Feb. 20, 2026), <https://www.livelawbiz.com/top-stories/united-india-insurance-bid-rigging-case-supreme-court-tags-cci-appeal-over-3276-lakh-interest-with-penalty-appeal-523927>.

The stance of the regulator: Automatic Accrual and Restitution

From the perspective of the Competition Commission of India (CCI), the recovery framework under the statutes is rigid. It argued that under Regulation 5 of the 2011 Recovery Regulations, a 1.5% monthly interest which amounts to 18% annually develops automatically in case a penalty is not paid within the stipulated period. It further contended that an appellate stay merely delays the coercive enforcement of the penalty. In their view, once the conclusion of the appeal is reached, the liability to pay the interest for the delayed period revives therein asserting that an enterprise must not unjustly enrich itself by retaining the capital during a prolonged litigation by way of a stay.

The Dilemma of the Appellant on this Impossible Choice

In contrast to the stance of the regulator, the present issue exposes a severe friction between the regulatory recovery and the right to an interim appellate relief. If the CCI's interpretation is upheld then any company challenging a flawed antitrust order will be forced to accept an "Impossible choice"

Once a stay is secure from an appellate tribunal, the appellant must either:

- Ignore the protection provided by the stay and pay the massive original penalty upfront to avoid any compounding interest, thereby suffering an immediate financial depletion and consequently defeating the entire purpose of interim relief. Or,
- Rely on the legally obtained stay, withhold the payment it was obligated to pay before the stay was granted and risk accumulating a crippling 18% annual interest liability in case the regulator demands later a retrospective interest, even though the principal penalty is eventually slashed.

The Delhi High Court Division bench identified this dilemma put in front of a company and found it to be inequitable, effectively holding that it penalizes an appellant for lawfully pursuing a remedy or protection provided to them under the statute.

The legal issue now rests in front of the Supreme Court of India which can either follow the Delhi High Court's ruling which quashed the CCI's interest demand by further holding that an appellate

stay renders a penalty legally unenforceable and an overlapping demand notice as dead in law. The Supreme Court officially tagged the specific appeal regarding the procedural validity of the interest demand with the broader civil appeal concerning the substantive penalty reduction.

The immediate task that lies before the Supreme Court is delivering a definitive ruling on whether a regulator established under a statute levies a penalty interest retrospectively for the exact duration during which an appellate tribunal stays it in operation.

The concept of interim interest

Interim interest basically means the additional amount of money one is supposed to pay over and above a fine during the pendency of an ongoing legal proceeding. In this case, the court has dealt with a significant question which is that if a company fighting an ongoing legal battle wins a stay, will it still be obligated to pay interest for the time period for which such case got pending due to stay.

The Delhi High Court ruled in favour of United India Insurance and stated that a stay means a stop which reiterates that penalty should become unenforceable, meaning thereby, that there should be no interest on the payment to be made¹⁴. It was also identified that if such interest is allowed to be charged upon, it would result in all loss situation since, it would mean that either one has to pay full amount of fine and if not then be hit with a significant amount of interest on such amount later on.

The Doctrine of Merger¹⁵ played a significant role in saving company against government's high interest payment demands. This doctrine basically means that there can be no more than one decree/order in a case, meaning thereby if a decision is overturned or modified by higher court, the lower court's decision doesn't tend to co-exist alongside the latter decision. It tends to merge with the decision of the higher authority.

¹⁴ *Id.*

¹⁵ CCI Interim Relief & Interest, LAW.ASIA (Feb. 12, 2025), <https://law.asia/cci-interim-relief-interest/>.

In present case, back in 2015 a penalty of approximately Rs. 157 Crores was imposed on insurance company for anti-competitive behavior. Unless such penalty is paid within a period of 60 days, the Competition Act mandates that an interest of 1.5% be paid per month¹⁶. But here, when the decision was appealed to by the United India Insurance Company and appellate body shifted the penalty amount to a startlingly low amount of Rs. 1.56 Crores. Later, the attempts to gain interest on this amount during the time for which case was pending in court of law, came into play.

