



COMPETITION COMMISSION OF INDIA

Case No. 55 of 2014

In Re:

Shri Nandan Kumar,

Assistant Director, [Economics & Research]

Parishram Bhavan,

Basheer Bagh,

Hyderabad, Telangana

Informant

And

Association of Healthcare Providers (India)

Ground Floor, Indian Medical Association,

Indraprastha Marg,

New Delhi

Opposite Party No. 1

Apollo Hospitals Enterprise Limited,

19, Bishop Gardens, Raja Annamalaipuram,

Chennai

Opposite Party No. 2

Yashoda Hospital,

Rajbhavan Road, Somajiguda,

Hyderabad

Opposite Party No. 3

All the members of Association of

Healthcare Providers (India)

Opposite Party No. 4

CORAM



Mr. M.L. Tayal

Member

Mr. S.L.Bunker

Member

Mr. Augustine Peter

Member

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

1. Shri Nandan Kumar (the “**Informant**”) has filed the instant information under section 19(1) (a) of the Competition Act, 2002 (the “**Act**”) against the Association of Healthcare Providers (India) (**OP 1**), Apollo Hospitals Enterprise Ltd., (**OP 2**), Yashoda Hospital (**OP 3**) and all the members of Association of Healthcare Providers (India) (**OP 4**) alleging, *inter alia*, the formation of cartel and abuse of dominance by OP 1 in violation of section 3 and 4 of the Act in the matter.
2. Facts of the case, as stated in the information, may be briefly noted:
 - 2.1 OP 1 is a Society registered under the Society Registration Act, 1860 and represents majority of healthcare providers in India. Its membership is open to all the healthcare providers such as hospitals/ nursing homes/clinics, diagnostic centres, medical equipment companies, insurance providers etc.
 - 2.2 It is alleged by the Informant that on the basis of the direction/ call given by the OP 1, all the private hospitals withdrew cashless medical facility available to Central Government Health Scheme (CGHS) beneficiaries/ pensioners



across India from a particular date with a stated objective to increase the CGHS rates.

2.3 It is submitted that the CGHS is a Central Government Health Scheme meant for Central Government employees. Central Government employees including retired employees (pensioners) are required to make some contribution to be a CGHS beneficiary. It is stated to be a paid service and part of an overall compensation (popularly known as CTC in private sector). In terms of the CGHS Rule and agreement executed between Private Hospitals and CGHS, the empanelled hospitals are under an obligation to provide cashless medical facility to the CGHS beneficiaries.

2.4 It is stated that OP 2, in the month of April 2014, informed through a placard at its reception about the withdrawal of the cashless medical facility being provided to the beneficiaries of CGHS. The said placard was alleged to have been displayed on behalf of the OP 1 since OP 2 alleged to be one of the members of OP 1.

2.5 The Informant has also highlighted the fact that on enquiry from OP 1, OP 2 & OP 3 through e-mail, OP 1 alleged to have confirmed the withdrawal of cashless medical facility by most of its member hospitals. CGHS local office also alleged to have confirmed over phone the withdrawal of cashless medical facilities available to the beneficiaries of CGHS in Hyderabad and informed about the proposed action initiated by them against these hospitals. The news of withdrawal of cashless medical facilities available to the beneficiaries of CGHS was well covered by media also.

2.6 It is averred that the OP 1 has around 10,000 member hospitals in India and thus any collective action of OP 1 and its members may have adverse impact on the competition in the healthcare segment. It is further submitted by the Informant that any dispute arising between the parties to the said agreement is



resolved by the process of arbitration as stipulated in the agreement and such disputes fall under the ambit of the Contract Act.

2.7 It is alleged that due to collusive decision of the Opposite Parties, the private hospitals in Hyderabad withdrew the cashless medical facility available to CGHS beneficiaries. Since most of the good hospitals are empanelled under CGHS for providing cashless medical facility, the Pensioners opt to avail the facility from these hospitals. The withdrawal of cashless medical treatment by these empanelled hospitals is alleged to be a form of cartelization which has adversely affected the medical services available to the Pensioners resulting in denial of medical services.

2.8 The Informant has submitted that the Operation Profit Margin and the Net Profit Margin of OP 2 has improved consistently over the last 6 years, hence the withdrawal of cashless medical facilities available to CGHS beneficiaries/pensioners is untenable on the ground of increase in the cost of services. It is further stated that such hospitals have dual system of reporting of their financial position, that is, they project robust growth on all front when reporting to the investors and a very grim picture to the Government agencies.

