



**COMPETITION COMMISSION OF INDIA**

**Case No. 46 of 2016**

**In Re:**

**Smt. Jolly Diclause**

**Informant**

**And**

- 1. The General Manager  
Sterling Vehicle Sales Pvt. Ltd.**
- 2. Nissan Motor India Pvt. Ltd.**

**Opposite Party No. 1**

**Opposite Party No. 2**

**CORAM**

**Mr. Devender Kumar Sikri  
Chairperson**

**Mr. S. L. Bunker  
Member**

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**

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

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

**Justice G. P. Mittal  
Member**



सत्यमेव जयते



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

1. The present information has been filed by Smt. Jolly Diclause ('the Informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against the General Manager, Sterling Vehicle Sales Pvt. Ltd. ('the Opposite Party No. 1'/'OP-1') and Nissan Motor India Pvt. Ltd. ('the Opposite Party No. 2'/'OP-2') alleging *inter alia* contravention of the provisions of Section 4 of the Act.
2. OP-1 is stated to be a service partner/ authorised dealer of OP-2. It is averred that OP-1 is engaged in marketing, sales, aftersales service of Nissan brand motor vehicles in Gurgaon, Haryana. OP-2 is engaged in design, manufacture, assembly and/ or sale of motor vehicle under the brand name of Nissan.
3. As per the information, the Informant, residing at Palam Vihar, Gurgaon; had bought a Nissan Micra car on 26.06.2013 from the showroom of OP-1 located at Sector 18, HUDA, Gurgaon for Rs.6,12,500/-. It is stated that all the services and maintenance of the car were done from the service centre of OP-1.
4. It is alleged that since the purchase of the said car, its engine made noise which was more than usual for new cars. It is further stated that despite having serviced the car for fixing the unusual sound with OP-1, there was no difference in the engine noise. The Informant also stated that the car was sent for further services with OP-1 and that during the fourth service, the Informant's husband was told that the services of the car was over but it required cleaning of the fuel injector since the car was showing late starting. Accordingly, the injector was cleaned and the Informant was charged a sum of Rs.7239/- out of which a sum of Rs.1450/- was charged for cleaning the fuel injector. However, after few days, the car's engine stopped functioning in the middle of a road in Faridabad and the same was towed to OP-1's service centre.



5. It is averred that on 20.10.2015, the Informant's husband received a call from the service centre of OP-1 and was informed that the car's 'engine head assembly' had to be opened to rectify the actual fault and the engine of the car might be damaged. The service executive assured that as the car was under warranty, the Informant need not worry and that all the repairs will be done under warranty. That on 23.10.2015, the Informant's husband received another call from the service executive of OP-1 informing that the car was not covered under warranty as it had missed a service and therefore, the Informant has to bear the cost for the repair. It is stated that the Informant has sent her car for all regular services and that it has never missed any service.
6. Apart from other alleged deficiency in services, it is averred that when the car was sent for services, the Informant was told that OP-2 was willing to repair the car on a condition that they share the cost of repair at 50:50 basis, to which the Informant had refused. A letter was also sent to OP-2 about the issues with the car and services and it is alleged that OP-2 gave an evasive reply instead of taking the matter seriously. It is further alleged that on 19.11.2015, the Informant was asked, through a letter from OP-1, to pay the cost of the repair and that any delay would result in the Informant being charged a sum of Rs.500/- per day as parking charges.
7. The Informant submits that either the car has manufacturing defect or was damaged by OP-1's carelessness and negligent handling. It is stated that due to dominant position of the Opposite Parties, the Informant is deprived of her car and the same is causing inconvenience, mental harassment and agony. That the Informant has tried all means but did not receive any proper reply from the Opposite Parties and she has also served them two legal notices but has not received any reply.
8. Aggrieved by the above detailed behaviour of the Opposite Parties, the Informant has filed the instant information praying that the Commission



issue a cease and desist order against the Opposite Parties restraining them from indulging in the alleged unfair and erroneous trade practices and direct them to exchange the defective car with a brand new car of the same model. The Informant has also prayed that the Opposite Parties be directed to pay a compensation to the tune of Rs. 2 lakhs towards the mental harassment and inconvenience caused.

9. The Commission has perused the material available on record.
10. From the facts as narrated in the information, it appears that the Informant had purchased a Nissan Micra car from OP-1 who is an authorised dealer of OP-2. That due to certain issues with the car like unusual sound, defective engine *etc.*, it was given for servicing several times to OP-1. It is noted that the Informant is essentially aggrieved that his grievances with regard to the deficiency in services on the part of the Opposite Parties was not attended satisfactorily despite approaching them several times and that further damage was caused to the car due to alleged negligent handling by them. The Informant, thus, alleged violation of Section 4 of the Act by the Opposite Parties.
11. It may be noted that for making out a case for contravention of the provisions of Section 4 of the Act, the dominant enterprise has to be shown to have abused such position in the relevant market. In the present case, the Informant, except alleging contravention of the provisions of Section 4 of the Act, has not indicated any relevant market where any of the OPs is shown to be dominant. In fact, looking at the nature of allegations as enumerated above, the Commission is of considered opinion that the grievances made by the Informant essentially pertain to alleged deficiency in services and none of the abusive instances as alleged in the information comes within the purview of Section 4(2) of the Act. As such, in the present case, it is not necessary to delineate the relevant market and to assess the dominance of any of the Opposite Parties.



सत्यमेव जयते



12. In view of the above, the Commission is of the view that no case is made out against the Opposite Parties for contravention of the provisions of Section 4 of the Act and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
13. The Secretary is directed to communicate to the Informant accordingly.

**Sd/-  
(Devender Kumar Sikri)  
Chairperson**

**Sd/-  
(S. L. Bunker)  
Member**

**Sd/-  
(Sudhir Mital)  
Member**

**Sd/-  
(Augustine Peter)  
Member**

**Sd/-  
(U. C. Nahta)  
Member**

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

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

New Delhi  
Date: 07/06/2016