



COMPETITION COMMISSION OF INDIA

Case No. 37 of 2014

In Re:

Sri Guru Jewels Private Limited

4637/20, Ansari Road,

Darya Ganj, Delhi - 2

Informant No. 1

Tushar Jewellers

1246/1168, Kucha Mahajani,

Chandni Chowk, Delhi - 6

Informant No. 2

And

MMTC Limited

Opposite Party No. 1

STC of India Ltd.

Opposite Party No. 2

PEC Limited

Opposite Party No. 3

Handicrafts and Handloom

Exports Corporation of India Limited

Opposite Party No. 4

Nova Scotia Limited

Opposite Party No. 5

Kotak Mahindra Bank

Opposite Party No. 6

IndusInd Bank

Opposite Party No. 7

YES Bank

Opposite Party No. 8

HDFC Bank

Opposite Party No. 9



AXIS Bank Limited

Opposite Party No. 10

Punjab National Bank

Opposite Party No. 11

State Bank of India

Opposite Party No. 12

Ministry of Finance, Union of India

Opposite Party No. 13

Ministry of Commerce & Industry

Opposite Party No. 14

Reserve Bank of India

Opposite Party No. 15

Directorate General of Foreign Trade

Opposite Party No. 16

CORAM:

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U. C. Nahta

Member

Present: None for the Informants.



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

1. The present information; filed by Sri Guru Jewels Private Limited and M/s Tushar Jewellers (henceforth, '**the Informants**') as per the provisions of section 19(1) (a) of the Competition Act, 2002 (henceforth '**the Act**'); relates to the alleged contravention of the provisions of sections 3 and section 4 of the Act by the Opposite Parties enlisted above in enrollment and allocation of imported gold among the jewelers and gold traders.
2. Registered with Gem and Jewellery Export Promotion Council, DGFT; the Informants are stated to be engaged in the business of import and export of gold as well as trading of gold jewellery in the domestic and international market. The Opposite Party Nos. 1 to 12 are the nominated agencies of the government for import of gold.
3. As per the information, with a view to rationalize the import of gold, the Reserve Bank of India (RBI) issued a policy on 22.07.2013, popularly known as 20:80 policy, for regulation of import and export of gold. As per the said policy, nominated banks/agencies must ensure that at least one fifth *i.e.*, 20% of every lot of imported gold is exclusively made available for the purpose of exports and the balance for domestic use against full upfront payment. Further, the nominated agencies shall make available gold in any form for domestic use only to entities engaged in jewellery business, bullion dealers supplying gold to jewelers and to the banks authorised to administer the Gold Deposit Scheme.
4. As per the Informants, these nominated banks/agencies have exclusive right to control the supply and distribution of imported gold among the jewelers and gold traders in the domestic market. In practice, the jewelers and gold traders interested in allocation of imported gold are required to be enrolled themselves with the nominated agencies and the nominated agencies will allocate the imported gold amongst the enrolled applicants against full upfront payment. However, no specific criteria have been prescribed by the RBI for



allotment of gold among the jewelers and gold traders. These nominated agencies are entitled to receive a certain percentage as service charge for the services they rendered.

5. It is the case of the Informants that the nominated agencies/banks are either not enrolling applicants at all or enrolling them but not allocating gold to them. No reasons are being provided for the non-enrolment and non-allocation of gold to the Informants and other jewelers and gold traders. It has been alleged that the nominated agencies/banks clearly enjoy a dominant position in the market and these agencies are abusing their dominant position by selecting few traders of their choice, restraining free competition and not providing a level playing field to Informants and other similarly placed jewelers and gold traders.
6. It is alleged that despite Informant No. 1 being enrolled with the Opposite Party No. 2, no gold has been allotted to it. Also, despite of fulfilling all the requisite qualifications and criteria for enrolment, the Opposite Party No. 2 has denied to enroll the Informant No. 2 without any cogent reason. It is alleged that no advertisements are made in newspapers etc. by the said nominated agencies/banks so as to make general public aware about the allotment of imported gold. As per the Informants, gold is being supplied to the selected customers thereby creating a monopoly in favour of the nominated agencies. Further, except the Opposite Party No. 3, no other Opposite Party is issuing any tender or adopting transparent procedure for allocation of imported gold. These agencies are acting arbitrarily and unfairly in enrolment and allocation of gold.
7. The Informants have also stated that there are no guidelines issued by the Government or the Reserve Bank of India for enrolment and allotment of gold as well as for the service charges of the said agencies. It is alleged that the commission/services charges are levied by the nominated agencies/banks arbitrarily. For example; the Opposite Party No. 2 is levying service charge/commission at the rate of 1% to 6% of the value of the gold whereas



the Opposite Party No. 5 is levying 4% to 6%. Similarly, the Opposite Party No. 9 is importing gold at a premium of approx. \$30 to \$40 per ounce while some other agencies are importing gold at premium of \$1 to \$3 per ounce.

