

COMPETITION COMMISSION OF INDIA
Case No. 73 of 2012

19th February , 2013

In re:

Mr. Karan Sehgal

Informant

v.

M/s Lakme Lever Private Limited

Opposite Party

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

The information has been filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by Mr. Karan Sehgal ('the informant') against M/s Lakme Lever Pvt. Ltd ('the Opposite Party' – 'the OP') alleging, *inter alia* contravention of the provisions of sections 3 and 4 of the Act.

2. As per the information the informant is engaged in the business of running and operating beauty saloons under the name and style M/s Karan Ores & Specials in New Delhi. He was also running a beauty parlour at DLF Phase –IV, Gurgaon under another sole proprietorship concern Maanya Bellezza.

3. The OP is an enterprise engaged in the business of providing beauty and wellness services, as well as in the business of sale and delivery of products in relation thereto i.e. for saloon services for women. It has been stated by the informant that OP had opened a

chain of nearly 168 retail boutique beauty saloons in various cities of India popularly known as “Lakme Saloon” through its franchisees.

4. It is alleged by the informant that the OP on account of its numerous retail beauty saloons all over the country has sizable presence and enjoys a position of strength and considerable dominance which enables the OP to operate its business model on its own terms and conditions independently of competition.

5. The informant alleged that he had entered into a franchisee agreement with the OP on 08.10.2010, whereby the informant was appointed as the Sole Franchisee of the OP to set up, develop and operate 6 Lakme Saloons in Gurgaon and 1 Lakme Saloon in East Patel Nagar i.e. 7 Saloons in all, within a specific time schedule. It has been alleged by the informant that amongst other terms in the agreement, Clause 4.2 granted territorial exclusivity to the informant for a period of 3 years provided that the informant was able to set up the Saloons within the period specified in Clause 6.1.1 of the agreement. Further by Clause 4.2.1 of the said agreement the OP specifically agreed that it shall not have the right to plan any Lakme Saloon during this period (period of agreement) in the said territory.

6. As per the informant under Clause 2.2 of the agreement, he was required to set up 5 Lakme Saloons within a period of two years from the commencement of the said agreement and the remaining 2 Saloons were to be set up in the 3rd year from the start of the said agreement. Under the agreement, the informant had to pay to OP in advance a non-refundable deposit of Rs. 6,55,000/-

plus service tax per saloon for all 7 saloons. 50% of this amount for all 7 Saloons was to be paid immediately and remaining 50% at the time of opening each Saloon. The informant paid a substantial sum of Rs. 35,12,535/- towards non-refundable start-up fees for all 7 Saloons including the sum of Rs. 13,12,222 towards 50% of non-refundable start-up fees for the balance 4 saloons proposed to be opened till 8th October, 2013.

7. The informant opened up three Saloons till December, 2011 in accordance with the Schedule under the said Agreement and hence, under Clause 4.2 of the said agreement the informant acquired a right to territorial exclusivity for a period of three years commencing from the date of opening of each of respective Saloon. The informant alleged that he had already invested more than Rs. 5 crores in setting up the three Saloons mentioned above.

8. As per information a dispute arose between the informant and the OP in January, 2012 when the informant came to know that the OP had initiated process of setting up its own Company-Run and Company-Operated (COCO) Saloon in Gurgaon city in breach of the territorial exclusivity given under the agreement. The informant as per the agreement initiated arbitration proceedings against the OP. During pendency of the arbitration proceedings the OP first issued a show-cause notice dated 29.05.2012 and thereupon *vide* letter dated 05.07.2012 terminated the franchisee agreement.

9. The informant has alleged that the action of OP to set up COCO Saloon in the territory given to the informant as a Sole Franchisee in contravention to the terms of the agreement was an

unfair trade practice and an abuse of its dominant position under the Franchisee Agreement. The OP being dominant in the relevant service and geographical market abused its dominance by preventing the informant from asserting its contractual right. Thus, as per the informant the acts and conduct of the OP were in contravention of the provisions of sections 3 and 4 of the Act.

10. The Commission has carefully perused the information and the documents filed therewith and considered the informant's oral submissions.

11. For looking into the contraventions of Section 4 of the Act, it is necessary to consider as to what will be the relevant market in this case. The relevant product/ service market, keeping in mind Section 2(t) and the factors given under Section 19 (7) of the Act, is the market of the beauty and wellness services for women through exclusive saloons for women. As far as the relevant geographical market is concerned, as per Section 2(s) of the Act "relevant geographic market" means 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. The market for beauty and wellness saloons for women is a customer based market and the factors such as consumer preferences etc. as given in Section 19(6) of the Act are to be kept in mind. Beauty and wellness saloons exclusively for women are present in Delhi as well as Gurgaon in abundance. These saloons cater to the needs of all strata of the society viz. lower middle class, middle class, upper middle class, rich class and super rich class women. As the financial status of customer changes her preference

changes, largely depending upon, personal satisfaction and depth of pocket. The relevant geographical market thus has to be the territory of Gurgaon as one market and Delhi as the second market. Substitutability is available to the customers in both geographic areas without difficulty. In fact the selection of a beauty saloon largely depends upon personal satisfaction of a customer and hit and trial method is often resorted to, for this purpose. The relevant markets thus in this case would be the market of beauty and wellness services exclusive for women through saloon in the territory of Gurgaon as well as Delhi.

12. The next issue to be considered is about dominance of OP in the relevant market. The market for beauty and wellness services exclusively for women in Delhi as well as in Gurgaon is highly fragmented and unorganized. There are very few corporations in this market and these corporations cater to the need of only small category of customers and their presence is only by way of few saloons. One can find beauty saloons/parlours almost in every street/mohalla of Delhi. Some examples of such saloons and parlours running in Delhi and Gurgoan are Trends Beauty Point, Cure & Curve, Radiance, Shreyas Shahnaz Husian Signature Salon etc. Many of these beauty saloons are one person show and many have employed several women beauticians to cater to the needs of their clients. The size of beauty saloons depends upon the gradual growth of the saloon in the area. Some saloons have grown with time and some are standstill. In any case, the exact numbers of total saloons catering to different strata of the society are not known. However, some of the well known players are Lakme, VLCC, Jawed Habib, Shahnaz Husain etc. According to informant itself, Lakme has

planned for total 7 saloons in Delhi as well as in Gurgaon. Presence of VLCC and Shahnaz Husain is at much larger scale in Delhi and surrounding areas. By no stretch of imagination, OP can be considered as dominant either in the geographical market of Delhi or of Gurgaon. There are innumerable branded and non-branded saloons exclusively for women in Delhi alone looking at the population of Delhi being 1.26 crore and the same is the situation with regard to the number of exclusive saloons for women within district Gurgaon which covers a large area within it. In view of the presence of such a large number of beauty saloons exclusively for women in these areas having 7 saloons or so would not give a dominant status to Lakme under any circumstance. Thus the question of abuse of dominance by Lakme would not arise.

13. In view of the above discussion, there does not exist a *prima facie* case for investigation by the Commission. It is a fit case for closure under section 26(2) and is hereby closed.

14. The Secretary is directed to inform the parties accordingly.

Sd/-
(H.C. Gupta)
Member

Sd/-
(R.Prasad)
Member

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L.Tayal)
Member

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

Sd/-
(Ashok Chawla)
Chairperson