



COMPETITION COMMISSION OF INDIA

Case No. 17 of 2020

In Re:

Prashant Properties Pvt. Limited
04th Floor, 59B, Chowringhee Road,
Kolkata-700020

Informant

And

SPS Steels Rolling Mills Ltd.,
Diamond Heritage, 16, Strand Road,
Room No-H 523 A, 5TH Floor, Kolkata - 700019

Opposite Party No. 1

Shakambhari Ispat & Power Limited,
Room No. 801, 8th Floor, Diamond Prestige,
41A, AJC Bose Road, Kolkata – 700017

Opposite Party No. 2

Shri Deepak Kumar Agarwal,
Managing Director,
SPS Steels Rolling Mills Ltd.,
Diamond Heritage, 16, Strand Road,
Room No-H 523 A,
5TH Floor, Kolkata - 700019

Opposite Party No. 3

Shri Ramabatar Agarwal,
Director,
SPS Steels Rolling Mills Ltd.,
Diamond Heritage, 16, Strand Road,
Room No-H 523 A,
5TH Floor, Kolkata - 700019

Opposite Party No. 4

Shri Sanjay Kumar Chowdhary,
Director,
SPS Steels Rolling Mills Ltd.,
Diamond Heritage, 16, Strand Road,
Room No-H 523 A,
5TH Floor, Kolkata – 700019

Opposite Party No. 5



Smt. Priyanka Goenka,
Director,
SPS Steels Rolling Mills Ltd.,
Diamond Heritage, 16, Strand Road,
Room No-H 523 A,
5TH Floor, Kolkata – 700019

Opposite Party No. 6

Shri. Ajit Kumar Nath,
Additional Director,
SPS Steels Rolling Mills Ltd.,
Diamond Heritage, 16, Strand Road,
Room No-H 523 A,
5TH Floor, Kolkata – 700019

Opposite Party No. 7

Shri Deepak Kumar Agarwal,
Managing Director,
Shakambhari Ispat & Power Limited,
Room No. 801, 8th Floor, Diamond Prestige,
41A, AJC Bose Road, Kolkata – 700017

Opposite Party No. 8

Shri Ajay Kumar Lahoti,
Director,
Shakambhari Ispat & Power Limited,
Room No. 801, 8th Floor, Diamond Prestige,
41A, AJC Bose Road, Kolkata – 700017

Opposite Party No. 9

Shri Swati Agarwal,
Director,
Shakambhari Ispat & Power Limited,
Room No. 801, 8th Floor, Diamond Prestige,
41A, AJC Bose Road, Kolkata – 700017

Opposite Party No. 10

Shri Asit Baran Bhattacharjee,
Additional Director,
Shakambhari Ispat & Power Limited,
Room No. 801, 8th Floor, Diamond Prestige,
41A, AJC Bose Road, Kolkata – 700017

Opposite Party No. 11

Shri Ramabatar Agarwal,
Director,
Shakambhari Ispat & Power Limited,
Room No. 801, 8th Floor, Diamond Prestige,
41A, AJC Bose Road, Kolkata – 700017

Opposite Party No. 12



Shri Ranjit Banerjee,
Director,
Shakambhari Ispat & Power Limited,
Room No. 801, 8th Floor, Diamond Prestige,
41A, AJC Bose Road, Kolkata – 700017

Opposite Party No.13

Smt. Priyanka Goenka,
Additional Director,
Shakambhari Ispat & Power Limited,
Room No. 801, 8th Floor, Diamond Prestige,
41A, AJC Bose Road, Kolkata – 700017

Opposite Party No. 14

Shri Vijaykumar V. Iyer,
Resolution Professional Of SPS Steels Rolling Mills Ltd,
Deloitte ToucheTomatsu India LLP,
Indiabulls Finance Centre,
Tower 3, 27th Floor, Senapati Bapat Marg,
Elphinstone Road (West), Mumbai – 400013.

Opposite Party No. 15

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present information has been filed by Prashant Properties Pvt. Ltd. ('Informant') under section 19(1)(a) of the Competition Act, 2002 ('Act') against SPS Steels Rolling Mills Ltd. ('OP-1'), Shakambhari Ispat & Power Limited ('OP-2' / 'SIPL'), OP-3 to OP-15, Directors of OP-1 and OP-2 and OP-15 (Resolution Professional under Insolvency proceedings) alleging contravention of the provisions of Section 4 of the Act.