8. It is further alleged that the Opposite Party Nos. 4, 9 and 10 have refused to enroll the Informants and other jewelers and gold traders stating that no new registration will be entertained. As per the Informants, contrary to the RBI policy these nominated agencies/banks are delaying application process without any cogent reason and are allocating gold only to the select jewelers and gold traders of their choice because of which they are not able to carry out their business. As per the Informants, the above said act of these nominated agencies/authorized banks is in violation of the provisions of the section 3 and section 4 of the Act.
9. The materials submitted by the Informants and available in public domain were perused. Despite opportunity being given for hearing, the Informants did not choose to appear before the Commission to put forth their views.
10. The information reveals that the Informants are essentially aggrieved by the alleged conduct of the Opposite Party No. 1 to the Opposite Party No. 12, except the Opposite Party No. 3, for not enrolling and allocating the imported gold among the jewelers and gold traders in a transparent and fair manner. It is the case of the Informants that these nominated agencies are in a dominant position and are abusing their position of dominance by allocating imported gold as per their whims and wishes to jewelers and gold traders of their choice without following any uniform transparent procedure and also charging commission differently from different jewelers and gold traders. Further, it averred that no guidelines in regards to allocation of imported gold among the jewelers and gold traders by the nominated agencies and the commission to be charged by these agencies have been prescribed by DGFT and RBI.
11. Even though the allegations of the Informants are directed towards the alleged abuse of dominant position by the DGFT notified agencies *i.e.*, the Opposite



Party Nos. 1 to 12, except the Opposite Party No. 3 in allocation/distribution of imported gold based on 20:80 policy of RBI; 'the market of trading of physical gold' may be considered as the relevant product market in the instant case. Depending on physical characteristic or end use, price and consumer preference imported gold cannot be distinguished from the domestically produced gold. Further, the Opposite Party Nos. 1 to 12 are, *inter alia*, not only engaged in trading of imported gold but also engaged in trading of domestically produced gold. However, it may be noted that domestically produced gold constitute a very negligible proportion of total gold traded in India. The relevant product trading of physical gold appears to be unique and cannot be substituted with other products. The relevant geographic market may be considered as the territory of India because there are no barriers for the Opposite Party Nos. 1 to 12 to trade gold within the territory of India. Accordingly, "the market of trading of physical gold in India" is considered as the relevant market in this case.

12. The next issue is determination of dominance of any of the said DGFT nominated agencies in the relevant market defined *supra*. The Informants have alleged abuse of dominance collectively by the Opposite Parties but since the concept of collective dominance is not provided under the Act the same is liable to be rejected. So far as dominance of any one of the Opposite Party Nos. 1 to 12 in the relevant market is concerned, *prima facie*, none of them appears to be in a dominant position. Seemingly, the Opposite Party Nos. 1 to 12 are not exclusively engaged in trading of gold, rather trading of gold is a part of their overall activities. It may be noted that trading of physical gold is not only done by these nominated agencies but also by the dealers, gold jewellery manufacturers and retailers whose activities are primarily confined to trading of gold. Also, the Informants have not submitted any information regarding dominance of any of the Opposite Parties in the relevant market. Since, *prima facie*, none of the Opposite Parties appear to be in a dominant position in the relevant market, the question of abuse of dominant position by them under the provisions of section 4 of the Act does not arise.



13. In regards to the allegation of contravention of Section 3 of the Act, no information available on record to suggest any kind of agreement or collusion among the Opposite Parties in regards to allocation/distribution of imported gold which can be termed as anti-competitive. So, *prima facie*, none of the provisions of section 3 of the Act are infringed by the Opposite Parties.
14. In view of the above, *prima facie*, no case of contravention of the provisions of either section 3 or section 4 of the Act is made out against the Opposite Parties and the information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.
15. It is ordered accordingly.
16. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member



Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi
Date: 18.09.2014