

COMPETITION COMMISSION OF INDIA

Case No.72/2012

Date: 15/02/2013

M/s Shahi Exports Pvt. Ltd.

...Informant

Through: Mr. Parag Tripathi, Senior Advocate & Neelima Tripathi

V.

Lakshmi Machine Works Ltd.

...Opposite Party

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

The present information has been filed under section 19(1)(a) of the Competition Act,2002 ('the Act') by M/s Shahi Exports Pvt. Ltd. ('the informant') against Lakshmi Machine Works Ltd. ('the OP') alleging contravention of section 4 of the Act.

2. The Informant claimed to be engaged in the business of manufacture and export of readymade garments for the past more than 3 decades. It embarked upon a major expansion of its business implementation and planned of an integrated textile and garment manufacturing facility with an investment outlay of over Rs. 500 crore in Shimoga (Karnataka). The OP is stated to have a textile machinery manufacturing division, manufacturing entire range of spinning machineries. As per the information, it is one of the major and in fact the only manufacturer in India manufacturing entire range of spinning textile machineries.

3. It is the case of informant that it entered into an agreement with the OP to purchase spinning machinery vide order dated 20.07.2010 for a total value of Rs. 73,71,71,793/- based on the discussion between the parties and the proforma invoice provided by the OP. The informant made a payment of 10% of the basic value of the order as advance payment. The formal detailed purchase order was placed by the informant with the OP vide purchase order no. 6004291 dated 12.08.2010. The purchase order categorically provided that the prices were to be maintained as

per proforma invoice dated 19.07.2010. However contrary to the contract the OP revised the prices of the machines and unilaterally sent a revised proforma invoice vide letter dated 07.04.2011 to the informant and raised the value of the order to Rs. 77,70,37,742/-. The informant was then told that the supply would be as per the new rates and payments were to be made accordingly, including the advance payment of 10%.

4. The informant objected to such unilateral increase of price and revision of the order when the proforma invoice 20.07.2010 clearly mentioned that the prices were to be maintained. The OP rejected the objection of the informant stating that their general conditions of sale enabled them to effect price increase before supplies were made. As the contract between the parties had an arbitration clause, the informant invoked the same and raised the issue before learned Arbitrator.

5. The informant in this information alleged that the OP held a dominant position since it held more than 60% of market share in textile machinery manufacture and supply. The OP was a leading manufacturer and one among three to manufacture the entire range of spinning machinery. Due to such dominant position, the OP was imposing unfair terms and conditions without justifying/ giving reasons for the same. This act of the OP was also not in accordance with the industry practice as generally the quoted price incorporates about 10-15% possible increase in costs later on. On basis of above facts, it is contended that, the OP contravened section 4 of the Act.

6. The Commission perused the information and heard the counsel for the informant. Section 4 of the Competition Act, prohibits abuse of dominance by a dominant enterprise in a relevant market. Section 2(r) read with section 19(5) of the Act requires determination of relevant market with due regard to the relevant geographic market and relevant product market. Section 2(t) defines relevant product market as 'a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use'. Further section 2(s) defines relevant geographic market as 'a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas'.

7. Keeping in view the provisions of section 2(t) read with section 19(7) the Act, the relevant product market has to be a market comprising all products regarded as substitutable by the consumers. Spinning machinery for textiles can be procured either from domestic manufacture or can be imported. Thus the relevant market in this case would be ‘sale of spinning machinery for textiles in India.’

8. Having determined the relevant market, next step would be to assess whether the opposite party was dominant in the relevant market so determined or not. Section 19(4) of the Act states that the Commission needs to consider various factors stated under that section while assessing whether an enterprise enjoys a dominant position or not. As per the data provided by the Centre for Monitoring Indian Economy Pvt. Ltd., major players in the market of manufacturing Textile machinery in India and their respective strength on the basis of value of sales during the financial year 2010-11 is as follows:-

S.No	Name of Manufacturers of Textile Machine	Rs. Crore
1.	Lakshmi Machine Works	1520.54
2.	LohiaStarlinger	518.24
3.	Trumac Engineering Co. Pvt.	230.69
4.	L M W Machinery	164.26
5.	Sulzer India	119.83
6.	Veejay Lakshmi Engg. Works	89.05
7.	Lakshmi Card Clothing Mfg. Co. Pvt.	83.42
8.	Peass Industrial Engineers	58.70
9.	Kirloskar Toyoda Textile Machinery Pvt.	54.16
10.	Bajaj Steel Inds.	28.10
11.	Naval TechnoplastInds.	23.01

12.	Inspiron Engineering Pvt.	23.58
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9. Furthermore, as per the information provided by Lakshmi Machine Works Ltd. on its website, it is among the top three manufactures in the world to produce the entire range of spinning machinery and it has around 60% of the domestic market.

10. On the basis of above-mentioned data and significant high market share of the OP in the domestic market, it is very clear that the OP is the leading and the largest supplier of entire range of spinning machines in the relevant market in India. Therefore, the Commission is of the *prima facie* view that the OP is dominant player in the relevant market.

11. However, having dominance in the relevant market *per se* is not in contravention of the provisions of the Act. The OP must have abused its dominance in the relevant market for contravening the provisions of section 4 of the Act. It was alleged that the OP increased price of textile machineries without consulting the Informant. But during the arbitration proceedings the OP had provided the reasons for increasing the price of their products as the cost of inputs like raw materials, labours and other related inputs, had increased significantly. The OP had also given data in support of his claim.

12. It is also inferred from the documents submitted by the OP in the arbitration proceedings that the OP had been increasing the price of his products after regular intervals and it was not discriminating with any of its customers but had increased the prices for all of its customers alike. In addition to above, the Informant did not provide any other evidence against the OP to support his allegation of abuse of dominant position. Hence, the Commission is of the view that despite the fact that the OP was a dominant player in the relevant market, mere increase in prices by the OP for valid economic reasons for all of its customers cannot amount to imposing of unfair or discriminatory conditions in purchase or sale of goods or services; nor it *prima facie* makes out a contravention of the provisions of section 4 (2) (a) (i) and (ii) of the Act.

13. From the facts of the case, it is apparent that there does not exist a *prima facie* case under section 4 of the Act to order DG investigation.

14. In view of the foregoing, the Commission deems it fit to close the proceedings in the above case under section 26(2) of the Act.

15. The Secretary is directed to communicate the decision of the Commission to the informant accordingly.

Sd/-
H.C. Gupta
Member

Sd/-
R.Prasad
Member

Sd/-
GeetaGouri
Member

Sd/-
AnuragGoel
Member

Sd/-
M.L.Tayal
Member

Sd/-
Justice S.N.Dhingra (Retd.)
Member

Sd/-
Ashok Chawla
Chairperson