



COMPETITION COMMISSION OF INDIA

Case No. 44 of 2021

In Re:

M/s Samaleshwari Automobiles
NH-6, at Aintapalli
PO/PS/Distt.- Samabalpur
Odisha-768004

Informant

And

Tata Motors Ltd.
Bombay House, 24
Home Mody Street Fort
Mumbai-400001

Opposite Party 1

Tata Motors Finance Ltd.
Think Techno Campus (Lodha), 2nd Floor
Building A, Off Pokhram Road 2
Adjacent to TCS Yantra Park
Thane (West) -400601

Opposite Party 2

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by M/s Samaleshwari Automobiles ('**the Informant**') under Section 19(1)(a) of the Competition Act, 2002 ('**the Act**') against Tata Motors Ltd. ('**Opposite Party 1**'/ '**OP-1**') and Tata Motors Finance



Ltd. (**‘Opposite Party 2’/ ‘OP-2’**) (collectively referred as **‘the OPs’**) alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.

2. The Informant is stated to be an authorised dealer of OP-1 for the period 2005–2017 for the sale of various models of passenger vehicles and their variants, including spare parts, accessories and other value-added services for Sambalpur, Bargarh, Jharsuguda, Deogarh, Bolangiri, Nuapada, Kalahandi and Sonepur districts of Odisha, and that such an appointment was non-exclusive and on a principal--principal basis. OP-1 is a subsidiary of Tata Sons and is engaged, *inter alia*, in the business of designing, developing and manufacturing passenger/utility vehicles among other commercial and passenger vehicles. Through its network, it provides sales, spare parts and value added services such as AMC, loyalty programs relating to sales and service of vehicles, retail channel finance insurance, hire purchase, loan financing, leasing or any other financing business through its affiliates or associates. OP-2 is one such affiliate through which OP-1 undertakes its finance business.
3. It is stated that several clauses of Dealership Agreements dated 01.05.2005, 31.07.2008 and 26.12.2012 entered into between the parties are violative of provisions of Section 4 of the Act. Furthermore, the OPs have also ensured that finance and its other related facilities are mobilised only through OP-2, thereby exploiting the Informant by not conferring any role to it in the decision-making process of the business. The first agreement between the Informant and OP-1 was executed on 01.05.2005, the second agreement was executed on 31.07.2008 and the last agreement was executed on 26.12.2012 for a period of 5 years, which ultimately expired on 31.03.2017. Thereafter, the Informant did not execute any further agreement but continued to do business with OP-1 till 06.12.2019, when the Informant expressed its unwillingness to OP-1 to continue with the dealership of OP-1.



4. Further, it is alleged that the OPs have indulged in a tie-in arrangement amongst themselves, thereby exercising abusive and anti-competitive practices which put the Informant's entity in financial jeopardy. It is also alleged that OP-1 is a dominant entity in the passenger vehicle segment and, as per OP-1's disclosures, it is a \$44 billion organisation with a diverse portfolio with an exclusive range of cars, SUVs, trucks, buses and defence vehicles as well as one of India's largest OEMs offering an extensive range of integrated, smart e-mobility solutions.

5. The Informant has also alleged that the Dealership Agreements, as mentioned above, expressly mandated the Informant to deal only with the OPs, which meant that the OPs were its sole business partners and the sale of passenger/utility vehicles, including their spare parts and after sales service was at the mercy of OP-1. The Informant has further alleged that the finance facility extended by OP-2 took away the decision-making power of the dealer and unfairly imposed liability of unpaid instalments of the borrower on the dealer, which caused a depletion in the working capital of the dealer and eventually made it financially sick. The Informant has also cited various instances of such abuses, and the same are recapitulated below:
 - (a) The OPs coerced the Informant to order its vehicles as and when directed by them, with total disregard to the financial viability of the Informant;

 - (b) That clause 17(b) of the Dealership Agreements expressly barred the Informant from venturing into business from other sectors and contained unfair, one-sided provisions of claim settlement and consumer dispute favouring only the OPs;