FACTS, IN BRIEF, AS STATED IN THE INFORMATION

2. The Informant is stated to be a company incorporated under the provisions of the Companies Act, 1956, carrying on business of marketing, distribution and offering for sale of multifarious wholesale items.
3. OP-1, SPS Steels Rolling Mills Ltd., is stated to be carrying on the business of manufacture and sale of various kinds of materials made of steel and common metals and conducting its business with a number of novel and distinctive Trade Marks *i.e.* “Elegant Brands” or “Family of Marks” which includes *inter-alia* *ELEGANT*, *ELEGANT TMT*, *ELEGANT SABAI CHENE TAI KENE*, *SABAI CHENE TAI KENE etc.* that has been originally conceived and adopted by OP-1 at different points of time during the course of trade for the sale and commercialization of the variant nature of goods emanating from their business.
4. OP-2, Shakambhari Ispat & Power Limited is the successful Resolution Applicant which has taken over the management of OP- 1 under orders passed by the National Company Law Tribunal, Kolkata Bench (‘NCLT’) *vide* order dated 08.04.2019. OP- 2 is a company incorporated in the year 2001, engaged in the same line of manufacturing as OP-1, *i.e.* production of TMT bars. OP-3 and OP- 4 to OP- 7 are the Managing Director and Directors of OP- 1, respectively. OP- 8 and OP-9 to OP-14 are Managing Director and Directors of OP- 2, respectively. OP-15 is Resolution Professional of OP-1 in proceedings before the NCLT.
5. OP-1 is a registered proprietor of the trademarks ‘*Elegant*’ and its variants thereof and is also a *bonafide* and legitimate proprietor of the trademarks which are hereinafter referred to as ‘**Family of Marks**’. The Informant submits that an agreement dated 30.05.2014, titled ‘**Permitted User Agreement**’, was entered into between OP- 1 and the Informant for a period of 21 years and is still subsisting. The Informant submits that as per agreement dated 30.05.2014, it is entitled, to certain rights including that



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of manufacture, use, distribution and sale of TMT Bars, TMT Rods, Steel & Iron Rods, Rolled and Cast, Building Materials, MS Tor, Ribbed Bars, Square Angles, Channels, Flats, Joists, Girders, etc. and similar goods/services with the said “Elegant Brands” or “Family of Marks” within the geographic territory of India.

6. The Informant under the agreement dated 30.05.2014, manufactured, supplied and distributed goods in the market utilizing the said family of marks, from time to time. The royalty in terms of the agreement was paid to OP-1 and duly accepted from time to time, by OP-15 as well, during the Corporate Insolvency Resolution Process (**‘CIRP’**).
7. Pursuant to an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**‘IBC’**) filed by Allahabad Bank (Financial Creditor), being Company Petition No. (IB) No. 595/KB/2017, CIRP was initiated against OP- 1 before NCLT. During the said Resolution Process, OP-2 filed Resolution Plan in terms of Section 30 of IBC. The Resolution Plan of OP-2 was approved by the Committee of Creditors (**‘CoC’**) with 100 % vote share of the members, and subsequently, this plan was placed before NCLT for its approval.
8. During the CIRP, OP-15 moved an application in the main petition, under Section 60(5) read with Section 20 of the IBC, being CA(IB) No. 05/KB/2019, praying for an order to protect and preserve the value of the property of OP-1. In the said application, OP-15 referred to *ELEGANT* brands and ‘Family of Marks’ and also referred to the said agreement dated 30.05.2014, between OP-1 and the Informant, with a prayer to direct temporary suspension of the operation of the Brand Sharing Agreements (including the Permitted User Agreement dated 30.05.2014) entered into by OP-1 with the Informant and one another entity, Dytron Marketing Private Ltd.



