



In Re:

M/s. Official Beverages,

Through its partners Mr. F. V. Sathiskumar,
Having its office at 1-4-879/42/5/A,
SBI Officers Colony, Besides Vijaya Bank,
Gandhi Nagar, Hyderabad - 500080.

Informant

And

1. **M/s. SAB Miller India,
SKOL Breweries Limited** **Opposite Party 1**
Office: Lalhali Camp Road, Yeshwantpur,
Bangalore-560022, Karnataka.
Also at: Registered Office:1, Mahal Industrial Estate,
Mahakali Road, Andheri (East), Mumbai-400093.
2. **M/s Prasheeta Enterprises** **Opposite Party-2**
3. **M/s Palmyra Enterprises** **Opposite Party-3**
4. **M/s Durga Bhargavi Enterprises** **Opposite Party-4**
5. **M/s SGS Agencies** **Opposite Party-5**
6. **M/s Crystal Agencies** **Opposite Party-6**
7. **U. Chandrasekar** **Opposite Party-7**
8. **M/s Choweshwarei Agencies** **Opposite Party-8**
9. **Sri Chowdeshwari Agencies** **Opposite Party-9**
10. **K.S.N. Prasad and Others.** **Opposite Party-10**
11. **Kadali Laxmi** **Opposite Party-11**
12. **Shravani Enterprises** **Opposite Party-12**
13. **Ommishekar** **Opposite Party-13**

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. H.C. Gupta
Member

Dr. Geeta Gouri
Member



Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice S. N. Dhingra (Retd.)
Member

Mr. S. L. Bunker
Member

Present: Mr. Sanjay Bhardwaj, Advocate, for the Informant.

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

The present information has filed by M/s Official Beverages (hereinafter referred to as '**Informant**') against M/s. SABMiller India (hereinafter referred to as '**Opposite Party 1**') and 12 other entities (hereinafter collectively referred to as '**Opposite Parties**') alleging abuse of dominance by the OP1 as well as cartelization amongst Opposite Parties.

2. As per the information, the Informant was engaged in manufacturing and selling soda, packaged drinking water and also running a franchisee business in Andhra Pradesh. OP1 was owner of trademark Hayward's 5000 and FOSTERS and carrying business of marketing of products manufactured under the trademark Hayward's 5000 and FOSTERS. The Informant and OP1 entered into a franchise agreement on 01.03.2009, valid for a period of three years, further renewable by mutual consent, by which OP1 granted license to the informant for manufacture of packaged drinking water, sparkling water, packaged soda etc. in pet bottles of different sizes, under trademark of the OP1, (hereinafter referred to as '**Products**') in Andhra Pradesh. OPs (2 to 13) were clearing and forwarding agents for the products manufactured by the Informant, under the trademark of OP1. The



Informant entered into various agreements with OPs 2 to 13, to market and sell the products in Andhra Pradesh.

3. As per clause 5 of the Franchise Agreement, the Informant was to ensure that raw materials used for manufacture of products were of standard specifications and quality, as provided by statutory and regulatory authorities from time to time and get the products so manufactured quality tested as per guidelines issued by OP1 and Bureau of Indian Standards. Any failure on part of Informant to manufacture products not confirming to quality standards was to be construed as breach of Agreement with a right to OP1 to terminate the Agreement without any costs or damages to Informant.

4. Further, as per clause 10 of the Agreement, Informant was required to pay Rs. 45,00,000 per annum as royalty and brand promotion fee to OP1. The first year royalty was to be paid in equal quarterly instalments of Rs. 11,25,000 and royalty of subsequent years was to be mutually agreed before commencement of each financial year. Informant was obligated to provide quarterly audited details of accounts to OP1 and allow OP1 to inspect books of accounts for determining quantum of sales. Informant stated that it had also paid Rs. 64,00,000 as royalty and brand promotion fee and the remaining was to be paid in due course.

5. The informant alleged that OP1 was in a dominant position in market and the terms of the Agreement between OP1 and Informant were completely one sided and favoured OP1 and OP1 adopted an unfair trade practice of predatory pricing by fixing uncontrolled royalty and brand promotion charges and the Informant was under a constant fear of the Franchise Agreement being terminated by OP1. OP1 by its letter dated 10.02.2012 terminated the agreement between Informant and OP1, for breach



of terms of agreement for non-payment of Rs. 80 lakhs outstanding towards royalty and for wrongly not placing orders for supply of bottled waters to enterprises from whom Informant had taken money. The Franchise Agreement was terminated before the stipulated period of three years.

6. The Informant alleged that after the termination of the Agreement, OP1 and Opposite Parties 2 to 13 withheld the sale consideration to be paid to the Informant, in breach of agreements entered between them and the Informant. The Informant alleged that all the Opposite Parties formed a cartel and boycotted the business of the Informant causing irreparable loss to it.

7. The Informant contended that OP1 as a brand was in a dominant position in the relevant market and it abused its position of strength and acted in connivance with the other opposite parties to affect business of the Informant unless it carried business as per their abusive terms and conditions.

8. The agreement between the informant and OP-1 was in the nature of a franchisee agreement. Under a franchisee agreement, a franchiser agrees to pass on its knowhow to the franchisee and provides it with necessary promotional and other assistance, without running a risk that this might benefit its competitors. Such agreements give substantial advantage to both the franchiser and franchisee. Such agreements allow the franchiser to derive financial benefit from its expertise without having to invest its own capital and to enlarge its geographical reach. The franchisee gets benefitted because it could receive, even without any past experience of trade, access to trading methods, technology, knowhow, quality control and goodwill which the franchiser had built over the years and for which it had gained reputation. Therefore, a franchisee agreement always protects and contains the



legitimate expectations of franchiser and it contains restrictive conditions for the franchisee.

9. A franchiser can reasonably ask the franchisee to maintain quality, hygiene and other standards to do business in such a manner so that the reputation of the franchiser does not suffer. If there is a breach of franchisee agreement, the aggrieved party can claim damages under law of contract from the other.

10. In the present case, the agreement between the informant and OP-1 was a franchisee agreement in respect of manufacturing and selling drinking water and soda packaged under trade name of OP1 & as per specifications of OP-1. The drinking water and soda was to be marketed under the trade mark of OP-1 in the bottles/containers as prescribed by OP-1. The dispute between the parties was business/commercial dispute regarding implications of the franchisee agreement. No competition issue arises in this case. When the informant entered into a franchisee agreement with OP-1, he had many options, as many players were active in the field of selling packaged drinking water and soda. It cannot be said that OP-1 had no competitors and therefore was able to operate independent of competition. The issue of dominance would not arise in a franchisee agreement of this nature. The technology of manufacturing drinking water and soda is not a secret technology. Anybody can manufacture drinking water and soda. Basically informant wanted to take benefit of the name and the goodwill of the trade name of OP-1 by marketing drinking water and soda in the trade name of OP-1. He had the option of even manufacturing/marketing soda & drinking water under his own brand name and would not have to pay the royalty. There is no case of abuse of dominance.

11. In view of the above discussion, there does not exist any prima facie case for causing an investigation to be made by the



Director General under section 26(1) of the Act. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.

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

New Delhi

Dated: 31/05/2013

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(H C Gupta)
Member

Sd/-
(Dr. Geeta Gouri)
Member

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