



COMPETITION COMMISSION OF INDIA

Case No. 78 of 2015

In Re:

Ms. Baby Nandini Garg

(Through her parents Mrs. Ekta Garg & Mr. Himanshu Mohan)

Flat No. 503, Tower-6, Orchid Petal Apartments,

Sohna Road, Gurgaon, Haryana

Informant

And

- 1. The Management of Shikshantar School**
(Through its Principal)
J Block, South City-1, Gurgaon, Haryana **Opposite Party No. 1**
- 2. The Principal Secretary, Govt. of Haryana**
Haryana School Education Department,
Plot No. 1/B, Shiksha Sadan,
Sector-5, Panchkula, Haryana **Opposite Party No. 2**
- 3. The Director, Elementary Education, Govt. of Haryana**
Plot No. 1-B, 1st Floor, Shiksha Sadan,
Sector-5, Panchkula, Haryana **Opposite Party No. 3**
- 4. The Assistant Director**
Elementary Education, Govt. of Haryana
Plot No. 1-B, 1st Floor, Shiksha Sadan,
Sector-5, Panchkula, Haryana **Opposite Party No. 4**



CORAM

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Justice (Retd.) G. P. Mittal
Member

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

1. The present information has been filed by Baby Nandini Garg (hereinafter, the '**Informant**') against the Management of Shikshantar School (hereinafter, '**OP 1**'); the Principal Secretary, Haryana School Education Department (hereinafter, '**OP 2**'); the Director, Elementary Education, Govt. of Haryana (hereinafter, '**OP 3**'); and the Assistant Director, Elementary Education, Govt. of Haryana (hereinafter, '**OP 4**') [collectively, hereinafter '**OPs**'] under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act in the matter.



2. As per the information, the Informant was a student of Nursery (Avir Group) class in Shikshantar School, Gurgaon (hereinafter, the 'School'); which is promoted by Unitech South City Educational Charitable Trust ('USECT'), a division of Unitech, a multinational company; and is affiliated to CISCE (Council for the Indian School Certificate Examinations).
3. Briefly, it is stated that *vide* Admission No. 056/N/1415, the Informant was admitted in the said School in September, 2013 for the academic session 2014-15 and accordingly, her parents paid Rs.1, 40,000/- to the School in November, 2013 towards fees which includes institutional fees of Rs.70, 000/-, refundable caution money of Rs.50,000/-, and admission fees of Rs.20,000/-. Additionally, her parents paid Rs.75,120/- to the School on 04.02.2014 towards annual fees of Rs.38,160/-, tuition fees of Rs.26,960/- (including transport fee of Rs. 4,060 for two months), and refundable transport security of Rs.10,000/-. Thus, the parents of the Informant made a total payment of Rs.2, 15,120/- to the School.
4. It is averred that it came as a shock to the parents of the Informant when they got to know that the transport facility would not be available for their child/ area and after frequent protests the School agreed to provide the transport facility for their child/ area only in the afternoon. It is stated that the parents accompanied their daughter for two days while returning from the School in the afternoon in the school transport and they found that there was no teacher in the school bus, the maid was not trained in handling the kids and did not even carry an I-card. The maid was least bothered about the children sitting in the bus. The parents of the Informant also observed that the bus lacked basic facilities such as drinking water. Further, the driver drove the bus rashly and negligently, which is in complete violation of the 'guidelines' as laid down by the Hon'ble Supreme Court of India. It is alleged that when the parents informed the above concerns to the Primary Head and Coordinators of the School, they did not address their concern. As a



result, the parents declined to avail the transport facility as provided by the School for their child and the same was communicated to the School *vide* email dated 23.04.2014 and subsequently, due to the irresponsible attitude of the School, they withdrew their child from the School and same was intimated to the School *vide* e-mail dated 17.06.2014.