9. Another application, being CA (IB) No.937/KB/2018, was moved by OP-15, in the main petition, under the provisions of Section 25(j), 43 to 51 and 66 of the IBC. It was stated therein that OP-15 had appointed a Forensic Consultant (Deloitte Touche Tohmatsu India LLP) on 06.07.2018 for carrying out review of transactions undertaken by OP-1 (Corporate Debtor) pursuant to provisions of the IBC to identify potential undervalued or fraudulent transactions. Upon receipt of the report of Forensic Consultant on 24.09.2018, key potential transactions were highlighted in which further investigation and examination were to be undertaken by OP-15 for discovery of additional information in terms of aforementioned provisions of IBC. Accordingly, OP-15 prayed for directions of avoidance of certain transactions (including the Brand Sharing agreements) as identified in the Forensic Consultant Report.
10. When the matter was taken up before the NCLT under Section 31, IBC for approval of the Resolution Plan submitted by OP- 2, as approved by the CoC, all objections were taken up including the allegations made by OP-15 in both the aforementioned applications. The NCLT vide order dated 08.04.2019, approved the Resolution Plan of OP-2, which was approved by CoC with 100% voting share, under Section 31(1) of IBC, making it binding on OP-1(Corporate Debtor and its employees, members, guarantors and other stakeholders). In so far as the allegations made by OP-15 against the Informant in aforementioned applications were concerned, it was observed that the aforesaid two applications were to be disposed of separately and no finding was given by the NCLT.
11. The Informant submits that though the application was pending consideration before the NCLT, the OP- 2 on behalf of the Enterprise issued a Public Notice on 18.04.2019, stating that anyone using trademark “*ELEGANT*” and/or associated trademarks thereof or any deceptively similar trademarks of OP-1 shall render itself/himself/themselves



liable to civil/criminal prosecution including police raids without any further notice or warning.

12. The Informant, being aggrieved, moved before the Court of the Learned 2nd Court, Civil Judge (Junior Division), Alipore by filing a suit for declaration and permanent injunction in which *ad interim* stay was granted on 22.04.2019, by the said Court, restraining OP-1 from suspending the said Permitted User Agreement dated 30.05.2014. The said interim order was vacated by the Appellate Court of the Learned District Judge, Alipore on 02.07.2019. However, in further proceedings, initiated against the order of the District Court, the interim order granted by Civil Judge was re-instated by the Hon'ble High Court of Kolkata via detailed order dated 25.09.2019. When the matter, was further taken before the Hon'ble Supreme Court, the Hon'ble Court remanded the matter for fresh consideration before the Civil Court directing parties to maintain status quo by an order dated 25.11.2019. Eventually the 2nd Court, Civil Judge (Junior Division), Alipore by an order dated 10.12.2019, dismissed the above suit of the Informant on the ground of lack of jurisdiction, being barred by the provisions of Section 63 and 231 of IBC alongwith Section 430 of the Companies Act, 2013.

13. In the meantime, CA (IB) No. 05/KB/2019 was disposed of by the NCLT as not pressed on 06.08.2019. The other application concerning the permitted user agreement dated 30.05.2014 *viz.* CA (IB) No. 937/KB/2018 was kept pending by the NCLT. The Informant also filed an application being CA No. 124/KB/2020 challenging the action of OP-2 as well as claiming that it was entitled to use the brand 'Elegant' and 'Family of Marks' as provided for in the said agreement dated 30.05.2014. The NCLT by an order dated 22.01.2020 in CA No. 124/KB/2020 filed by the Informant, allowed the said application to the extent of permitting impleadment of the Informant in the proceedings before it, while directing that the remaining reliefs



sought for in the said application shall be considered at the time of hearing the other application *viz.* CA (IB) No. 937/KB/2018.

14. Eventually, by an order dated 26.02.2020, the NCLT disposed of CA(IB) No.937/KB/2018 filed by OP-15, on behalf of OP-1, against the Informant. The NCLT has held that the agreement dated 30.05.2014 was not undervalued or fraudulent. However, having so held, the NCLT refused to grant the reliefs sought by the Informant in CA No. 124/KB/2020 on the ground that the Resolution Plan having been approved by the NCLT, it had become *functus officio* and did not have jurisdiction to pass further orders. However, the NCLT has clarified that its findings did not have a bearing on the applicability of the agreement in future. The NCLT also observed that the Informant was aware of the Resolution Plan approved by it vide order dated 08.04.2019, wherein its claim for recovery of its outstanding dues of Rs. 15,15,58,302/- was rejected and the Informant did not approach the National Company Law Appellate Tribunal ('NCLAT') in appeal against the order dated 08.04.2019, which now stands time-barred.
15. The Informant placing reliance on the order of NCLT dated 26.02.2020 has contended that the NCLT, has while passing the said order clarified that the agreement was valid from the IBC point of view, but it did not have the jurisdiction to pass further orders for enforcement in respect thereof. Consequently, the Informant, is at liberty to invoke other remedies available to it under the law.
16. Accordingly, the Informant has submitted that the conduct of OP-1 in issuing the public notice dated 18.04.2019 and threatening civil and criminal prosecution including police raids without warning or notice against any person or entity using the trademark "*ELEGANT*" or associated trademarks and further seeking to injunct any party from exploiting or carrying on any business including manufacturing /producing, distribution or retail of any TMT Bars or any other allied products under the trademark



‘*ELEGANT*’ or other associated or similar marks, is in violation of the provisions of Section 4 of the Act.