 - (c) That OP-1 had mandatorily deducted the cost of loyalty card, ISO certification charges, imposition of training fee and high interest



rate at 15%, restriction of resale price maintenance and the business of the Informant to one territory in an arbitrary manner;

(d) To achieve its targets, OP-1 would send cars to the Informant without any work order and issue a bill on a credit basis, and further, charge interest for the same. In 2009–2019, 145 cars were sent to the Informant without any work order by the Informant, amounting to Rs. 5,49,89,711/-;

(e) OP-1 had also mandated the Informant to buy vehicles exclusively for test drive every year, regardless of any variation in the models. The OPs had also imposed various unfair costs on the Informant, such as stock audit charge, ad hoc fees and processing fees;

(f) By virtue of the Dealership Agreements, OP-1 was entitled to call upon the Informant to deposit cash, an additional sum of money by way of security deposit and/or furnish a bank guarantee or any other type of security.

6. In light of the aforementioned, the Informant asserted that it went through serious financial liabilities, which constrained it to terminate the Dealership Agreement dated 26.12.2012 on 06.12.2019. In pursuance to the termination, OP-1 had, *inter alia*, made a demand to pay an outstanding sum of Rs. 4,51,20,219/- with Rs. 4,20,77,061/- as principal and Rs. 30,43,218/- as interest.

7. The Informant further pointed out various clauses of the Agreements dated 01.05.2005, 31.07.2008 and 26.12.2012 between the Informant and OP-1 that allegedly violated the provisions of Sections 3 and 4 of the Act. The relevant clauses in this regard are extracted below:



Clause 4(d):

“4(d). The Dealer shall not, without obtaining the prior approval of the Company in writing, permit any person, company or organisation, including any financing company of his own, for financing the sale of the Products and providing Services and / or any other products, to be positioned at, or to operate from, his dealership premises, or from the precincts thereof.”

Clause 17(c):

“17(c). The Dealer shall not start, acquire or indulge in any new business (of products or services) even if it is not related to the automobile industry either under the same company as the Tata Motors dealership business or otherwise without seeking a formal ‘No Objection certificate’ (NOC) from the company in this regard. Such certificate shall not be unreasonably withheld by the company.”

Clause 26:

“The Company shall notify the Dealer of any dispute and the Dealer shall thereupon either settle such claims, dispute. The Dealer shall be solely responsible and liable towards all costs, and consequences arising therefrom. In no circumstances shall the Company be liable to the Dealer for any claims pertaining to transit claims, insurance claims or third party claims and the Dealer shall indemnify and hold the Company indemnified in such events.”

Clause 29:

“The Dealer shall fully co-operate at all times with the Company in all matters connected with or arising out of any consumer disputes or cases filed in respect of the products and services offered by the Dealer. Such cooperation shall, without limitation, include obtaining/providing to the Company, in a timely and accurate manner, all information pertaining to any such consumer



cases or disputes as may be requested by the Company from time to time and doing all such acts, or things that the Company may deem necessary to be done by the Dealer to enable the Company to defend itself in such cases. Any termination or expiry of this Agreement by efflux of time shall not release the Dealer from this obligation and the Dealer shall be liable for the disputes arising from sales of products and Services rendered by it during the period of agreement. In the event of termination, the company shall also be entitled to adjust from the deposit kept by the dealer with the company in terms hereof and from any amount due to the Dealer from the company the amount equal to the likely liabilities arising out of such disputes pending at the time of termination.”

8. The Informant has also prayed for interim relief, stating that, during pendency of the case, the OPs be directed to not take any coercive action against the Informant arising out of the Dealership Agreement dated 26.12.2012 or to proceed for arbitration of the dispute or difference arising between the parties arising out of or relating to the contract agreement till disposal of the case or until further orders. The Informant has also sought to penalise the OPs for the alleged anti-competitive practices.
9. Having considered the averments and allegations made in the Information, the Commission notes that the Informant has primarily alleged that the OPs have imposed unfair and discriminatory terms and conditions in the Dealership Agreement in respect of passenger/utility category of vehicles, besides indulging in anti-competitive practices, which put the Informant's company in a deep financial crisis, constraining the Informant to terminate the Dealership Agreement dated 26.12.2012.
10. At the outset, the Commission notes that the last agreement between the Informant and OP-1, i.e., the Dealership Agreement dated 26.12.2012, was executed on 26.12.2012 for a period of 5 years, which expired on 31.03.2017.



