



COMPETITION COMMISSION OF INDIA

(Case No. 19 of 2013)

In Re:

Quadrant EPP Surlon India Ltd.

Informant

And

- | | |
|--|----------------------|
| 1. INA Bearings India Pvt. Ltd. | Opposite Party No. 1 |
| 2. Schaeffler Technologies AG & Co. KG | Opposite Party No. 2 |
| 3. Eastern Railway | Opposite Party No. 3 |
| 4. Durga Bearings Pvt. Ltd. | Opposite Party No. 4 |
| 5. V.M. Automation | Opposite Party No. 5 |
| 6. Monika Bearing Traders | Opposite Party No. 6 |

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M.L.Tayal
Member

Mr. Justice (Retd.) S.N. Dhingra
Member

Mr. S.L. Bunker
Member



Present: Mr. Manoj Kumar Garg, advocate with Mr. R.K.Singh, (Assistant Manager, Quadrant EPP Surlon India Ltd.) for the informant

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

The information was filed by Quadrant EPP Surlon India Ltd. ('the informant') against INA Bearings India Pvt. Ltd. (OP-1), Schaeffler Technologies AG & Co. KG (OP-2), Eastern Railway (OP-3), Durga Bearings Pvt. Ltd. (OP-4), V.M. Automation (OP-5) and Monika Bearing Traders (OP-6) (collectively referred to as 'Opposite Parties') alleging contravention of sections 3 and 4 of the Competition Act, 2002 ('the Act').

2. The informant was engaged in the business of manufacturing, marketing and supply of semi-finished engineering plastic products made through nylon monomer castings. The OP-1 was the wholly owned subsidiary of the OP-2 and stockist of all types of 'INA' brand bearings manufactured by the OP-2. The OP-2 was the original equipment manufacturer (OEM) of 'INA' brand bearings at its works in Germany. The OP-3 *inter alia* manufactured '140T Brake Down Cranes' for Indian Railways. The OP-4 and OP-5 were the authorised dealers of OP-1. The OP-6 was an authorised stockiest of the OP-5.

3. The informant submitted that it manufactured and supplied nylon pulley fitted with INA brand bearings to OP.3 and the same was being used in 140T Gottawald Cranes manufactured by OP.3 at its workshop at Jamalpur, District- Munger, Bihar. It was averred that the OP-3 issued a Notice Inviting Tender in April 2012 through Indian Railways e-procurement system for procurement of diverse quantities of pulleys with bearings (of INA make) and retainer rings. It was submitted that one of the condition for award of tender was that it would be placed only with latest approved vendor of CME or their authorised dealer/ agent for either nylon pulleys or INA make bearing as on date of opening of tender. It was also submitted that as per tender condition,



the proof of purchase was to be submitted from OEM or its authorised dealer/ agent of bearings of INA brand. The informant was stated to have participated in the tender and was found to be L1 for supply of pulley with bearing and retainer rings for main hoist and main hoist guide as per Drg. No. 2.7707.1181-3 Alt-1 (item 1) and pulley with bearing and retainer rings for aux. Hoist guide as per Drg. No. 2.7707.1194-3 Alt-1 (item 3).

3.1 It was submitted that OP.3 created an exception by approving two more manufacturers, apart from those approved by M/s. Gottwald for supply of nylon pulleys but such exception was not created in case of supply of bearings where there were a lot of reputed manufacturers.

3.2 It was stated that the informant being the L1 bidder requested OP.1 to provide best and early delivery period for the bearings with retainer rings. The informant alleged that OP.1 abused its dominant position and did not provide any price list or delivery period. Even after repeated requests *vide* email and letters, OP.1 did not respond and due to the arbitrary delay on part of OP.1, the informant was not able to make delivery to OP.3 and paid Rs. 21 lac as penalty for delayed delivery.

3.3 The informant submitted that a bulletin tender (due on March 05, 2013) was issued by OP.3 for procurement of nylon pulleys. The terms and conditions of tender again provided for the requirement of proof of purchase from the OP.1 to confirm product genuinity in case of bearings. It was averred that the aforesaid restrictive clauses in the tender restrained the informant from participating in the said tender as OP.1 was not cooperating with it.

3.4 The informant stated that it participated in the notice inviting tender of October 2010 announced by OP.3 and was declared L1. On getting the tender,



the informant approached OP.1 for supplies but OP.1 responded after three months with tentative delivery time period being five months. Seized of the situation, informant approached OP.5 for supplies, who responded that it only deals through its authorised stockiest i.e. OP.6. After scrutinising the authorisation of both OP.5 and OP.6, informant placed order for bearings with OP.6. The bearings were supplied to full satisfaction of OP.3 after being duly checked and verified by OP.3.

3.5 However, it was learnt by informant that OP.4 had filed a complaint raising doubts on the genuineness of the goods supplied by informant. OP.3 allowed inspection by OP.1, OP.2 and OP.4 without intimating the informant besides a joint inspection. Further, OP.5 refused to have any business relation with OP.6, even though OP.6 admitted having sourced the bearings from OP.5. The informant alleged that this was a cartel and OP.3 rejected 152 sets of nylon pulleys out of 216 sets supplied by informant.

4. It was alleged that the OP.1 held complete control over the market for supply of nylon pulleys and bearings which arose out of the tender conditions of OP.3. This was stated to result in complete absence of competition for the said product; to drive out other manufacturers, distributors and suppliers from the market; and to cause harm to the interest of end consumers.

4.1 The informant alleged that the opposite parties acted as a cartel which was demonstrated from the fact that the OP.1 enjoyed the ability to control the supply of bearings; convenient existence of forum for cartel-forming in the guise of active associations of distributors through OP.3; concentration of product, enabling intense and regular interaction necessary for cartels and policing of cartel agreement/ arrangement and ability to control the actions of informant.



4.2 The informant alleged that the OP.1, OP.2, OP.4 and OP.5 were in dominant position in the relevant market of supply of bearings and held full control over the market in supply of bearing and OP.3 was in dominant position by imposing unfair, unreasonable and inequitable terms on the informant. The informant further alleged that OP.1, OP.2, OP.3, OP.4 and OP.5 abused their dominant position in the relevant market of supply of bearings by directly imposing unfair and/or discriminatory conditions in sale of goods (bearings in this case); price in purchase or sale of such goods and time of delivery and limits and restricts the market for the said products and indulges in practices resulting in denial of market access to the informant.

5. The Commission perused the information and heard the counsel for informant. Section 4 of the Act requires that first the relevant market be deciphered; subsequent to that the dominant position and finally the abuse of dominant position. Section 2(r) read with section 19(5) of the Act requires determination of relevant market with due regard to the relevant geographic market and relevant product market. Section 2(t) defines relevant product market as ‘a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use’. Further section 2(s) defines relevant geographic market as ‘a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas’.

6. Keeping in view the provisions of section 2(t) read with section 19(7) the Act, the relevant product market has to be market comprising all products regarded as substitutable by the consumers. Cylindrical roller bearings can be either procured from INA or its authorised distributor/ stockiest or it can be procured from any other manufacturer, meeting the INA brand specification.



Thus, the relevant market in this case would be ‘procurement of INA brand (or equivalent make) cylindrical roller bearings in India’.

6.1 In the relevant market, there are other suppliers present who supply cylindrical roller bearing of equivalent make (INA brand) such as FAG, Heinrich, Jungboltdt, Hoesch, Rother Erde, SKF. Like OP.1, they are also the OEM and are approved vendors for supply of bearings. There is no material on record from which an inference can be drawn regarding dominance of OP.1 in the relevant market. The informant had alleged that brand specification by a dominant procurer limits the suppliers besides creating entry barriers and limiting choice and results in anti-competitive effects and outcomes. It is alleged that inserting brand specification in the tender document for a proprietary product by a dominant procurer, the dominant procurer imposes unfair condition besides limiting/ restricting market thereof. Moreover, allegedly it also results in denial of market access and as such the conduct of dominant procurer is claimed to in contravention of the provisions of sections 4(2)(a)(i), (b)(i) & (c) of the Act.

6.2 However, on a closer scrutiny of the terms and conditions of the tender documents, it was found that the allegations made by the informant were misconceived and held no merit. In this connection, clause 8 of the terms and conditions of the tender document has to be noted, which reads as follows:

8. *“Complete technical literature of products to be submitted along with the offer. In case the tenderer is offering equivalent material it will be the responsibility of the tenderer to establish the equivalent of their offer with the tendered product by submitting a comparative chart supported by catalogues of both the makes. If the item which is offered has been supplied to the original equipment manufacturer/ original equipment supplier (OEM/ OES) or Indian Railways for use in Gottwald’s 140 T crane, the firm will have to furnish a certificate from the OEM/ OES or the Indian Railway consignee for confirmation of supply and satisfactory*



performance of such item to them. Also a certificate needs to be furnished from the end user of such crane fitted with the parts supplied by such firms that after fitment of such items, the crane is working satisfactorily.”

6.3 From the above, it was made out that neither did the tender document impose a condition which limited/restricted the supply of bearings to only that of INA brand nor did OP.1 hold any dominant position in the relevant market. Hence, the allegation that opposite parties contravened the provisions of section 4 of the Act was not *prima facie* made out.

6.4 Section 3(3) of the Act requires existence of an agreement between enterprises or association of enterprises or persons or association of persons or between person and enterprise or practice carried on or decision taken by any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or services. In the present case, the opposite parties are not engaged in identical or similar trade of goods but are positioned vertically in the chain of production in different markets and hence, no case of cartel is made out. Section 3(4) of the Act provides for agreement amongst enterprises or persons at different stages or levels of production chain in different markets, in respect of production, supply, distribution etc. related to refusal to deal. The provisions of section 3(4) of the Act particularly clause (d) thereunder would not be attracted in the present matter since the requirement of INA brand bearings was not absolute in the tender document (clause 8) and there was no restriction as to the persons or class of persons from whom goods could be procured.

7. In view of the above discussion, there does not exist a *prima facie* case for causing an investigation to be made by the Director General under section 26(1) of the Act. It is thus a fit case for closure under section 26(2) of the Act and the same is hereby closed.



The Secretary is directed to inform the parties accordingly.

New Delhi

Date: 27.5.13

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L.Tayal)
Member

Sd/-
(Justice (Retd.) S.N. Dhingra)
Member

Sd/-
(S.L. Bunker)
Member