17. The Informant also submitted that as the registered proprietor of Family of Marks in question, OP-1 is in a dominant position. Further, other users of the mark including the Informant herein and Dytron Marketing Private Limited derive their right to produce or use or supply goods using the said marks, from OP-1. Moreover, the public notice dated 18.04.2019 restricts and limits the production, supply and distribution of the ‘Family of Marks’ to the market and hence adversely effects the Informant by denying it market access and also to a consumer by denying it access to the products being manufactured by the Informant and other users of the said “Family of Marks” barring OP-1. The Informant further submitted that it is evident that the enterprise intends to abuse its dominant position, eliminate competition and spiral up the prices of its products by restricting supply.
18. The Informant then submitted that in addition to the amount of Rs. 15,15,58,302/- owed by the OP-1 to the Informant which was set off against the use of the brands by the Informant under the Permitted User Agreement dated 30.05.2014, an amount of Rs. 3 crores have been spent in setting up for marketing of the product and it is facing monthly losses on account of denial of access to the market. Additionally, it has made commitments to manufacturers for minimum quantity lifting and as a result of not being able to meet its commitment, it is affecting its credibility in the market, which are not quantifiable in terms of money.
19. In view of the facts and circumstances of the case, the Informant has prayed that the Commission may inquire into the matter and:
 - a) Pass an order for investigation under Section 26 of the Act;



- b) Upon results of the investigation pass an order of penalty under Section 27 against the OPs; and such other orders which the Commission deems fit and proper in the interest of justice.
20. The Informant has also prayed for interim relief of issue of direction to the OPs to not take any coercive measures against the Informant and/or restrain the OPs in any manner from interfering with the rights of the Informant under the said agreement 30.05.2014, and/or restrain the OP's from taking any coercive steps in furtherance to the Public Notice dated 18.04.2019 and/or staying the said Public Notice dated 18.04.2019 and/or orders restraining the OP's from acting upon or giving effect to the Public Notice. The Informant has submitted that non-grant of interim relief would cause grave and irreparable prejudice to the Informant, other competitors and consumers of the product and the industry for the reason that the OPs would succeed in eliminating competition and abusing its dominant position to spiral the price of the goods. It will also result in exhausting and/or driving the Informant and other such similarly placed parties out of business.
21. The Commission considered the matter in its ordinary meeting held on 16.06.2020 and decided to pass an appropriate order in due course.
22. At the outset, the Commission notes that in the present matter the Informant is aggrieved by the public notice dated 18.04.2019, whereby OP-2 has threatened civil and criminal prosecution against any person or entity using the trademark 'ELEGANT' or associated trademarks and further seeking to injunct any party from exploiting or carrying on any business including manufacturing /producing, distribution or retail of any TMT Bars or any other allied products under the trademark.
23. Upon consideration of the Information and documents placed on record by the Informant, the Commission notes that sometime in the year 2011, the Informant had



advanced, in several instalments, loans to OP-1 which aggregated to an amount of Rs.33,55,48,650/-. This amount was repaid by OP-1 partially and with respect to outstanding dues which remained to be paid, OP-1 entered into a 'Permitted User Agreement' dated 30.05.2014 with the Informant, whereby the Informant was allowed the use of OP-1's Trademark named '*Elegant*' and its variants, for limited purposes which included manufacture, use, distribution and sale of TMT Bars, TMT Rods, Steel & Iron Rods *etc.* within the geographic territory of India. This agreement was entered initially for a period of 21 years from the date of such agreement, wherein OP-1 was allowed to adjust a royalty of Rs.75/ per ton on production on a half-yearly basis for using the family of marks, from the amounts it owed to the Informant. Subsequently, when insolvency proceedings were initiated against OP-1 at the behest of Allahabad Bank (being Financial Creditor of OP-1) before NCLT, the Informant in its capacity as operational creditor also staked its claim for recovery of a sum of approximately Rs. 15.15 crores which was outstanding after adjustment of royalty payments to OP-1 under the Permitted User Agreement. However, it did not get the said sums under the resolution plan which was approved by NCLT on 08.04.2019.

