



COMPETITION COMMISSION OF INDIA

Case No. 74 of 2014

In Re:

Shri Abhinandan Kumar
Abhinandan Villa, W. No. 15, Pilibangan,
District Hanuman Garh, Rajasthan
Presently residing at
70 Bayshore Road, #04-08 Costa Del Sol,
Singapore – 469987

Through Shri Nikhilesh Kumar, Advocate
72, Janpath, Ved Mansion,
New Delhi

Informant

And

MVL Limited
1201-B, Hemkunt Chamber
89, Nehru Place
New Delhi

Opposite Party

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member



Mr. Augustine Peter
Member

Present: Informant in person

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 (hereinafter referred to as the “Act”) by Shri Abhinandan Kumar (hereinafter referred to as “**Informant**”) against M/s. MVL Limited (hereinafter referred to as “**Opposite Party**”) alleging, *inter alia*, that the Opposite Party abused its dominant position by imposing unfair conditions, which are in contravention of the provisions of section 4 of the Act.
2. The Informant has stated that he is a resident of Singapore and running an IT company namely ‘BuzzIT Consultancy Pte. Ltd.’ and another company namely ‘Divine Financial Services Pte. Ltd’ which provides ‘ready to move’ fully furnished spaces for offices and business process outsourcing concerns. The Opposite Party is a registered company engaged, *inter-alia*, in the business of real estate development.
3. It is submitted that the Informant, with an intention to expand his business off-shore, invested and purchased an IT/ Cyber space No. 20, 21 & 22 having super area of approx. 4504 sq. ft. (aggregate) in the multi storied air conditioned IT/ Cyber Complex ‘India Business Centre’ (hereinafter referred to as “**Project**”) which is developed by the Opposite Party in Sector 35, Gurgaon, Haryana. It is stated that out of total sale consideration of Rs.1,77,90,800/- Informant paid a sum Rs.1,69,01,260/- for the above said Cyber space. The Informant submitted that he executed Buyer’s Agreement and Assured Return agreement on 17.08.2011. In terms of the Assured Return Agreement, the Informant is stated to be entitled for receiving an amount of Rs.1,49,758/- per month after TDS deduction.



4. It is averred that the Informant received assured return for few months but thereafter the Opposite Party discontinued the payment. The Informant has alleged that he was pressurised by the Opposite Party to cancel the Assured Return Agreement and enter into a Supplementary Agreement to accept additional 13% space in lieu of dues towards assured return. The Supplementary Agreement is alleged to have been executed by the Informant under protest on 15.04.2013. It is further alleged that the Opposite Party, by stating in the letter that the Informant is no more interested in the assured return plan and has requested for termination of the Assured Return Agreement, shifted the burden on the Informant.
5. The Informant has alleged that terms of the Agreement are not only harsh but also one sided and has pointed out certain clauses in the Supplementary Agreement to be in contravention of provisions of the Act.
6. The Informant stated that the Opposite Party is able to impose unfair and discriminatory conditions on its buyers because it enjoys a dominant position in the relevant market.
7. Based on the above averments, the Informant has alleged that the conduct of the Opposite Party is violative of the provisions of section 4 of the Act and has prayed, *inter alia*, for initiation of action against the Opposite Party for their alleged contravention of the provisions of section 4 of the Act.
8. The Commission perused the material available on record including the information, facts placed on record by the Informant. The Informant was also heard in person by the Commission on 10.12.2014.
9. For examination of the alleged abusive conduct of the Opposite Party, it is required first to delineate the relevant market where the Opposite Party is operating and then to assess whether it enjoys a position of dominance in the relevant market so delineated. In case the Opposite Party is found to be



dominant in the relevant market, allegations of its abusive conduct are required to be examined.

10. Facts of the case reveal that the grievance of the Informant primarily pertains to the alleged abusive and discriminatory conduct of the Opposite Party. The allegation of the Informant in the present case is regarding investment in IT/Cyber space in IT/ Cyber Complex 'India Business Centre' in Sector 35, Gurgaon, Haryana. The Informant appears to be aggrieved of cancellation of the Assured Returns Agreement and the execution of Supplementary Agreement to accept 13% additional space. Considering the issues involved in the present matter, it appears that the relevant product market would be the *"services of development and sale of commercial IT/Cyber space"*. As regards the geographical market, it is observed that the geographic region of Gurgaon exhibits distinct characteristics from a buyer's point of view and conditions of competition in Gurgaon are distinct from areas such as Noida, Delhi and Ghaziabad in the National Capital Region. Geographical region of Gurgaon is known to possess certain unique geographical characteristics such as its proximity to Delhi, proximity to Airports and a distinct brand image as a destination for commercial activities. Therefore, the relevant geographic market in the present case would be 'Gurgaon'. Consequently, the relevant market in this case would be the *"services of development and sale of commercial IT/Cyber space in Gurgaon"*.

11. The underlying principle in the definition of a dominant position is linked to the concept of market power which allows an enterprise to act independently of competitive constraints. Such independence affords an enterprise with the capacity to affect the relevant market in its favour to the economic detriment of its competitors and consumers. There are many other real estate developers offering 'Information Technology real estate projects' (hereinafter referred to as "IT/ ITES") in the relevant geographic market like DLF (4 projects), Unitech (3 projects), JMD (1 project), Landmark (1 project), Welldone Group (1 project), Spaze (1 project) etc. In the present case, based on the information



available in public domain, the Opposite Party has developed two IT/ITES projects - iPark and IBC in the relevant market.

12. On the basis of the information in public domain about the total saleable area of major real estate developers, a comparative analysis reveals that DLF has the highest total saleable area of around 89.6 lakh sq. ft. followed by Unitech having area of 74 lakh sq. ft. (excluding Unitech Cyber Park). The Opposite Party has the total saleable area of 6.6 lakh sq. ft.
13. From the above analysis, it is observed that the Opposite Party does not appear to be in a dominant position since many other large real estate developers like DLF, Unitech, JMD, Landmark, Welldone Group, Spaze etc. are operating in the relevant market. These large developers are competing with each other in the relevant market with projects of varying magnitudes and having bigger or similar size and resources compared to the Opposite Party. Presence of such players with comparable projects in the relevant market indicates that the buyers have the option to choose from the various developers in the relevant geographic market. Since there is no information available on record and in the public domain to show the position of strength of the Opposite Party which enables it to operate independently of the competitive forces prevailing in the relevant market, *prima facie*, the Opposite Party does not appear to be in a dominant position in the relevant market. In the absence of dominance of the Opposite Party in the relevant market, its conduct is not required to be examined under the provisions of section 4 of the Act.
14. In the light of the above analysis and based on information available on record, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against the Opposite Party. 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/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

New Delhi
Date:30/01/2015