# COMPETITION COMMISSION OF INDIA

**Case No. 33/2012**

**Date : 24/7/2012**

Nalini Gupta ... Informant

V.

OTIS Elevator Company (India) Ltd. ... Opposite Party

## ORDER UNDER SECTION 26 (2) OF THE COMPETITION ACT, 2002

The present information was filed by Nalini Gupta ('the informant') under section 19(1)(a) of the Competition Act, 2002 ('the Act') against the OTIS Elevators Company (India) Ltd. ('the opposite party'), a well known multinational elevator manufacturing company for an alleged violation of section 4 of the Act.

2. As per the informant, the opposite party's representative informed her that the price of an elevator would be Rs. 9,40,000/- and the total process of the supply, installation and commissioning would take 24 weeks. The payment structure was on pro-rata basis i.e. 40% of contract value with acceptance of the proposal, 50% of contract value within 6 weeks prior to supply of materials and the remaining 10% on commissioning.

3. The informant was further informed by the opposite party's representatives that if 90% of the total price is paid in advance, then the opposite party would supply the material within 8 weeks and the installation and commissioning of the elevator would be completed much before 24 weeks. Since the informant required the elevator urgently, she paid the opposite party 90% of the total price

i.e. Rs. 8,50,000/- by cheque dated 1st December 2011 in advance and placed the order for the elevator. On 19th December 2011, the informant received set of papers signed by the opposite party which included the proposal and the conditions of the contract.

4. As per the contract, the elevator was to be supplied within 8 weeks of payment of 90% of the total price. However, when the elevator was not supplied after completion of 8 weeks, the informant reminded the company representatives and was told that the work shall be completed within stipulated time as per contract terms. However, even after waiting for more than 20 weeks the opposite party did not supply the material (which was to be supplied within 8 weeks). The informant then served upon the opposite party a legal notice dated 25th April 2012 to which the opposite party has not responded till date nor has it supplied the material for the elevator.

5. According to the informant, this is due to the reason that the opposite party has received many institutional orders and has therefore, diverted all its resources to fulfill such institutional orders. This conduct of not supplying the elevator and non fulfillment of the contract, according to the informant, amounts to abuse of dominance by the opposite party in contravention of section 4 of the Act.

6. To establish a contravention of section 4 of the Act, one needs to examine the definition of dominant position as given in explanation (a) to section 4 of the Act and then the provisions of section 4 and see whether the conduct in question would fall within the ambit of section 4 of the Act or not. The information available in public domain indicates that OTIS is the largest and leading manufacturer of elevators in the world. Its dominant position in markets in India is clear from the information available in public domain. However, mere dominance of an enterprise does not offend the provisions of the Act. The Commission has to consider if the enterprise abused its dominant position in the relevant market.

Non-supply of equipment within the period provided in contract *per se* is not abuse of dominant position. The information *prima facie* does not disclose any competition issue i.e. abuse of dominance under section 4 and as such the matter does not fall within the four corners of the Act.

7. In view of the above discussion, the Commission finds that no *prima facie* case was made out against the opposite party for referring the matter to DG for investigation. It is a fit case for closure under section 26(2) of the Act and is hereby closed.

The Secretary is directed to inform all concerned, accordingly.

| | | |
|---|---|---|
| Sd/-<br>Member (G) | Sd/-<br>Member (R) | Sd/-<br>Member (GG) |
| Sd/-<br>Member (AG) | Sd/-<br>Member (T) | Sd/-<br>Member (D) |

Sd/-
Chairperson

Certified True Copy

भारतीय प्रतिस्पर्धा आयोग Competition Commission of India नई दिल्ली / New Delhi

05/09/2012

S.P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi