



COMPETITION COMMISSION OF INDIA
Case Nos. 39 and 40 of 2015

In Re:

Case No. 39 of 2015

Shri Vijay Malhotra
Flat No. 10C, 10th Floor, Amardeep Building,
1-Sarat Bose Road, Kolkata

Informant

And

Milestone Capital Advisors Limited
602, Hallmark Business Plaza,
Sant Dnyaneshwar Marg,
Bandra (E), Mumbai

Opposite Party

WITH

Case No. 40 of 2015

Shri Vijay Tejpal
Flat No. 28, 6th Floor, Shyam Kunj,
Lord Sinha Road, Kolkata

Informant

And

Milestone Capital Advisors Limited
602, Hallmark Business Plaza,
Sant Dnyaneshwar Marg, Bandra (E)
Mumbai

Opposite Party



CORAM

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Appearance: Shri Vijay Tejpal for the Informant in person

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

1. This common order shall dispose of the information filed in Case No. 39 of 2015 and Case No. 40 of 2015 as the Informants have raised similar issues against Milestone Capital Advisors Limited (hereinafter referred to as “OP”).
2. The present information have been filed by Shri Vijay Malhotra and Shri Vijay Tejpal (hereinafter referred to as the “**Informants**”) against OP under section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as the “**Act**”) alleging, *inter alia*, contravention of the provisions of section 4 of the Act.
3. Shorn of details, the Informants are stated to have invested a sum of Rs.10 lakhs each in Milestone Domestic Fund Scheme II (hereinafter referred to



as the “Scheme”), in the year 2008. In this regard the two Informants, Shri Vijay Malhotra and Shri Vijay Tejpal had executed their contribution agreements (hereinafter referred to as the “agreement”) on 06.05.2008 and 28.04.2008, respectively. It is stated that at the time of investment, the brokers of OP, Royal Bank of Scotland N.V., had assured an interest on the capital contribution @12% p.a., listing of the scheme and availability of easy exit option through need-based liquidation of investment. However, none of these assurances were fulfilled.

4. It has been stated that as per the agreement, the scheme which was for a tenure of 4 years with two extensions of one year each (*i.e.*, 4+1+1), should have matured on 30.11.2014. The Informants have averred that OP, *vide* email dated 17.11.2014, had sought the consent of the Informants to extend the scheme by one year but in reply the Informants had declined the request of OP and had requested OP to pay back their money alongwith the interest and profit. The Informants have alleged that OP not only refused to pay the interest that was due on the capital contribution made by the Informants but unilaterally extended the tenure of the scheme by one more year in breach of the terms of the agreement.
5. It has further been alleged that OP has failed to divest the investments to the tune of Rs.150 crores (approx.) before the maturity date and have not handed over the money back to the Informants which amounts to abuse of its dominant position in the market.
6. It has been submitted by the Informants that in response to their intentions to file a complaint against OP before the Commission, OP offered to pay Rs.3,26,000/- to each of them which was their balance capital contribution in the scheme. The Informants are stated to have accepted the said offer of OP. It has been alleged that OP has refused to share with the Informants the profits emanating from the sale of ‘unrealised investments’.



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7. The Informants have alleged that OP has imposed one-sided clauses in the agreement. The Informants have highlighted the following clauses to be in contravention of the provisions of section 4 of the Act:
- Clause 3 of the agreement relating to the 'return of contribution and liability' which restricted the liquidation of investments by the investors. It has been alleged that OP was in a position to impose such a condition due to its dominant position in the market.
 - Clause 6 of the agreement which pertains to the term and termination of the investment fund. The Informants have alleged that OP unilaterally extended the tenure of the scheme by another one year in breach of the clause 6 of the agreement.
 - OP closed the scheme on 30.11.2014 which was in violation of the provision of 'Initial closing date' (i.e., 31.05.2008) in the agreement. It has been alleged that due to extension of the maturity period of the scheme, the Informants were made to invest for more than six years in violation of the stipulated six years in the agreement.
8. Based on the above averments, the Informants have alleged that the conduct of OP is violative of the provisions of section 4 of the Act and have prayed, *inter alia*, for directing OP to treat the Informants as investors and pay their proportionate share of the unrealized investments of Rs.150 crores (approx.).
9. After perusal of the information, the Commission directed the Informant to appear for hearing on 25.06.2015. Shri Vijay Tejpal appeared in person to present his case. The Commission perused the Information and also considered the arguments made by Shri Vijay Tejpal.
10. Facts of the case reveal that the grievance of the Informants essentially relate to the alleged conduct of OP in contravention of the provisions of section 4 of the Act.