The court clearly stated that the amount of Rs. 157 Crores has now ceased to exist in the eyes of law and it has been replaced by the amount ordered by court in the latest stance taken by it. This means that the original amount shall be deemed to be Rs. 15.6 Crores from the very beginning. So, the claim of interest amount of Rs. 32.76 lakhs¹⁷ as interim interest was struck down via application of the doctrine of merger.

The stance of the court

The ingenuine judgement delivered by the Division Bench of the Delhi High Court systematically dismantled the Competition Commission of India's (CCI) recovery mechanism. By overturning the Single Judge's prior ruling, the Division Bench ruled in favor of the appellant by basing its decision in three different jurisprudential pillars which are strict statutory interpretation, Doctrine of Merger, and the equitable principles governing interim relief.

The interoperability of the Demand Notice

The Court firstly examined the mechanical trigger for interest under the CCI (Manner of recovery of Monetary Penalty) Regulations, 2011. The regulatory framework relies on sequence wherein Regulation 3 mandates the issuance of a demand notice granting the enterprise 30 days to pay the

¹⁶ PSL Advocates & Solicitors, Case Brief: United India Insurance Company Limited v. Competition Commission of India, LEXOLOGY (Nov. 11, 2025), <https://www.lexology.com/library/detail.aspx?g=7d78057e-6071-4cc6-a31c-5b255ddf91ab>.

¹⁷ SC to Hear CCI Appeal on ₹32.76 Lakh Interest Claim in UII Case in March, BUS. STANDARD (Feb. 20, 2026), https://www.business-standard.com/industry/news/sc-to-hear-cci-appeal-on-32-76-lakh-interest-claim-in-iii-case-in-march-126022001068_1.html.

penalty. Only after the expiry of this 30 day window does Regulation 5 gets triggered and then the 1.5% monthly interest on the unpaid amount comes into picture¹⁸.

The court examined the exact timeline of events. The Competition Appellate Tribunal (COMPAT) granted an interim stay on the levied penalty on October 5, 2015. However, the United India Insurance received the CCI's demand notice on October 7, 2015. The Division Bench then unequivocally held that if a demand notice served after an appellate authority has stayed the penalty, it makes the notice inoperative from the moment of receipt.

Furthermore, because the penalty is explicitly stayed, it was not legally recoverable during that period. Consequently, the 30-day compliance window which is mandated by Regulation 3 would never legally commence¹⁹. Further, without the expiration of a valid 30-day window, the statutory clock for interest under Regulation 5 could not start ticking. The court also ruled that CCI could not retroactively validate a legally dead notice simply because the appeal had eventually concluded.

Application of the Doctrine of Merger

The biggest attack to the CCI's case was the Court's application of the Doctrine of Merger. This established principle of administrative and appellate law lays down that when an appellate forum modifies, reverses or even affirms an order which was passed by a lower adjudicatory body, then the original decision ceases to exist independently. It then "merges" into the final order given by the appellate authority.

In the present case, the original July 2015 order by the CCI imposed a penalty of Rs 156.62 crore. However, in December 2016 COMPAT fundamentally altered the measurement logic shifting from total turnover to relevant turnover and thus slashing the penalty to Rs 1.56 crore.

¹⁸ Demand Notice Issued During Stay Period Is Invalid: Delhi HC Quashes CCI's Demand for Interest on Penalty Against United India Insurance, TAXSCAN (Feb. 2026), <https://www.taxscan.in/top-stories/demand-notice-issued-during-stay-period-is-invalid-delhi-hc-quashes-ccis-demand-for-interest-on-penalty-against-united-india-insurance-1437707>.

¹⁹ Demand Notice Served During Subsistence of Stay Invalid, Quashed, TAXGURU (Feb. 2026), <https://taxguru.in/company-law/demand-notice-served-subsistence-stay-invalid-quashed.html>.