24. During the pendency of the resolution proceedings, OP-15 (Resolution Professional) *inter-alia* filed two separate applications being CA (IB) No.937/KB/2018 and CA(IB) No.05/KB/2019, before NCLT Kolkata, respectively, under the relevant provisions of IBC, seeking avoidance of undervalued and fraudulent transactions and also temporary suspension of Brand Sharing Agreement (including Permitted User Agreement dated 30.05.2014). The NCLT vide order dated 08.04.2019, had approved the Resolution plan and remarked that the application will be disposed of separately. Pursuant to the approval of the Resolution Plan, OP-2 made payment of Rs. 266 crores under such plan and came to control OP-1. Thereafter, a Public Notice dated 18.04.2019, was issued on behalf of OP-1, stating that anyone using OP-1s trade mark '*Elegant*' or associated trade mark thereof will be liable for prosecution. Subsequently, the NCLT vide order dated 26.02.2020, dismissed the application of OP-15, being CA



(IB) No.937/KB/2018, as also the application of the Informant being CA No. 124/KB/2020, claiming use of brand “Elegant”. NCLT gave its finding that the agreement dated 30.05.2014 was not undervalued or fraudulent as contended by OP-15. However, having so held, NCLT refused to grant the reliefs sought by the Informant on the ground that the Resolution Plan having been approved by the NCLT, it had become *functus officio* and did not have jurisdiction to pass further orders as it had no powers of review and the Informant ought to have preferred an appeal before NCLAT, which it has not done. The Commission further notes from the records that the suit filed by the Informant seeking permanent injunction against the OPs and allowing use of the trademark has been dismissed by the abovementioned Civil Court *vide* order dated 10.12.2019. Thus, it appears both from the Information as well as the documents annexed therewith that the subsistence of any legal right of the Informant, in respect of the use of the trademark of OP-1, under the Permitted User Agreement dated 30.05.2014, and the validity of such agreement itself has come under cloud after the resolution process undertaken in relation to OP-1 company under IBC. The OPs are the owners of such mark, who consequent upon the approval of the resolution plan by NCLT, have the vested right to the use of such marks, to the exclusion of the Informant, which is evidenced upon a perusal of the order dated 26.02.2020, passed by NCLT. Further, as per NCLT, this right came to be accrued upon the OPs by virtue of the earlier order of NCLT dated 08.04.2019, approving the Resolution Plan, and in terms of which OP-2 has expended considerable sums to takeover the control of the affairs of OP-1, which has held the mark “ELEGANT” besides other marks, being registered under the Trade Marks Act in its name. The public notice dated 18.04.2019, issued on behalf of OP-1, cautioning any other person from using such mark, on the basis of which notice Informant has alleged abuse is evidently issued post the approval of the resolution plan by NCLT, granting such rights in favour of OPs. Further as aforementioned, a subsequent challenge by the Informant by filing its application being CA No. 124/KB/2020, claiming use of brand ‘ELEGANT’, before NCLT has also not met with success and as on date of filing of the present information, there is



nothing to show any legal right that is inherent in the Informant in relation to aforementioned marks.

25. The Commission notes that to bring a competition concern before it, the Informant ought to have shown some right that it possessed and such right has been infringed in terms of the provisions of Section 4 the Act, by the alleged conduct of the OPs. No conduct has been shown on the part of OPs, of having indulged in any abusive or exclusionary behaviour, causing distortion in the market, or affecting the consumers or any other market constituents, adversely. The announcement made in the public notice dated 18.04.2019, is a mere reflection of the existence of a right that the OPs claim to vest in them and which they want to safeguard against any misuse. A public announcement by a party of the existence of a legal right, that it validly possesses, may not tantamount to an abuse.
26. In view of the above, the Commission observes that it may not be germane to define a precise relevant market and assess the dominance of the OPs as no abuse can be seen to have arisen based on the facts and circumstances disclosed in the Information. When the rights of the Informant to use of such mark appears to have been extinguished under the legal process of IBC, it would not be worthwhile from a competition standpoint to firstly undertake a relevant market analysis and assessment of dominance of OPs in such market, which is the normal course of action adopted by the Commission in respect of cases brought before it, under the provisions Section 4 of the Act, but for the facts and circumstances of the present case, as presented above.
27. Thus, the Commission is of the opinion that no competition concern can be said to have arisen in the present matter and the information is closed forthwith against the OPs under Section 26(2) of the Act. Consequently, no case for grant of relief(s) as sought under Section 33 of the Act arises and the same is also rejected.



28. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 08/07/2020