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CCI free to probe Ericsson in patent case, rules Delhi HC

The Delhi High Court has allowed the Competition Commission of India to look into complaints from Micromax and Intex that Ericsson had abused its dominant position to demand for royalties on the total handset cost, which the companies say were excessive.

In an order passed by Justice Vibhu Bakhru on Wednesday, the Court dismissed petitions filed by Ericsson in early 2014, disputing CCI's jurisdiction in the matter. ET has reviewed a copy of the order.

The writ petitions are dismissed," Justice Bakhru said.

"It is also necessary to clarify that nothing stated herein should be construed as an expression of opinion - prima facie or otherwise - on the merits of the allegations made by Micromax and Intex; all observations made or views expressed herein are in the context of the jurisdiction of CCI to pass the impugned orders," the order added.

The order now paves way for CCI to begin investigation, which lawyers aware of the case said, had been stalled due to Ericsson's petitions in the Delhi High Court. Ericsson though can appeal the order by moving a Division Bench.

An Ericsson spokesperson said that the company will be reviewing the court order and declined further comments.

"The court held that the competition Commission of India has got to investigate in this matter. We are reviewing the orders further."

Micromax and Intex had filed complaints with CCI alleging that the Swedish telecom equipment maker, which has a large portfolio of Standard Essential Patents (SEPs) in respect of technologies that are used in mobile handsets and network stations, had abused its position of dominance as it was demanding excessive royalties on mobile phones.

CCI then passed orders on November 12, 2013 in case of Micromax, and on January 16, 2014 in case of Intex, directing the Director General CCI to probe into whether provisions of the Competition Act were violated. The CCI also said that if the DG finds Ericsson has contravened, it would also investigate the roles of people in-charge and responsible, so as to fix the responsibility.

However, Ericsson filed petitions in the Delhi High Court in early part of 2014, said CCI had no jurisdiction to pass the orders of investigation into claims of royalty by a proprietor of a patent.

Ericsson contended that any issue regarding a claim for royalty would fall within the scope of Patents Act and cannot be examined under the Competition Act.

Pratibha Singh, lawyer for Ericsson said that the judgment appears to accept that Patent Act is special Act but has held that there's no conflict with the Competition Act, though lawyers are yet to review the order fully.

At the heart of the matter lies an ongoing dispute between Ericsson and the Indian handset makers relating to the former's demand for royalty on SEPs - used in mobile handsets and network stations - which the company alleged were infringed upon by Micromax and Intex.

Litigation on the royalty demands is still going on in the Delhi High Court, however, local players including Micromax, Intex and iBall have had to pay royalties to the patent holders on an interim basis, at 1% of the selling price of its devices

iBall has settled the matter with Ericsson by signing a global patent agreement, though details of the settlement are not public.