3. In additional information, submitted by the Informant, no new issue is raised except the submission that the present case is certainly a contract related issue between CGHS and hospitals but also involves the issue of competition as there is an action by the service providers against a class of consumers. It is stated that the issue involved in the present case is first a competition issue and then a contractual issue.

4. Accordingly, it is alleged that the conduct of the Opposite Parties is anti-competitive and in contravention of the provisions of section 3 and 4 of the Act.



5. Based on the above averments, the Informant has prayed, *inter alia*, for initiating action against the conduct of the Opposite Parties for violation of the provisions of the Act.
6. The Commission has perused the information.
7. Facts of the case reveal that the grievance of the Informant primarily pertains to the withdrawal of cashless medical facility available to CGHS beneficiaries/ pensioners by the CGHS empanelled private hospitals pursuant to the circular/ notice issued by the OP 1.
8. The Commission notes that the present case originated pursuant to the circular/ notice issued by OP 1 to its members which contained instructions in the form of an appeal to all its member hospitals to stop cashless medical facility being provided by them to the CGHS beneficiaries w.e.f 07/03/2014. OP 2 displayed this information at its reception. The reasons for such withdrawal were stated as follows:
 - (i) More than Rs.200 crores remains unpaid by CGHS to member hospitals for a very long period.
 - (ii) CGHS tariffs are unreasonably low and have not been revised for last 4 years threatening the very existence of medical service providers.
 - (iii) Illegal deduction of 10% on all payments leading to a huge loss to member hospitals amounting to more than Rs.180 crores during the last 3 years.
 - (iv) Failure on the part of CGHS authorities to resolve these issues in spite of repeated representations.
9. It is further mentioned in the said circular that the CGHS beneficiaries can avail hospital services at CGHS rates on cash payment post 07/03/2014.



10. It is noted that OP 1 is an Association representing majority of the healthcare providers in India. As per the information, available on its website, it works on non-profit basis and advocates with the government, regulatory bodies and other stake holders on the issues, which have bearing on enabling its member organizations to deliver appropriate healthcare services to community at large. It functions through an empowered Secretariat which facilitates the member organizations in improving their systems, processes and outcomes on continuous basis.
11. As per the information available on public domain and also the press release dated 19/03/2014 issued by the Ministry of Health, it is noted that 24 out of 407 private hospitals, empanelled under CGHS, discontinued the cashless facility. The press release further mentions that these hospitals decided unilaterally to discontinue credit facility to the eligible categories of CGHS beneficiaries. Therefore, it appears that the instructions issued by OP 1 were not backed by any sanction imposable on member hospitals for non-compliance of directions of OP 1.
12. Further, it is contended by the Informant that he inquired from various hospitals also about the discontinuance of this facility which confirmed the same. However, the Commission notes that the hospitals which were chosen by the Informant for inquiry were those 24 hospitals which discontinued the cashless medical facility to the CGHS beneficiaries/ pensioners. Therefore, the sample taken by the Informant cannot be taken into account as the same did not depict the correct picture.
13. The Commission is, therefore, of the opinion that the allegations cited by the Informant in the present case do not amount to cartelization under section 3(3) of the Act since the majority of the private hospitals did not comply with the instructions of the said circular issued by the OP 1 and continued to provide cashless medical facility to CGHS beneficiaries. As per a press release issued



by Directorate General of CGHS in the month of March 2014, around 95% of the empanelled hospitals were continuing providing cashless medical facility to CGHS beneficiaries. Further, Ministry of Health had taken cognizance of the matter with the hospitals that have stopped cashless medical facility, the Commission feels that given the facts of the case, its intervention at this stage is not required.

14. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 3 of the Act is made out against the Opposite Parties in the instant matter. The question of dominance does not arise in the present case. In the absence of dominance of the Opposite Parties, its conduct cannot be examined under the provisions of section 4 of the Act. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

15. The Secretary is directed to inform all concerned accordingly.

Sd/-
(M.L. Tayal)
Member

Sd/-
(S.L.Bunker)
Member

Sd/-
(Augustine Peter)
Member

New Delhi
Dated: 29/10/2014