Thus, by applicability of this doctrine the Delhi High Court reasoned that upon COMPAT's final decision, the original order by the CCI got completely merged into the appellate order. The initial demand of penalty for Rs 156.62 crore was therefore suspended and hence rendered a nullity. The court further held that it is mathematically and legally absurd for the CCI to calculate the default interest based on a demand notice tethered to a non-existent 156.62 crore penalty. Further the liability to pay 1.56 crore only crystallized on the date of the COMPAT order and since the company paid this revised amount promptly within a month, there cannot be said to be any "delay" upon which interest could be levied.

Condemning the Impossible Choice

Apart from the strict interpretation of the statute, the court also applied the principle of equity to protect the statutory right to appeal under Section 53B of the Competition Act. The CCI argued that the interest rate of 1.5% monthly was purely "restitutive", which was structured to prevent the enterprise from unjustly enriching itself by holding onto the penalty funds during the appeal.

However, the Division Bench categorically rejected this characterization. The court further observed that a rate of 18% per annum is inherently penal and not merely restitutive as argued by CCI. Additionally, the court also contemplated upon the "impossible choice" forced upon the appellants. An interim stay is granted to specifically protect an appellant from financial ruin while a flawed regulatory order is scrutinized.

If the CCI's interpretation were upheld then an enterprise securing an appellate stay would face a catch-22 situation in the form of:

- Pay the massive disputed penalty upfront despite obtaining a legally valid stay which would result in draining of its corporate liquidity and rendering the appellate tribunal's interim protection merely illusory
- Rely on the legal stay and withhold payment but risk accumulating a crippling and compounding interest liability that could threaten the company's solvency if the appeal is ultimately dismissed.

The court held on the same that forcing this choice will severely prejudice the appellant and will create a chilling effect on the right to seek judicial review. Penalizing a party with an exorbitant interest for the exact duration they were protected by a lawful judicial order will offend the basic tenets of natural justice which is the primary responsibility of the court of law.

The relevant legal provision

The issue of impossible choice originates from the friction lying in the statutory provision. To fully understand the judgement held by the Delhi High Court, there is need to properly analyze the interplay between the substantive rights guaranteed under the Competition Act, 2002, the mechanical recovery procedures and broader principles of comparative jurisprudence

Substantive rights under section 27 and 53B of the Competition Act, 2002

The conflict originates between the two important provisions of the Competition Act, 2002. Section 27²⁰ gives power to the Competition Commission of India to impose heavy monetary penalties to deter any anti-competitive practice. On the other hand, section 53B²¹ serves as a crucial check on this power, providing an enterprise the right to appeal a CCI order to appellate tribunal (formerly COMPAT and which has been now changed to NCLAT). This right to appeal intrinsically encompasses the right to seek an interim relief which can be in the form of a stay. Without the ability to seek interim relief, the mandatory pre-deposit of massive penalties would cause irreversible financial ruin which might render the right to appeal as a mere illusion.

The 2011 recovery regulation: root of the problem

The execution of the CCI penalty is governed by the CCI (Manner of recovery of Monetary penalty) Regulations, 2011²². The dispute in United India relied on the dependency of two specific regulations:

- Regulation 3: this mandates that the CCI must issue a formal demand notice (Form I), granting the enterprise exactly 30 days to deposit the penalty.²³

²⁰ The Competition Act, 2002, § 27, No. 12, Acts of Parliament, 2003 (India).

²¹ The Competition Act, 2002, § 53B, No. 12, Acts of Parliament, 2003 (India).

²² The Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011, Gazette of India, pt. III sec. 4 (Feb. 8, 2011).

²³ *Id.* Reg. 3.

- Regulation 5: this states that if the penalty remains unpaid after these 30 days window period is over, then a simple interest at the rate of 1.5% per month amounting to 18% annually will be imposed.²⁴

The Delhi High Court by citing a similar judgement of CCI v Geep Industries²⁵, strictly construed the framework. The court held in this regard that the interest provision is inherently penal, and not on the administrative side. Therefore, strict statutory compliance is needed. The issuance of a legally valid demand notice as per regulation 3²⁶ is a mandatory precondition which cannot be bypassed by CCI to automatically trigger an 18% interest rate under Regulation 5.