11. As per the information available on the website of OP, it is a privately held alternative investment advisory firm in India which manages alternative investment funds linked to the realty sector and bullion products. It also appears that OP has a wide investor base, including, institutions, family offices, government organizations and high net worth individuals.
12. The present case relate to investments made by the Informants in a scheme which is a realty linked registered venture capital fund. Traditionally, venture capital funds entail high risk investments and accept contributions from institutional investors, banks, government organizations, high net worth individuals, *etc.* It is noted that Securities and Exchange Board of India (SEBI), the securities market regulator, prescribes a minimum investment value for investors investing in venture capital funds through its regulations. The said scheme was registered with SEBI in 2005 in accordance with the provisions of SEBI (Venture Capital Funds) Regulations, 1996 which proscribed individual investments of less than Rs.5 lakh with a few exceptions.
13. In this regard, reference may be made to the definition of “Contributors” as provided in schedule I of the agreement executed by the Informants. The definition stipulates a minimum investment value of Rs.20 lakh in cases involving joint investments by more than one investor.
14. From the demand-side substitutability of the scheme, the Commission observes that the investment scheme under examination is linked to the realty sector, therefore, it would be appropriate to examine those schemes with similar profile of risks and returns, specifically designed for institutional investors and high net worth individuals.
15. Further, the Commission observes that from the consumers’ perspective, realty linked venture capital funds offering higher returns on large scale investments based on a diversified portfolio comprising of residential,



commercial and industrial real estate properties, including rental yielding properties would in itself constitute a distinct category. Thus, private equity investments meant for institutional investors and high net worth individuals with similar risk and offering high returns on investments from real estate projects could be considered as substitutes. It is observed that while there are marginal differences between realty linked private equity and realty linked venture capital funds, the two are substitutable from the point of view of consumers looking for high returns from investments in the real estate sector. Both, real estate linked venture capital funds and realty linked private equity funds are governed by SEBI (Alternative Investment Funds) Regulations, 2012. The said regulations prescribe a minimum investment of Rs.1 crore and also limit the total number of investors to one thousand with respect to such funds.

16. In view of the foregoing, the Commission is of the view that investors consider realty linked private equity funds as interchangeable with realty linked venture capital funds by reason of characteristics of the products, prices and their intended use. Further, these funds are launched/ developed by investment firms which also manage the investments in such schemes. Accordingly, the Commission is of the view that the relevant product market appears to be the market for *“provision of services relating to management of investment in realty linked venture capital funds and realty linked private equity funds”*.

17. With regard to the relevant geographic market, the Commission notes that an investor who is based in any part of India may easily invest in any real estate related private equity fund or venture capital fund since these funds could be obtained on private placement basis either directly or through brokers. Further, most subscriptions could be obtained online also. Thus, the relevant geographic market would be pan-India. Accordingly, the Commission delineates the relevant market as the market for *“provision*



of services relating to management of investment in realty linked venture capital funds and realty linked private equity funds in India”.

18. Having identified the relevant market, the Commission proceeds to examine the dominance of OP in the relevant market. Assessment of dominance of an enterprise is intricately connected with the concept of market power of the enterprise (being examined) which allows the enterprise to act independently of competitive constraints.
19. On the basis of the information available in the public domain, the Commission notes that there are a substantial number of realty linked private equity/ venture capital firms such as Kotak group, IL&FS, Aditya Birla group, HDFC, Unitech, ASK group, Anand Rathi group, Landmark Capital, Peninsula, Mirah Group, *etc.*, in the relevant market. Further, many of these firms offer multiple investment funds. For example, Kotak alone offers four realty linked investment funds while IL & FS, HDFC, Anand Rathi group and ASK group offer two such funds. Further, as per information available in the public domain, the size of the investment funds managed by the various players are of comparable size. Therefore, it is amply clear that the relevant market is highly fragmented with the presence of a large number of players, thereby indicating that the consumers have a wide variety of investment options.
20. The Commission observes that no information is available in the public domain that indicates the position of strength of OP, which enables it to operate independently of competitive forces prevailing in the relevant market. Further, the Informant has also not produced any cogent material to show the dominance of OP in the relevant market. Thus, *prima facie*, OP does not appear to be in a dominant position in the relevant market. In the absence of dominance of OP in the relevant market, its conduct need not be examined under the provisions of section 4 of the Act.



21. In light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against OP in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

22. 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)

Sd/-
M. S. Sahoo
(Member)

New Delhi

Date: 02-07-2015