



COMPETITION COMMISSION OF INDIA

Case No. 34 of 2016

In Re:

Mr. Deepak Verma

Informant

And

Clues Network Pvt. Ltd.

Opposite Party No. 1

R S Fashion

Opposite Party No. 2

STR Enterprises

Opposite Party No. 3

FF

Opposite Party No. 4

TSG Fashions Ltd.

Opposite Party No. 5

Ebay India Pvt. Ltd.

Opposite Party No. 6

Pinnacle Fashion Lounge

Opposite Party No. 7

Managing Director, Lordswear Pvt. Ltd.

Opposite Party No. 8

Xerion Retail Pvt. Ltd.

Opposite Party No. 9

Yepme

Opposite Party No. 10

Growthways Trading Pvt. Ltd.

Opposite Party No. 11

Growthways Trading (P) Ltd.

Opposite Party No. 12



One 97 Communications Ltd.

Opposite Party No. 13

Kitchengiftonline.com

Opposite Party No. 14

Amazon Seller Service Pvt. Ltd.

Opposite Party No. 15

Cloudtail India Pvt. Ltd.

Opposite Party No. 16

Accelyst Solutions Pvt. Ltd.

Opposite Party No. 17

Jasper Infotech Pvt. Ltd.

Opposite Party No. 18

Zrestha Enterprises

Opposite Party No. 19

Nuvo Logistics Pvt. Ltd.

Opposite Party No. 20

Getit Grocery Pvt. Ltd.

Opposite Party No. 21

Shree Govind Store

Opposite Party No. 22

B. R. Mart

Opposite Party No. 23

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Augustine Peter
Member**

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

**Dr. M. S. Sahoo
Member**



Justice G. P. Mittal
Member

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

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (**Act**) by Mr. Deepak Verma (**Informant**) against Clues Network Pvt. Ltd. (**OP-1**), RS Fashion (**OP-2**), STR Enterprises (**OP-3**), FF (**OP-4**), TSG Fashions Ltd. (**OP-5**), Ebay India Pvt. Ltd. (**OP-6**), Pinnacle Fashion Lounge (**OP-7**), Managing Director, Lordswear Pvt. Ltd. (**OP-8**), Xerion Retail Pvt. Ltd. (**OP-9**), Yepme (**OP-10**), Growthways Trading Pvt. Ltd. (**OP-11**), Growthways Trading (P) Ltd. (**OP-12**), One 97 Communications Ltd. (**OP-13**), Kitchengiftonline.com (**OP-14**), Amazon Seller Service Pvt. Ltd. (**OP-15**), Cloudtail India Pvt. Ltd. (**OP-16**), Accelyst Solutions Pvt. Ltd. (**OP-17**), Jasper Infotech Pvt. Ltd. (**OP-18**), Zrestha Enterprises (**OP-19**), Nuvo Logistics Pvt. Ltd. (**OP-20**), Getit Grocery Pvt. Ltd. (**OP-21**), Shree Govind Store (**OP-22**) and B. R. Mart (**OP-23**), collectively referred to as the OPs.
2. As per the information, the Informant is an individual residing in Jaipur, India. Some of OPs are online e-commerce companies and others are sellers on the e-commerce websites maintained / managed by the e-commerce companies.
3. From a perusal of the information, it appears that the Informant has been purchasing various items through OPs since December, 2013 and experiencing defects / deficiencies in the goods and services bought through the OPs. A list of few orders, placed by the Informant, along with the alleged defects and deficiencies, is provided below:



सत्यमेव जयते



S. No.	Company	Order	Alleged
1.	Clues Network Pvt. Ltd. (OP-1)	Crispy Dry Fruits	Non-delivery of the product despite successful online payment
2.	Ebay India Pvt. Ltd. (OP-6)	US POLO Assn T-Shirt	➤ Poor quality ➤ Fake Vat Invoice
3.	Xerion Retail Pvt. Ltd. (OP-9)	Printed Aqua Blue Round Neck T-Shirt	➤ Poor quality ➤ Fake Vat Invoice
4.	Growthways Trading Pvt. Ltd. (OP-11)	Yepme Men's Watch	➤ Overcharging ➤ Fake Vat Invoice
5.	One 97 Communications Ltd. (OP-13)	Prestige Juicer Mixer	Fake product
6.	Amazon Seller Services Pvt. Ltd. (OP-15)	Lenovo Laptop	Overcharging
7.	Jasper Infotech Pvt. Ltd. (OP-18)	Wrist Watch	Cancellation of order due to incomplete address
8.	Nuvo Logistics Pvt. Ltd. (OP-20)	Grocery Items	Overcharging
9.	Getit Grocery Pvt. Ltd. (OP-21)	Grocery Items	➤ Not generated VAT Invoice of sold item ➤ Item sold without indicating MRP and manufacture and expiry date



4. The Informant has alleged, *inter alia*, that the online e-commerce companies are trying to increase their business illegally and are fooling consumers by using unfair trade practices.
5. The Informant has also sought interim relief under Section 33 of the Act, wherein he has requested the Commission to direct the OPs to pay, *inter alia*, Rs.1,00,000/- for various expenditures incurred by the Informant, Rs.5,000/- for expenses for the filing with the Commission, Rs.10,000/- for grievance documentation, *etc.* It has been further prayed:
 - a) to award compensation of Rs.50,00,000/- along with interest at the rate of 14% for financial loss, injury suffered and mental harassment;
 - b) for removal of defects or deficiencies in the goods and services; and
 - c) discontinuance of unfair trade practices and restrictive trade practices.
6. The Commission has considered the materials available on record and notes that the electronic commerce or e-commerce refers to a wide range of online business activities for sale and purchase of products and services. On an e-commerce website, parties interact electronically rather than direct physical contact. It is noted that some of OPs are third party platforms and offer virtual market place to potentially large number of buyers and manufactures / sellers.
7. In the present case, the Commission notes that the Informant has made, *inter alia*, following allegations:
 - a) Items delivered by OPs were either pirated or defective / of low quality.
 - b) Non-delivery of the product(s) despite successful online payment.
 - c) Some of the bills received by the Informant were fake VAT invoices.
 - d) The Informant received different items than what he ordered for.
 - e) Sellers have charged more price.
8. The Commission observes that these allegations are mainly in the nature of deficiencies in the provision of goods and services and do not bring out any



competition issue, which may merit further enquiry under the provisions of the Act. However, the issues raised are broadly examined from the perspective of Section 3 and 4 of the Act, in the following paragraphs.

