



COMMISSION OF INDIA

Case No. 34 of 2014

In Re:

**Santosh Kumar Agrawal
Proprietor, Venkatesh Steels,
Opposite Private Bust Stand,
Hoshangabad, M. P.**

Informant

And

1. Ultra Tech Cement

**(Through North Zone Marketing Head)
12th Floor, Ambadeep Building,
K.G. Marg, New Delhi - 1**

Opposite Party No. 1

2. Ultra Tech Cement

**(Through Regional Head, Indore)
3rd Floor, Oasis Trade Centre,
Indore, M. P.**

Opposite Party No. 2

CORAM:

**Mr. Ashok Chawla
Chairperson**

**Mr. M. L. Tayal
Member**

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



Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Present: Mr. Manish Chawra, Advocate for the Informant and the Informant in person.

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

1. The present information has been filed by Mr. Santosh Kumar Agrawal (“**the Informant**”) under section 19(1) (a) of the Competition Act, 2002 (“**the Act**”) against M/s Ultra Tech Cement (through its north zone marketing head at New Delhi and regional head at Indore) [“**the Opposite Party**”] alleging contravention of the provisions of section 3 and section 4 of the Act.
2. Briefly, the Informant is in the business of retailing of cement and steel in the name of M/s Venkatesh Steels at Hoshangabad in Madhya Pradesh. The Informant is stated to be a stockiest of Ultra Tech Cement *i.e.*, the Opposite Party for the past eighteen years. Previously he was a stockiest of L&T cement which later on merged with the Grasim Cement, the parent company of the Opposite Party and he continued to be a stockiest of the merged company.
3. The Informant has stated that in the past he was selling cement of the Opposite Party only. Considering the requirements of the market, in the year 2011 he started selling other brands of cement. However, his decision to diversify the sale of cement into multi-brand did not go well with the Opposite Party and as a result it started imposing various restrictions on the Informant.
4. On 10.05.2013, the officers of the Opposite Party made a visit to the shop of the Informant at Hoshangabad and pressurized him to become an exclusive



dealer of the company. The Opposite Party also asked the Informant not to deal with other brands of cement and threatened him to stop the supply in case the Informant failed to stop dealing in other brands of cement immediately. Aggrieved by the said act, the Informant *vide* his letter dated 11.05.2013 made a representation to the north zone head of the Opposite Party to which no response has been received and also no action has been taken. Instead, the officers of the Opposite Party were issuing regular threats to the Informant to stop the supply of cement and pressurising him to become an exclusive dealer of Ultra Tech cement.

5. The Informant has stated that despite not receiving any reply, he went on placing repeated orders for cement to the Opposite Party on different dates during May, 2013 to October, 2013. However, none of the orders was accepted by the Opposite Party. It is alleged that because of the said anti-competitive policy and dominant position of the Opposite Party, the Informant has suffered a huge sales loss of about 250 tons per month from May 2013 amounting to Rs 15 lacs for the year 2013. It is further averred that the north zone head of the Opposite Party has stopped issuing quarterly statement of accounts to the Informant without which he is unable to furnish his income tax returns on time.
6. The Informant has also alleged that the conditions imposed by the Opposite Party in terms of the stockiest agreement are arbitrary and illegal and the act of stopping the regular supply of cement and accepting orders at its sweet will is an exercise of dominant position of the Opposite Party. Further, the act of compelling the Informant to become an exclusive dealer of the company is in contravention to the provision of section 3 and section 4 of the Act.
7. Based on the above averments, the Informant prayed to the Commission to direct the Opposite Party to pay compensation for the loss caused due to non supply of cement, to regularise the supply of cement, and to provide the statement of accounts to him.



8. The Commission has perused the information on record and heard the Informant through his Advocate.
9. It appears from the facts that the Informant is essentially aggrieved by the behaviour of the Opposite Party for not supplying cement to him and imposing arbitrary conditions on the Informant in terms of the stockiest agreement. Seemingly, the allegations pertain to violation of the provisions of section 4 of the Act.
10. For examinations of the alleged conduct of the Opposite Party under section 4 of the Act, first it is necessary to delineate the relevant market and then to assess the position of dominance of the Opposite Party in the relevant market and finally, examination of conduct in case the Opposite Party is found to be in a dominant position in the relevant market.
11. Delineation of the relevant product and geographic market is a necessary prerequisite to measure the market strength of an enterprise. However, this is not a mechanical exercise and the varying facts and circumstances of each case determine the result. In the present case, it is observed that the Opposite Party is a manufacturer of cement and the Informant is one of its authorized dealers. Accordingly, „the market of wholesaling of cement“ may be considered as the relevant product market in the instant case.
12. For a product like cement, a catchment area approach is one of the methods considered appropriate for defining the relevant geographic market. The catchment area in the instant case may be identified based on the area within which it would be feasible for cement plants of various manufacturers to transport cement to Hoshangabad. In the absence of appropriate plant level dispatch data, the distance over which Ultratech Cement is transported to the Informant may be a good approximation for the radius of the catchment area. It is observed that the nearest Ultratech plants from Hoshangabad are located at distances ranging from 400 km - 500 km. Based on a *prima facie* analysis, it



appears that the Opposite Party has a market share (based on capacities of cement plants) of 18.01% in a catchment area taking a 400 km radius and 23.91% in a catchment area taking a 500 km radius. Given these market shares, it is not likely that the Opposite Party enjoys a position of strength in the market.

13. For the purposes of preliminary analysis, even if the relevant market was narrowed to be limited to „the market of wholesaling of cement in the State of Madhya Pradesh“, it is observed that there are around thirteen cement manufacturers operating in the state of Madhya Pradesh including the Opposite Party, ACC, Jaypee, Birla Cements, Cement Corporation of India, Century etc. In terms of the installed capacity, the market share of the Opposite Party in the State of Madhya Pradesh in 2012 was 11.08% whereas the market shares of some of its competitors such as Jaypee, Prism Cement Limited and Century Cement were 33.6%, 20.68% and 15.51% respectively. (Source: <http://dipp.nic.in/English/questions/09122013/lu484.pdf>, <http://eaindustry.nic.in/cement/report2.asp>)

14. Moreover, the Informant has also not provided any information/data to substantiate the allegation that the Opposite Party enjoys a dominant position. On the basis of the foregoing, *prima facie*, the Opposite Party does not appear to be in a dominant position in the market.

15. In the absence of a finding on the dominance of the Opposite Party, it is not required to look into its conduct. Accordingly, the Commission is of the opinion that no *prima facie* case of a contravention of the provisions of section 4 of the Act has been made out in the present matter.

16. In regards to the allegation of the Informant on contravention of section 3(3) (b) of the Act by the Opposite Party, it is observed the Informant and the Opposite Party are not operating at the horizontal level for applicability of the provisions of section 3(3) of the Act. In fact, the Informant and the Opposite



Party are vertically placed. However, the Informant has not submitted the stockiest agreement so as to infer whether the said agreement is an exclusive supply agreement or whether the said agreement has clauses that are restrictive in nature within the meaning of section 3(4) of the Act. Even otherwise, considering the existence of competitive forces at the manufacturers' level and the stockists' level, the stockiest agreement does not seem to cause any appreciable adverse effect on competition in India.

17. In view of the above discussion, the Commission is of the *prima facie* opinion 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. Therefore, the information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.

18. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(M. L. Tayal)
Member

Sd/-
(S.L. Bunker)
Member



Sd/-

(Sudhir Mital)

Member

Sd/-

(Augustine Peter)

Member

New Delhi

Date: 01/10/2014