



COMPETITION COMMISSION OF INDIA

Case No. 09 of 2015

In Re:

M/s Shubham Sanitarywares

UG – 2 & 3, Shekhar Grand,

15 Sitabagh, Nehru Park Road,

Indore, Madhya Pradesh - 452003

Informant

And

M/s HSIL Limited

Red Cross Place, Kolkata-700001

Opposite Party

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Augustine Peter

Member

Mr. Sudhir Mital

Member



Mr. U. C. Nahta

Member

Mr. M. S. Sahoo

Member

Appearances:

For the Informant: Shri Sunil Paliwal, Partner (in person)

For the Opposite Party: Shri G. R. Bhatia, Advocate

Ms. Kanika Chaudhary, Advocate

Ms. Tripti Malhotra, Advocate

Shri Gaurav Sukhija, Sr. Manager (Legal Department)
of the Opposite Party

Order under Section 26(2) of the Competition Act, 2002

1. The information in the present case has been filed by M/s Shubham Sanitarywares (hereinafter, the '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against M/s Hindustan Sanitarywares & Industries (HSIL) Limited (hereinafter, the '**Opposite Party**') alleging contravention of the provisions of section 3(4) of the Act in the matter.
2. The Informant is stated to be a partnership firm engaged in the dealership business of sanitaryware, faucetware and tiles of various brands in the city of Indore, Madhya Pradesh. The Opposite Party is a public limited company



incorporated under the Companies Act, 1956 and has been engaged in the business of manufacturing and selling of bathroom fittings such as sanitarywares, faucetware, ceramic tiles, kitchen appliances, *etc.*

3. It may be noted that the Informant had previously filed an information (in Case No. 99 of 2013) against the present Opposite Party, M/s Roca Bathroom Products Private Limited and M/s Cera Sanitarywares Limited alleging contravention of the provisions of the Act. The Commission, after considering the information, had closed that case vide its order dated 05.02.2014 under section 26(2) of the Act. The Informant preferred an Appeal before the Competition Appellate Tribunal ('COMPAT') against the said order of the Commission. The Hon'ble COMPAT *vide* its order dated 07.07.2014 has disposed of the Appeal giving liberty to the Informant to approach the Commission for any possible violations of section 3(4) of the Act. The Hon'ble COMPAT further granted liberty to the Informant to present any new evidence and information, if any, in support of its allegations before the Commission. Hence, the present information.
4. As per the information, the Informant has entered into a dealership agreement (hereinafter, the '**Agreement**') with the Opposite Party on 28.10.2003 to deal with the products manufactured/ produced by the Opposite Party in the city of Indore. It is alleged that though the '**Agreement**' is continuing, the Opposite Party has stopped supply of its products to the Informant since 12.02.2013. The Informant has stated that the Opposite Party is the largest manufacturer of ceramic sanitaryware in India with the market share exceeding 40% in the organised segment.
5. The Informant has alleged that the Opposite Party has been regularly issuing price lists to its dealers recommending the maximum discount that can be given on the Maximum Retail Price (MRP) to the sub-dealers or customers. Moreover, the



Opposite Party has also communicated to its dealers/ distributors that if any dealer/ distributor offers any discount more than the prescribed limit then the same shall be dealt severely. In this regard, the Informant has submitted several e-mails written by one of the officials of the Opposite Party to it. The Informant has also alleged that the Opposite Party is engaged in the practice of tie-in-arrangement by forcing its customers/ dealers to purchase its products alongwith the products sourced from other manufacturers. It is stated that the Opposite Party operates an Allied Products Division (APD) which is engaged in marketing of outsourced products from local and foreign manufacturers such as PVC cisterns, fittings and seat covers, tubs and shower panels, bath accessories *etc.*

6. On the direction of the Commission, both the parties have filed additional information/ submissions to substantiate their contentions. The Informant, in its additional submissions dated 14.07.2015, has stated that it had placed several orders dated 19.02.2013, 10.04.2014, 23.04.2014, 14.05.2014, 19.07.2014 with the Opposite Party but none of the orders were executed. It is submitted that the Opposite Party has also stopped sending interactive e-mails to it regarding sales targets, quantity discounts or other circulars with regard to sales and marketing of sanitarywares.
7. The Opposite Party in its submission has stated that the present information has been filed by the Informant with malafide intention to damage its reputation. As per the Opposite Party, the allegations in the present information had previously been agitated before the Commission in Case No. 99 of 2013 and the Commission had rejected the same vide its order dated 05.02.2014 under section 26(2) of the Act. The Opposite Party has submitted that dropping of some allegations in the previous case and raising new allegations in the present case shows the malafide intention of the Informant. It is submitted that the present information arises due to contractual dispute between the Informant and the Opposite Party and breach of



any terms and conditions in the contract entitles the aggrieved party to claim damages/ remedies under Indian Contract Act, 1872. Further, the Opposite Party has submitted that the grievance of the Informant primarily pertains to refusal to supply goods to it which is not supported by any cogent evidence. It is submitted that the allegations of the Informant that the Opposite Party forces maximum discounts on its dealers is also not correct, as the Opposite Party only issues guidelines and proposes discounts which may offered to the end consumers.

8. The Commission has perused the information, additional submissions of the Informant and the Opposite Party and material available on record. The Commission also heard the learned counsels appeared on behalf of the Informant and the Opposite Party on 23.04.2015 and 01.07.2015.
9. The Commission observes that the present information is the second information filed by the Informant against the same Opposite Party for the similar allegations of anti-competitive practices; the first one was in Case No. 99 of 2013 which was closed under section 26(2) of the Act. In the previous information, the Informant inter alia had alleged cartelisation by the Opposite Parties (the Opposite Party in the present case, M/s Roca Bathroom Products Pvt. Limited and M/s Cera Sanitarywares Limited) and abuse of dominant position by the Opposite Party of the present case. Whereas, in the present case, the Informant inter alia has alleged that the Opposite Party has adopted practices like tie-in-arrangement and resale price maintenance.
10. Like in Case No. 99 of 2013, the relevant product market to be considered in the present case is the market for branded ceramic sanitarywares and bathroom fittings. Ceramic sanitaryware products and bathroom fittings manufactured in the unorganized sector cannot be considered as the substitute of branded ceramic sanitaryware products and bathroom fittings because of difference in prices,



quality, user group *etc.* Moreover, ceramic sanitaryware products and bathroom fittings manufactured in the unorganized sector generally caters to the low income buyers whereas, branded ceramic sanitarywares and bathroom fittings cater to the middle and high income buyers.

11. While determining the relevant geographic market, the Commission is guided by section 19(6) of the Act. The Commission is expected to have due regard to all or any of the factors mentioned therein. The factor that is relevant in the instant case is 19(6) viz. transport cost, all other factors being similar throughout India in respect of the relevant product. The dominance of the Opposite Party has to be determined with reference to the smallest geographic area where conditions of competition are similar. The Informant has not provided any evidence as to the structure of the relevant market. The Commission does not see any reason other than to define the relevant geographic market as 'India', since except for the transport cost (which itself does not get reflected in the MRP that is uniform throughout India in respect of branded products of most of the major competitors of the Opposite Party), conditions of competition are similar throughout India. Thus, the relevant market in the instant case may be considered as the "the *market of branded ceramic sanitarywares and bathroom fittings in India*".

12. So far as dominance of the Opposite Party in the relevant market is concerned, the Commission is of the view that, with 42.83 % market share in 2010-11, it is in a dominant position in the relevant market delineated above (*Source: CMIE Industry Outlook*). The other two nearest competitors of the Opposite Party hold 21.15% and 18.72 % market share in the same period. It may be noted that, in Case No. 99 of 2013, the Commission held the same view in regards to position of dominance of the Opposite Party in the same relevant market in its *prima facie* order. However, the Commission did not find the alleged conduct of the Opposite Party in violation of the provisions of section 4 of the Act. In the instant case, the



Informant has not raised any specific allegations pertaining to violation of section 4 of the Act by the Opposite Party. The Commission *prima facie* also do not find any conduct of the Opposite Party to be considered as abusive in terms of section 4 of the Act. Thus, the Commission is of the view that the Opposite Party has not contravened any of the provisions of section 4 of the Act in the instant matter.

13. The Informant has alleged that the Opposite Party has been dictating the amount of discount at every level of supply chain and indulging in tie-in arrangement. It is alleged that the Opposite Party has also been engaged in resale price maintenance by regulating the discount structure.

14. In this regard, the Commission perused Clause 10 of the 'Agreement' which states "*We shall advise you maximum retail prices from time to time for selling HINDWARE products to your customers. Under no circumstances, you will charge prices higher than our recommended MRP.*" In this regard, the Commission notes that the said clause does not raise any competition concern. The definition of 'resale price maintenance' as provided in explanation (e) to section 3(4) of the Act clearly states that prescribing/setting maximum resale price is not prohibited under the Act. Moreover, since such price does not restrict the resellers to sell below a particular price, the same does not raise any competition concern to require any intervention by the Commission.

15. As far as the price lists issued by the Opposite Party with respect to discounts to be offered to sub-dealers and retail customers is concerned, it has been alleged that the Opposite Party had sent communications to its dealers/ distributors that discounts more than the limit stipulated by it should not be given to the customers. From a perusal of e-mails sent by Opposite Party to the Informant, the Commission observes that through such e-mails, the Opposite Party conveyed to its dealers/ distributors that if they want to give more discount then the Opposite



Party should be kept informed by routing such proposals through it. After careful examination of the emails exchanged between the Parties, the Commission notes that there is no absolute restriction or prohibition imposed by the Opposite Party on the Informant. Until and unless regulation of discounts leads to appreciable adverse effect on competition, such practices do not become anti-competitive *per se*. As such, in view of the facts and circumstances of the present case, *prima facie* there seems to be no contravention of section 3(4) read with 3(1) of the Act.

16. As far as the allegation of tie-in arrangement is concerned, the Commission after considering the product range has found that complete set of bathroom fittings consist of ceramic and non-ceramic products are sold together as a set by companies dealing with branded products in organized industry of ceramics. Though, individual units are also sold consumers always have a choice to go for a complete set or different units from different manufacturers.
17. In light of the above analysis, the Commission is of the view that the Informant has not placed any new evidence to substantiate its allegations of violation of the provisions of section 3(4) of the Act. Moreover, the issues raised by the Informant in the instant case have already been considered by the Commission in its previous order in Case No. 99 of 2013.
18. Thus, the Commission finds that no *prima facie* case of contravention of the provisions of either section 3 (4) or section 4 of the Act is made out against the Opposite Party in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.



19. The Secretary is directed to inform all concerned accordingly.

Sd/-

(Ashok Chawla)
Chairperson

Sd/-

(S. L. Bunker)
Member

Sd/-

(Sudhir Mital)
Member

Sd/-

(Augustine Peter)
Member

Sd/-

(U. C. Nahta)
Member

Sd/-

(M. S. Sahoo)
Member

New Delhi

Dated: 09.09.2015

Case No. 09 of 2015

Page 9 of 9