The 2025 regulatory Overhaul and does the loophole survive

One of the important and most recent development that this paper wants to focus upon is the recent regulatory shift. The CCI, in February 2025, changes its framework by notifying the CCI (Manner of Recovery of Monetary Penalty) Regulations, 2025²⁷ and thereby repealing the 2011 regime.

The new 2025 regulations introduced certain critical changes designed to resolve the procedural gaps:

- Demand notices are now to be issued simultaneously with the final penalty order.²⁸
- The payment window has been extended to 60 days which aligns perfectly with the 60-day period allowed to file an NCLAT appeal under Section 53B.²⁹
- The penal interest rate has been reduced to 1% from 1.5% per month.³⁰

While these 2025 regulations ensure that a demand notice will always predate an appellate stay, the core jurisprudential logic of the Delhi High Court still survives. The enforceability of the penalty relies on the effect of the stay, not just the timing of the notice. Even under the new 2025 rules, an intervening appellate stay suspends the underlying liability. If the NCLAT subsequently modifies the penalty, the additional concepts of Doctrine of Merger still apply which requires the

²⁴ *Id.* Reg. 5.

²⁵ Competition Commission of India v. Geep Industries, L.P.A. 727/2024 (Del. H.C. Nov. 1, 2025) (India).

²⁶ The Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011, Reg. 3.

²⁷ The Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2025, Gazette of India, pt. III sec. 4 (Feb. 27, 2025).

²⁸ *Id.* Reg. 3(1).

²⁹ *Id.* Reg. 3(2).

³⁰ *Id.* Form I.

original simultaneous notice to be withdrawn or modified. Consequently, retrospective interest still cannot legally accrue.

Comparative jurisprudence and the relevant maxims for the present situation

To clearly understand the problem and the relevant legal jurisprudence there is need to go beyond the statutory framework and look at certain additional principles.

- The maxim of Actus Curiae neminem Gravabit: this foundational maxim of equity dictates that “an act of the court shall prejudice no man.”³¹ When an appellate tribunal grants a stay, it is an act of court which is based to protect the appellant. Penalizing an enterprise with such crippling retrospective interest simply for the time taken by the judicial system to adjudicate shall not prejudice a person and if it does then it will directly violate the maxim.
- Jurisprudence of Taxation law: the CCI often relies on the principle of “restitution” arguing that an interest is merely to prevent any unjust enrichment which flows from tax law logic. Interestingly, the new 2025 regulations explicitly permit the CCI to refer unpaid penalties to Income Tax authorities to be recovered as “tax due.”³² However, looking at section 220(2) of the Income Tax, 1961³³, their comparison reveals a flaw in the regulator’s stance. On the one hand tax law mandates interest on any delayed payments, tax appellate tribunals (like the ITAT) regularly use their inherent judicial powers to explicitly waive or halt interest recovery while a stay is in operation. Additionally, tax jurisprudence firmly distinguishes between compensatory interest and penal interest. A rigid, non-negotiable rate triggered mechanically by a delayed demand as under the present law leans heavily into the penal category which precludes its automatic application during judicial protection.

Recommendations

The Delhi High Court’s ruling in the present case revolves the immediate controversy, but the underlying issue present in the statute still remains. There is need to resolve this issue to prevent any future regulatory overreach and protect the fundamental right to appeal under section 53B of

³¹ Actus Curiae Neminem Gravabit, BCAJ ONLINE (Feb. 2026), <https://bcajonline.org/journal/actus-curiae-neminem-gravabit/>.

³² The Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2025, Reg. 11, Form V, Gazette of India, pt. III sec. 4 (Feb. 27, 2025).

