



COMPETITION COMMISSION OF INDIA

Case No. 44 of 2015

In Re

**M/s Mukesh Brothers,
Partnership Firm,
Through Shri Mukesh Kumar Saini
50-51, New Sanganer Road,
Near Vivek Vihar Metro Station,
Sodala, Jaipur**

Informant

And

**Jaguar & Co. Pvt. Ltd.
306, Udyog Bhawan, Phase-II,
Gurgaon, Haryana**

Opposite Party No. 1

**Jaguar & Co. Ltd.
SP-53, RILCO Industrial Area,
Distt.- Alwar- Bhiwadi, Rajasthan**

Opposite Party No. 2

**M/s Agrawal Sanitary and Electric
Teen Dukan, Dher ka Balaji,
Siker Road, Jaipur**

Opposite Party No. 3

**M/s Shivshakti Trading Company
Sultan Nagar, Gurjar ki Thadi,
Gopalpura Bypass, Jaipur**

Opposite Party No. 4

**Aditya Retail Pvt. Ltd.
129, New Atish market,
Gopalpura Bypass, Jaipur**

Opposite Party No. 5



सत्यमेव जयते



M/s Ghodela Bath Collection Plot No.66, Shiv Nagar, Murlipura Scheme, Jaipur	Opposite Party No. 6
M/s S & S Enterprises G-1/2, Ganesham Apartment, Khatipura Road, Jaipur	Opposite Party No. 7
M/s Kalkatta Sanitary Store 40, Tripoliya Bazar, Jaipur	Opposite Party No. 8
Rajendra & Company D-29, Subhash Marg, C-Scheme, Jaipur	Opposite Party No. 9
M/s Vaishali Traders E-796, Amarpali Circle, Jaipur	Opposite Party No. 10
M/s Bath and Tiles D-29, Subhash Marg, C-Scheme, Jaipur	Opposite Party No. 11
M/s Rahul Dek Home Chitranjan Marg, C-Scheme, Jaipur	Opposite Party No. 12
M/s Girraj Tapes and Tiles SBBJ Bank, Tonk Road, Durgapura, Jaipur	Opposite Party No. 13
M/s Agrawal Sanitation, 14-15, Brijvatika, Goner Road, Jagatpura, Jaipur.	Opposite Party No. 14

CORAM

Mr. S. L. Bunker
Member



सत्यमेव जयते



Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U. C. Nahta

Member

Mr. M. S. Sahoo

Member

Present: None for the Informant

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 (the 'Act') by M/s Mukesh Brothers through Shri Mukesh Kumar Saini (hereinafter referred to as the '**Informant**') against Jaguar & Co. Pvt. Ltd. (**OP 1**), Jaguar & Co. Ltd. (**OP 2**), M/s Agrawal Sanitary and Electric (**OP 3**), M/s Shivshakti Trading Company (**OP 4**), M/s Aditya Retail Pvt. Ltd. (**OP 5**), M/s Ghodela Bath Collection (**OP 6**), M/s S & S Enterprises (**OP 7**), M/s Kalkatta Sanitary Store (**OP 8**), Rajendra and Company (**OP 9**), M/s Vaishali Traders (**OP 10**), M/s Bath and Tiles (**OP 11**), M/s Rahul Dek Home (**OP 12**), M/s Girraj Tapes and Tiles (**OP 13**) and M/s Agrawal Sanitation (**OP 14**) alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.
2. Facts of the case may be briefly noted:
3. As per the Information, the Informant is engaged in the business of sale and purchase of sanitary ware and bathroom fittings such as pipes, tiles, tanks, *etc.* of various brands such as Astral, Ashirwad, Finolex, Supreme, Vikas, Kasta, Polypac,



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Jindal, Kamdhenu, Paras, Vactus, Nircon, Jain, Raksha Kataria, Amitwex, K-Wing, Modi, Rituraj, Hindware *etc.* OP 1 (the name has been spelt as 'Jaguar' instead of 'Jaquar' by the Informant) is stated to be a manufacturer of sanitary ware and bathroom fittings in India. As per the documents furnished by the Informant, OP 3 to 14 are dealers of OP 1 in Jaipur.

4. The Informant has stated that it was dealing with the trading of sanitary goods of OP 1 from 2007 till April 2014 and used to purchase goods either from OP 1 or from its dealers in Jaipur. In April 2014, the Informant requested Shri Pankaj Tiwari who is stated to be the in-charge of OP 1 in Rajasthan to appoint the Informant as dealer in Jaipur. In response, Shri Pankaj Tiwari is alleged to have demanded illegal gratification and the same was refused by the Informant. It is submitted that due to non-fulfilment of the demand of illegal gratification, Shri Tiwari refused to appoint the Informant as a dealer of OP 1 in Jaipur. It is alleged that Shri Tiwari had also instructed the other dealers of OP 1 in Jaipur to discontinue the supply of sanitary ware and bathroom fittings to the Informant. It is submitted that the Informant had sent representations to OP 1 and its dealers with a request to restore the supply of their products to the Informant. Thereafter the Informant had served legal notice to OP 1 and its dealers in Jaipur alleging violation of the provisions of the Act.
5. It is further alleged that OP 1 and its dealers have entered into an agreement thereby agreeing to discontinue the supply of sanitary ware and bathroom fittings to the Informant in contravention of the provisions of section 3 of the Act.
6. It has been submitted that the alleged conduct of OP 1 has lowered the goodwill of the Informant because of which the Informant has incurred irreparable loss in his business. It is alleged that OP 1 has abused its dominant position in contravention of the provisions of section 4 of the Act.
7. Based on the above allegations, the Informant has alleged that the conduct of OP 1 is in contravention of the provisions of sections 3 and 4 of the Act and has prayed, *inter alia*, for initiating an inquiry against OPs under the Act.