5. Aggrieved by the said conduct, the parents of the Informant served a 'legal notice' dated 11.09.2014 to the School, raising their grievances and asking the School to refund Rs.2, 15,120/- paid by them towards fees and to pay Rs.5,00,000/- for causing inconvenience, agony, anxiety *etc.* to them. In response, the School agreed to refund Rs.65, 380/- as caution money only on the condition of withdrawal of 'legal notice' in writing, but the Informant never received the said amount till date.
6. It is alleged that because of dominant position of the School in the relevant field of primary education, it is refusing to refund the unspent fees as well as the refundable amount to the parents of the Informant. It is submitted that such unfair trade practice would cause an appreciable adverse effect on competition in the field of primary education in India and particularly, in rich circles like Gurgaon within the meaning of sections 3 and 4 of the Act. As per the information, OP 1 could afford to a non-competitive attitude towards the Informant because of its backing by Unitech which is a real estate giant. Against the said unfair practices of OP 1, the parents of the Informant approached OP 2, OP 3 and OP 4, but they neither responded nor took any action against the School.
7. On the basis of above, the Informant has alleged that OP 1 has abused its dominant position. Accordingly, the Informant, *inter alia*, has prayed the Commission to initiate enquiry against OP 1. The Informant has also prayed for interim relief under section 33 of the Act.



8. The Commission has perused the information and material available on record. It is observed that the crux of the dispute in the present matter relates to refusal of OP 1 to refund the unspent fees as well as the refundable amount paid by the parents of the Informant for admission of their daughter. Primarily, the Informant has alleged abuse of dominant position by OP 1 in violation of the provisions of section 4 of the Act.

9. For analysis of the case under the provisions of section 4 of the Act, before determining whether the alleged conduct of OP 1 is abusive or not, the relevant market needs to be defined first where OP 1 is operating and then to assess the position of dominance of OP 1 in the relevant market. In the instant matter, the parents of the Informant are aggrieved by the conduct of OP 1 whereby it is refusing to refund certain fees paid by them at the time of admission. Thus, the dispute in question relates to the provision of school education services wherein OP 1 is the service provider and the Informant is a consumer. Apparently, the Informant is at the demand side and OP 1 is at supply side of the market of the provision of school education services. Accordingly, 'market of the provision of school education services' may be considered as the relevant product market in the instant case. With regard to the relevant geographic market, it is observed that the Informant is a resident of Gurgaon and OP 1 is providing the school education services in the same area. Further, the parents who are residing in Gurgaon and looking for admission for their child in schools in Gurgaon may not prefer areas other than Gurgaon for admission of their child because of factors such as distance, transportation time *etc.* Hence, the relevant geographic market in this case may be considered as the geographic area of Gurgaon. In view of the relevant product market and relevant geographic market defined above, the relevant market in this case may be considered as the "*market of the provision of school education services in Gurgaon*".



10. The next issue is to determine whether OP 1 is dominant in the relevant market or not. In this regard it is observed that though OP 1 is one of the well known schools in Gurgaon, there are number of other prominent schools such as Amity International School, Delhi Public School, G. D. Goenka Public School, Presidium School, Ryan International School, Salwan Public School, Summer Fields School *etc.* operating in Gurgaon. Further, as per *schooladmissionindia.com*, there are around 125 schools operating in Gurgaon. The presence of other comparable schools in Gurgaon indicates that the parents of the Informant had options to admit the Informant in other schools and they do not seem to be completely dependent on OP 1 for school education services.
11. Further, it is observed that no information is available on record or in the public domain indicating the position of strength of OP 1, which enables it to operate independently of competitive forces prevailing in the relevant market. Based on the above, the Commission is of the, *prima facie*, view that OP 1 is not enjoying dominant position in the relevant market. In the absence of dominance of OP 1 in the relevant market, its conduct need not be examined under the provisions of the section 4 of the Act. The Commission also observes that the Informant has not raised any specific allegations of violation of the provisions of section 4 of the Act against OP 2, OP 3 and OP 4.
12. With regard to the allegations of violation of the provisions of section 3, the Commission observes that the information does not disclose any kind of agreement which can be termed as anti-competitive in terms of any of the provisions of section 3 of the Act.
13. In the light of the above analysis, the Commission finds that no, *prima facie*, case of contravention of the provisions of either section 3 or section 4 of the Act is



made out against OPs in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

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

Sd/-

**(Ashok Chawla)
Chairperson**

Sd/-

**(S. L. Bunker)
Member**

Sd/-

**(Augustine Peter)
Member**

Sd/-

**(U. C. Nahta)
Member**

Sd/-

**(M. S. Sahoo)
Member**

Sd/-

**(Justice (Retd.) G. P. Mittal)
Member**

**New Delhi
Date:28.09.2015**