Thereafter, as per the averments made in the Information, the Informant did not execute any further agreement but continued to do business with OP-1 till 06.12.2019, when the Informant expressed its unwillingness to OP-1 to continue with the dealership of OP-1. Thus, it is evident that the Dealership Agreement expired as early as 2017 and in any event in 2019 if the averments made by the Informant regarding continued business with OP-1 post-expiry of the Agreement is taken into account, whereas the present Information was moved in December 2021.

11. Be that as it may, the Commission has perused the Information and the documents filed therewith. As regards contravention of the provisions of Section 4 of the Act, the Informant has not provided or delineated any proposed relevant market. In this regard, the Commission notes that Informant was an authorised dealer of OP-1 for the period 2005–2017 for the sale of various models of passenger vehicles and their variants, including spare parts and accessories. Further, considering that commercial vehicles are separate from other categories of vehicles such as passenger or utility vehicles on issues such as speed, mileage, appearance, engine capacity, usage, etc., the relevant product market in the present matter for assessing the impugned conduct may be taken as “market for manufacture and sale of passenger vehicles”. Furthermore, as the conditions of demand and supply of passenger vehicles do not differ from one region to another, the relevant geographic market may be taken as “India”. Based on the above, the Commission is of the view that the relevant market in the instant matter appears to be ***“market for manufacture and sale of passenger vehicles in India”***.

12. Having identified the relevant market, the Commission proceeds to determine the dominance of OP-1 in the relevant market. As per the annual report of the year 2020–2021 of OP-1, OP-1 commanded a market share of a mere 8.2% in passenger vehicles segment. Against this backdrop, OP-1 cannot be said to enjoy the strength to operate independently of the competitive forces



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prevailing in the market or affect its competitors or consumers or the relevant market in its favour. Thus, OP-1 does not appear to be dominant in the delineated relevant market. In the absence of dominance in the relevant markets defined *supra*, the question of abuse of dominant position does not arise.

13. At this stage, it is pertinent to note that, in Case No. 21 of 2019 (*Neha Gupta v. Tata Motors Ltd and Others*) and Case No. 16 of 2020 (*Nishant P. Bhutada v. Tata Motors Ltd and Others*), contravention of the provisions of Sections 3 and 4 of the Act were alleged against Tata Motors, *inter alia*, in respect of certain clauses of the Dealership Agreements in the passenger vehicle segment as well as in the category of small commercial vehicles. While passing a common order dated 04.05.2021 under Section 26(1) of the Act in the aforesaid cases directing investigation by the Director General, it was expressly noted by the Commission that it was not inclined to examine the conduct emanating in the passenger vehicle segment since, *inter alia*, Tata Motors was not found to command any significant market power in the passenger vehicles market.
14. At this juncture, it is pertinent to mention that the Informant appears to be more aggrieved of the alleged high interest charged by the OP-1 and the legal notice dated 25.02.2021 sent by OP-1 raising demand upon the Informant towards the alleged consolidated outstanding amount of Rs. 4,53,37,902/- (Rupees Four Crore Fifty-Three Lakhs Thirty-Seven Thousand Nine Hundred Two only). From the interim relief prayers made by the Informant, it appears that an attempt is being made to the present proceedings to avoid the arbitration proceedings arising out of the Dealership Agreement dated 26.12.2012.
15. In view of the foregoing, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the OPs, and the



matter is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.

16. It is, however, made clear that nothing stated in the present order shall preclude the Informant from taking/ availing any other remedy(s) available to him in accordance with law.

17. The Secretary is directed to communicate to the parties accordingly.

Sd/-

**Ashok Kumar Gupta
(Chairperson)**

Sd/-

**Sangeeta Verma
(Member)**

Sd/-

**Bhagwant Singh Bishnoi
(Member)**

New Delhi

Date: 03/02/2022