³³ The Income-tax Act, 1961, § 220(2), No. 43, Acts of Parliament, 1961 (India).

the Competition Act, and for that India's antitrust recovery framework requires certain structural reforms. For the same, the authors propose certain recommendations which can offer a balanced, forward-looking approach to neutralize this impossible choice

Adopting the European Commission's Bank Guarantee Model

One of the most effective solution lies in adopting better and efficient practices from other antitrust jurisprudence. The European Commission routinely imposes massive fines; however, it avoids imposing on the appellants any punitive interest during pending appeals. As per the EU framework, an enterprise which challenges an EC decision before the General Court is not forced to immediately deposit the fine in fear of any statutory penalties. On the other hand, the enterprise is given an opportunity to provide a financial bank guarantee.³⁴

In the current scenario in India, the NCLAT generally mandates a 10% cash deposit to grant a stay.³⁵ Though this looks lenient but for the remaining 90% there is creation of an impossible choice. However, integrating a statutory "Bank Guarantee Option" into the regulatory framework will modernize enforcement and will offer a predictable middle ground that ultimately protects corporate liquidity while guaranteeing regulatory deterrence.

Differentiation of compensatory and penal interest

The threat of compounding and retrospective interest ultimately creates a severe chilling effect on the access to justice. Startups and MSMEs, often operate on a very tight margin and they might not have the capital and resources to challenge any CCI flawed order. They fear that any protracted appellate process will exponentially multiply their financial liability and they might be forced to accept unjust penalties.

To cure this inequity, there is need for an amendment by the legislature in the Competition Act that ultimately distinguishes between Compensatory interest and penal interest as the court also

³⁴ Consolidated Version of the Treaty on the Functioning of the European Union art. 299, Oct. 26, 2012, 2012 O.J. (C 326) 47.

³⁵ Interglobe Aviation Ltd. v. Competition Commission of India, Competition Appeal (AT) No. 23 of 2018 (NCLAT May 10, 2018) (India).

has laid in cases against capitalization of penal interest.³⁶ The statutory rules should explicitly state that upon the grant of an interim relief in the form of stay the penal default interest should also be automatically suspended. Penal interest should only be triggered retrospectively if the NCLAT explicitly finds the appeal to be frivolous or vexatious or instituted with some ulterior motive as in the parallel jurisprudence of civil law.³⁷

Linking interest rate to appellate success

The current system applies a blanket interest rate regardless of the result of the appellate tribunal on the CCI's original order which might be deeply flawed. A clean legislative fix would be able to fix this issue and the accumulation of interest would be based on another method for instance the outcome of the appeal.³⁸ If this is implemented then if a company filed a frivolous appeal and the NCLAT upholds the CCI's penalty in full then the imposition of interest rate is not bad in law. However, if the case is what happened in the present scenario where the appellate tribunal slashed the penalty from Rs 156 crore to Rs 1.56 crore then in that case the interest for the delay which was caused due to successfully challenging a flawed order should not be imposed upon the appellant. Thus, the statute should be amended to reduce the penalty or in some cases to add a provision of waiver in such cases.

Replacing penal interest rate with commercial bank rates

Another substitute for imposing interest rate can be if they have to be charged during an appellate stay, then the rate should be rationalized. The rate of 1.5% under the old law and 1% under the new rules act as explicit punishment rather than fair compensation.

An interim stay is a legal protection instead of a default or a loan. During the time it takes for an appeal to be heard and adjudicated, the interest rate should simply be pegged at a standard Bank base lending rate since it should be compensatory not punitive.³⁹ The rationale behind interest during a litigation should be strictly to adjust for inflation and the value of monetary changes with

³⁶ Central Bank of India v. Ravindra, (2002) 1 S.C.C. 367 (India).

³⁷ The Code of Civil Procedure, 1908, § 35A, No. 5, Acts of Parliament, 1908 (India).

³⁸ MINISTRY OF CORPORATE AFFAIRS, REPORT OF THE COMPETITION LAW REVIEW COMMITTEE 6-7 (2019).