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8. The Commission has considered the matter in the ordinary meeting dated 16.06.2015 where it decided to hear the Informant on 08.07.2015. None appeared on behalf of the Informant on the said date of hearing.
9. The Commission perused the material available on record.
10. Facts of the case reveal that the grievance of the Informant primarily pertain to the conduct of OP 1 for not appointing the Informant as its dealer in Jaipur and further giving instructions to its other dealers in Jaipur to stop the supply of sanitary ware and bathroom fittings to the Informant.
11. With regard to the allegation of contravention of section 3 of the Act, the Commission observes that the Informant has not substantiated the allegations with requisite material. Further, even the alleged conduct of OPs do not seem to have restricted the availability of its products to the end consumers in Jaipur and the same is made available through 13 other dealers of OP 1. Furthermore, as per the information available in the public domain, there are a number of other brands which are available in the market such as HSIL Ltd., Cera Sanitaryware Ltd., Roca Bathroom Products Pvt. Ltd., Neycer India Ltd., Swastik Sanitarywares Ltd., Liberty White Ware Pvt. Ltd., LLM Appliances Ltd., Jindal, Grohe, Eros, Axor, Bell, Toto Asia Oceania and Kohler *etc.* Thus, it can be inferred that the choice of consumers has not been restricted by the alleged agreement between OP 1 and its dealers in Jaipur. Therefore, the Commission is of the view that no contravention of the provisions of section 3 of the Act can be made out against OPs.
12. It may be noted that section 4 of the Act proscribes abusive conduct of the dominant enterprise. Therefore, identification of the relevant market is *sine qua non* for the purpose of determining dominance of an enterprise.
13. The products available in the sanitary ware and bathroom fittings sector can be differentiated into two broad categories based on brand, price and quality - branded and unbranded. It is noted that the brand loyalty is a result of consumer behaviour



and is affected by a person's preferences. Loyal customers will consistently purchase products from their preferred brands, regardless of convenience or price. The unbranded segment mainly caters to the needs of low income consumers. It is observed that the branded segment has relatively few players as compared to the unbranded segment. Therefore, branded segment of sanitary ware and bathroom fittings will compete with the other brands of sanitary ware and bathroom fittings. Thus, the relevant product market in the instant matter would be the “*market for branded sanitary ware and bathroom fittings*”.

14. While determining the relevant geographic market, the Commission is guided by section 19(6) of the Act. The Commission is expected to have due regard to all or any of the factors mentioned therein. The factor that is relevant in the instant case is 19(6) viz. transport cost, all other factors being similar throughout India in respect of the relevant product. The allegation of abuse is in Jaipur and all the OPs are located in Jaipur where the Informant is also located. The dominance of OP has to be determined with reference to the smallest geographic area where conditions of competition are similar. The Informant has not provided any evidence as to the structure of the relevant product market i.e. ‘*market for branded sanitaryware and bathroom fittings*’ in Jaipur. As per the information available on the website of the Informant, the prices (MRP) of the products of the Informant are similar throughout India. Therefore the prices of the branded sanitaryware and bathroom fittings do not vary from one place to another place. In view of the foregoing, the Commission does not see any reason other than to define the relevant geographic market as ‘India’, since except for the transport cost (which itself does not get reflected in the MRP that is uniform throughout India in respect of branded products of most of the major competitors), conditions of competition are similar throughout India. Thus, the relevant market in the instant case would be the “*market for branded sanitaryware and bathroom fitting in India*”.

15. In order to assess the dominance of OP 1 in the relevant market, the sales revenue, value of consolidated assets of the major manufacturers have been considered by the



Commission along with the number of players present in the relevant market. As per the information available in the public domain, sales revenue for the year 2013-14 of OP 1, HSIL, Cera and Grohe is Rs.1654 crores, Rs.910 crores, Rs.694 crores and Rs.21 crores, respectively. The value of assets of OP 1, HSIL and CERA is Rs.971 crores, Rs.2674 crores, Rs.453 crores, respectively. (Source: CMIE, BSE and Ministry of Corporate Affairs). From the said figures, it can be inferred that OP 1 is a leading player in terms of sales revenue but in terms of value of assets, HSIL is the leading player. It is further noted from the information available in the public domain that there are many players in the relevant market such as HSIL Ltd., Cera Sanitary ware Ltd., Roca Bathroom Products Pvt. Ltd., Neycer India Ltd., Swastik Sanitary wares Ltd., Liberty White Ware Pvt. Ltd., LLM Appliances Ltd., Jindal, Grohe, Eros, Axor, Bell, Toto Asia Oceania and Kohler *etc.* 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 options.

16. With the presence of so many players in the relevant market and consumers having varied options to choose from, the Commission is of the considered view that OP 1 neither has a position of strength, which gives it the power to act/operate independently of its competitors nor has the ability to affect its competitors/consumers in the relevant market. Further, the Informant has also not produced any cogent material to show the dominance of OP 1 in the relevant market. Thus, *prima facie*, OP 1 does not appear to be in a dominant position in the relevant market. In the absence of dominance of OP 1, its conduct need not be examined under the provisions of section 4 of the Act.
17. In light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of sections 3 and 4 of the Act is made out against OPs in the present case. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.



The Secretary is directed to inform the parties accordingly.

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: 20 .08 .2015