9. For analysing the allegations under Section 3 of the Act, it is necessary to first establish an existence of an agreement / arrangement amongst the OPs. Once an agreement is established, the next step will be to see whether such agreement / arrangement causes or is likely to cause appreciable adverse effect on competition in India. In the present case, the Commission notes that the Informant has neither alleged any anti-competitive agreement / arrangement amongst the OPs nor provided any evidence regarding such agreement / arrangement amongst the OPs. Further, the Commission also could not find any evidence of any agreement / understanding amongst the OPs to establish a case under Section 3 of the Act. In the absence of any evidence regarding agreement / arrangement / understanding among the OPs, the Commission is of the *prima facie* view that there is no violation of provisions of Section 3 of the Act.

10. With regard to allegations pertaining to Section 4 of the Act, the Commission notes that the Informant has purchased certain items from the OPs. In these transactions, the Informant is on the demand side and OPs are at the supply side in the retail market. The assessment of demand substitution entails the determination of the range of products which are viewed as substitutes by the consumers. In the recent past, it has been observed that buyers are shifting from offline to online retail market because of heavy discounts, better choices and convenience. Similarly, if the prices in the online market increase significantly, the consumers are likely to shift back towards the offline market and *vice versa*. Therefore, the Commission is of the view that these two markets are only two different channels of distribution and are not two different relevant markets. Earlier, similar observation was also made by the Commission in Case No. 17 of 2014, namely, “*Mr. Ashish Ahuja vs. Snapdeal.com and Another*”.



11. To assess the dominance of the OPs, the Commission observes that in the PWC Report, 2014, titled “Evolution of e-commerce in India: Creating the bricks behind the clicks”, the calculations based on industry benchmarks estimate that the number of parcel check-outs in e-commerce portals exceeded 100 million in 2013. However, this share represents a miniscule proportion (less than 1%) of India’s total retail market. In other words, brick and mortar retail market holds more than 99 percent of the total retail market. Therefore, apart from online websites, the consumers have options to buy from the huge offline market.
12. Further, there are number of e-commerce websites offering similar goods and services, such as, Clues Network Pvt. Ltd. (OP-1), Ebay India Pvt. Ltd. (OP-6), Xerion Retail Pvt. Ltd. (OP-9), Growthways Trading Pvt. Ltd. (OP-11), One 97 Communications Ltd. (OP-13), Amazon Seller Service Pvt. Ltd. (OP-15), Accelyst Solutions Pvt. Ltd. (OP-17), Jasper Infotech Pvt. Ltd. (OP-18), Flipkart *etc.* With regard to dependence of consumers, the Commission notes that no consumer is dependent on a single e-commerce player, as a consumer can easily switch to another e-commerce player without incurring significant cost in terms of money, time, convenience, *etc.* Thus, if one e-commerce player tries to dictate unfair terms and conditions, the consumers can move to other e-commerce player or offline retailers without much difficulty.
13. In Combination Registration No. C-2015/05/281, titled, *Bharti Retail Limited and Future Retail Limited*, the Commission observed that “.....*In addition to the above, Parties have submitted that the online retail market, comprising of players such as Zopnow, Bigbasket, Flipkart, Snapdeal, Jiffstore etc., is growing at a rapid pace. Some of the online retail players specialise in selling Groceries while others supply Apparel & Footwear, CDIT and General Merchandise in several overlapping cities / towns. Therefore, it is apparent that the consumers have ample choice in terms of number of options available*”



to them for purchasing various products in the overlapping product categories.

....”

14. It is also noted that in Case No. 80 of 2014, titled, “*Mr. Mohit Manglani Vs. M/s Flipkart India Private Limited and Ors.*” the Commission observed that “*....with regard to allegations pertaining to Section 4 of the Act, the relevant market needs to be determined where OPs are operating. ... Irrespective of whether we consider e-portal market as a separate relevant product market or as a sub-segment of the market for distribution, none of OPs seems to be individually dominant. There are several players in the online retail market which have been arrayed as OPs in the present case, offering similar facilities to their customers. In view of the above, the Commission does not consider it necessary to go into the question of abuse of dominance by OPs”.*
15. With regard to the impugned sellers on e-commerce website, the Commission further notes that there are a number of competitors selling similar goods and services (online and offline). Hence, the buyers are not dependent on the aforesaid sellers.
16. In view of above, the Commission opines that none of the OPs are in the dominant position in the market. In the absence of dominance, the question of abuse does not arise.
17. In the information, the Informant stated that “*.... online ecommerce companies is trying to increase his business illegally after using unfair trading & competition practice.....these types of ecommerce companies and also sellers is earning illegal income...* ”. It appears that the Informant was also making allegation regarding abuse of collective / group dominance. However, abuse of collective / group dominance is not covered under the Act.
18. In the light of the above analysis, the Commission is of the view that no case of contravention of the provisions of either Sections 3 or 4 of the Act is made



out against the OPs. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.

19. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Dr. M. S. Sahoo)
Member

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

New Delhi
Date: 26.07.2016