



COMPETITION COMMISSION OF INDIA

Case No. 102 of 2015

In Re:

**Mrs. Belarani Bhattacharyya
BC-243, Salt Lake, Sector-1, First Floor,
24 Parganas, Kolkata, West Bengal**

Informant

And

**M/s Asian Paints Ltd.
6/A, Shantinagar, Santacruz, Mumbai**

Opposite Party

CORAM

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

**Mr. M. S. Sahoo
Member**

**Justice G. P. Mittal
Member**



Appearances:

Ms. Manjulika Pal, Advocate on behalf of the Informant.

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

- 1 The present information has been filed by Mrs. Belarani Bhattacharyya (the '**Informant**') under the provisions of section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against M/s Asian Paints Ltd. (the '**Opposite Party**') alleging, *inter alia*, contravention of the provisions of sections 3 & 4 of the Act.
- 2 It is to be noted that the Informant had earlier filed an information on 17.02.2011 in case no. 08 of 2011 against the Opposite Party in the present case alleging contravention of provisions of sections 3 and 4 of the Act; pursuant to which the Commission *vide* its order dated 03.05.2011 held that no *prima facie* case was made out against the Opposite Party and the matter was closed in terms of section 26(2) of the Act. Thereafter, the Informant filed an appeal under section 53B(2) of the Act before the Competition Appellate Tribunal ('**COMPAT**') *vide* Appeal No. 16/2011. The Hon'ble COMPAT decided to dismiss the Appeal *vide* its order dated 20.10.2011. Subsequently, the Informant filed a writ petition *i.e.* W.P.(c) No.5079/2013 before the High Court of Delhi and the Hon'ble High Court *vide* its order dated 07.11.2013 held that the Informant may approach the Supreme Court of India against the aforementioned order of COMPAT. Thereafter, the Informant filed a Review Petition No. 629/2013 against the said order which was dismissed by the High Court *vide* its order dated 10.01.2014. The Informant then filed a LPA No. 390/2015 against the impugned orders dated 07.11.2013 and 10.01.2014 which was dismissed by the Delhi High Court *vide* its order dated 02.07.2014. Subsequently, the Informant filed a SLP No. 422/2015 before the Hon'ble Supreme Court which was dismissed *vide* order dated 19.01.2015 and on 15.05.2015, allowing the Informant to approach the Commission with a fresh



information. The present information, with the same set of facts and allegations as in case no. 08 of 2011, has been filed by the Informant in pursuance to the aforementioned order of the Hon'ble Supreme Court of India.

- 3 Briefly stated, the Opposite Party brings out several advertisements in various daily newspapers promising various services relating to painting of house such as painting by trained painters with supervision, one year warranty in respect of jobs done *etc.* to the public at large. Attracted by such advertisements and brand name of the Opposite Party and expecting high quality and smooth service, the Informant opted to avail the services of the Opposite Party for painting of her residential premises. In response to the request of the Informant, through the helpline number of the Opposite Party, Mr. Jayanta Das, acting as a representative of OP, visited and inspected the premises of the Informant and gave estimates for painting.
- 4 Subsequently, on 26.2.2009 and 27.3.2009, the Informant placed orders for interior painting of the ground floor portion and total exterior painting of the premises. Two estimates amounting to Rs.37,574/- & Rs. 62,081/- on the aforesaid dates were given by Mr. Jayanta Das on behalf of the Opposite Party. Thereafter, two more estimates to the tune of Rs.62,490/- and Rs. 13,120/- dated 29.03.2010 and 30.04.2010 were given for painting of ceiling, walls of master bedroom and second bathroom for which full payments were made in advance with due acknowledgement by Mr. Jayanta Das.
- 5 It is stated that on 15.06.2010, Mr. Jayanta Das gave details of payments received from the Informant *vis-a-vis* different jobs undertaken from time to time. The Informant was shocked to find that there were no receipt vouchers from the Opposite Party pertaining to various jobs undertaken rather they were in the name of Colour Concepts. The Informant for the first time was made aware of the tie up which the Opposite Party seems to have entered into with Colour Concepts. As per the Informant, for the said painting works no colour



plan was approved by her rather the Opposite Party went ahead with its own colour plan. It is averred that even after receiving the payments from time to time, the painting jobs were not up to the mark as the paint was peeling out at number of places and all the painting works were not completed.

- 6 The Informant made a complaint to the Chairman of the Opposite Party on 16.09.2010 regarding the said cheating, misrepresentation and unlawful activities of Mr. Jayanta Das with a request to investigate the matter, to rectify the defects in painting jobs done, to attend immediately the unfinished works, and to look into the credentials of Mr. Jayanata Das. *Vide* mails dated 22.09.2010, 23.09.2010 and 24.09.2010, the Opposite Party admitted the seriousness of the complaint and informed the Informant that a team comprising two persons, one from Asian Paints and another from Asian Paints Home Solutions, would visit the premises of the Informant and to take care of all the painting loopholes. Subsequently, the Opposite Party sent another e-mail on 25.09.2010 brushing aside all the complaints of the Informant on flimsy grounds. Thereafter, the Informant *vide* her mail dated 25.09.2010 stated that the conclusions of the inspection team were not at all acceptable as the same had been reached with ulterior motive to protect a person who acted as the representative of the Opposite Party. Moreover, the inspection was also done by one person who found the painting works to be okay. In view of this, the Informant asked the Opposite Party not to carry out any further painting work in her premises unless the issues contained in the complaint were resolved in writing. It is submitted that since no proper inspection was done and no corrective measures were undertaken by the Opposite Party, the Informant found it prudent to file an information before the Commission.
- 7 The Informant *inter alia* has alleged that the following activities of the Opposite Party are anti-competitive:
 - (i) The consumers are drawn through misleading advertisements and its brand name.



- (ii) The painting estimates were given through its intermediary even though the advertisement contained no such reference.
 - (iii) The market for selling of paints and the market for providing painting service cannot be separated since both constitute a single service under a distinct brand name. When name like Asian Paint Home Solutions appear in the advertisements, the consumers are likely to draw the conclusion that both purchase of paints and the service of painting will be provided by a single entity i.e. the Opposite Party.
 - (iv) If a customer chooses to avail the services of painting from the Opposite Party then the raw materials produced by the Opposite Party are used for the painting works. Thus, the criteria for a tie-in arrangement under section 3(4)(a) of the Act stand satisfied.
 - (v) Due to the agreement between the Opposite Party and Color Concepts not only the consumer's interest is affected due to poor quality of service but also other suppliers are denied entry into the market.
 - (vi) The Opposite Party is a dominant player in the market and it abuses its position of dominance in terms of section 4 of the Act.
- 8 Based on the above averments, the Informant, *inter alia*, has prayed to the Commission to order an investigation into the contravention of the provisions of sections 3 & 4 of the Act by the Opposite Party.
- 9 The Commission has perused the information and material available on record and also heard the counsel appearing on behalf of the Informant on 17.12.2015.



- 10 The gravamen of the Informant stem from the fact that the Opposite Party has not provided appropriate painting services to the Informant and has also not completed the painting works at her residential premises, as promised through various advertisements. The Informant has alleged violation of the provisions of sections 3 and 4 of the Act in the matter.
- 11 At the outset, the Commission takes note of the fact that the Informant had earlier filed similar information with the Commission in case no. 08 of 2011 against the same the Opposite Party which was closed under section 26(2) of the Act. The Commission held that none of the provisions of either section 3 or section 4 of the Act were violated by M/s Asian Paints Ltd. The Commission held that there was no case of any agreement between Asian Paints and other paint companies or practice adopted by any association of painting companies operating in the relevant market, thus section 3(3) of the Act does not apply to the facts of the case. Also, it was held that none of the clauses of section 3(4) read with section 3(1) is applicable to the facts of the case. With regard to the allegation of violation of section 4 of the Act the Commission held that the Opposite Party was not in a dominant position in the relevant market of 'providing home solution services for painting homes in geographical area of Kolkata' because all the major companies such as Berger, Nerolac, *etc.* are providing home solution services for painting homes.
- 12 The Commission observes that the Informant has not submitted any additional material or evidences with the information in the instant case so as to draw a different conclusion from case no. 08 of 2011 regarding contravention of the provisions of sections 3 and 4 of the Act. As the facts and allegations remain the same, the Commission is of the view that no case of contravention of any of the provisions of either section 3 or section 4 of the Act is made out against the Opposite Party in the instant case.



13 In the light of the above analysis, the Commission finds that none of the provisions of either section 3 or section 4 is violated by the Opposite Party in the instant matter. Accordingly, the matter is closed in terms of the provisions of section 26(2) of the Act.

14 The Secretary is directed to inform the parties accordingly.

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Dated: 27.01.2016