³⁹ South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 S.C.C. 648 (India).

time instead to penalize the company for the time it took for the judicial system to work which is not in their control.

In case where penalty is modified, any interest already paid should be re-calculated again based upon the reduced amount so finalized later on via authorities' decision

Introduction of Escrow account for the disputed penalties

Instead of forcing appellant to either pay the CCI directly or withhold payment by risking an interest rate of 18% annually, there is need for introduction of a mandatory escrow mechanism. When the NCLAT for instance grants a stay then the appellant can deposit the disputed amount that needs to be paid or a fixed percentage of the same into an independent, interest-bearing account which should be monitored by the tribunal. This will perfectly balance both the sides wherein the money is secure and company cannot use them for their own commercial profits but at the same time the money sits in a standard bank account where the interest rate is normal and the threat of arbitrariness is completely eliminated. Furthermore, once the appeal is decided then the winning party will simply receive the principal along with the interest that has accumulated at the normal interest rate.

Official Codification of Doctrine of Merger

From the analysis of precedents regarding present issues, the doctrine of merger has been subject to judicial interpretation and application.⁴⁰ However, there is no formal codification of the same under the Competition Act. It must be explicitly stated that when a penalty is modified by an appellate body, the liability for interest must be calculated solely on the final modified amount from the date of the original order, rather than the initial amount. This will help ensure reduced court burden, legal uniformity and certainty in issues revolving interim interest amounts.

Additionally, if an appeal is found to be frivolous, there must be a penalty for frivolous litigation, the amount of which shall be determined pertaining to specific facts of the case. But, if appeal is

⁴⁰ Kunhayammed v. State of Kerala, (2000) 6 S.C.C. 359 (India).

genuine and one involving merits, meaning thereby the penalty is reduced even minutely then the interest rate shall automatically be lowered down at prevalent base rate.

Introduction of Pre-Deposit Interest Offsetting

This means that if an amount has been deposited during the period of stay, the same shall be placed in an interest-bearing account. If the company loses, the interest earned on that 10% should be used to offset the total interest liability. This will be helpful in preventing double enrichment and excessive loss to one party.

Transition from “Manner of Recovery” to “Adjudicatory Certainty”

In present case, the dispute primarily arose because the 2011 regulations allowed Demand Notice to be served almost immediately, irrespective of whether appeal has been made or not.⁴¹ Amendment should be made in a way that allows demand notice to be enforceable only after first appeal being exhausted, this will not only ensure effective calculation of accrued interest, but also ensure adequate amount to be paid rather than excessive amount being paid earlier, and later the struggle of refunding the same provided the appeal turns out to be meritorious one.

Conclusion

The case of United India Insurance delves deep into a fundamental flaw in balancing between regulatory power and right to fair appeal. The misuse of interim interest to claim extra money on an amount which might subsequently be reduced considerably on appeal has been discussed in the case. If such interest is allowed to be collected on amount which was fixated earlier, it would not only render additional loss but also defeat the entire purpose of right to appeal by forcing the party to either choose between paying massive amount of money or potentially high amount of interest rate for the time period when the revision of such penalty amount is under consideration in the court of law.

⁴¹ The Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011, Reg. 3, Gazette of India, pt. III sec. 4 (Feb. 8, 2011).

Court has tried to undo this one-sided approach by analysing the relevant statutory provisions and adopting the doctrine of merger, thereby, clearly reinforcing that the previous penalty amount doesn't coexist but gets replaced by the new amount so decided by the authorities, and any interest amount collected on previously fixed penalty amount shall lead to unjust enrichment of the party. Apart from the analysis of the issue in hand, the paper has sought to analyse various remedies or amendments that can be exercised in order to encourage uniformity, ensure legal certainty and prevent unjust enrichment. These recommendations include introduction of escrow account, calculation of final interest amount based upon final penalty amount decided after exhaustion of first appeal, pre-deposit interest offsetting and also introducing certain amendments to the existing regulatory framework in order to increase certainty in cases surrounding this realm.

