



(Case No. 84/2013)

Tavoy Apparels LimitedInformant No. 1
Tavoy Work Wear (P) LimitedInformant No. 2
Tavoy WorkwearInformant No. 3
Rajee ApparelsInformant No. 4

And

Export Credit Guarantee Corporation of India Limited

Express Tower, 10th Floor,
Nariman Point
Mumbai- 400021

...Opposite Party No.1

Union Bank of India

Union Bank Bhawan Marg
Nariman Point,
Mumbai-400021

...Opposite Party No.2

CORAM:

Mr. Ashok Chawla
Chairperson

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. Ramji Srinivasan, Mr. Rahul Goel, Ms. Anu Monga, advocates for Informant and representatives of Informant



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

The information in the present case was filed by the Informant under Section 19(1)(a) of the Competition Act, 2002, (“**Act**”)alleging violation of the provisions of Sections 3 and 4 of the Act by the Opposite Party No. 1 (“**OP1**”) with regard to export credit insurance.

2. The Informant No. 1 was a 100% export oriented small scale unit engaged in the manufacture of readymade garments, work wear, industrial and institutional garments. The Informants^{2 to 4}were sister concerns of Informant no. 1. Informants 1 to 4 are collectively referred to as “**Informant**”.

3. OP1 is the national export credit insurer of India, functioning under the administrative control of Ministry of Commerce & Industry and is registered with the Insurance Regulatory and Development Authority (“**IRDA**”) to provide non-life insurance. It was stated to be having more than 90% of market share of Indian credit insurance market. The Informant submitted that OP1 earned 60% of its premium income through provision of export credit insurance to public sector banks. The Opposite Party No. 2 (“**OP2**”)is a nationalized public sector scheduled commercial bank.

4. The Informant stated that it had availed export credit of about INR 6.25 crores in 1995 from OP2 and OP2 had taken insurance cover for its export credit portfolio from OP1. IRDA vide its circular dated 13.12.2010 (“**IRDA Circular**”) specified certain conditions for providing export credit insurance service, which was fulfilled only by OP1. Therefore, OP1 was the only insurer in India which was permitted to provide export credit insurance facilities, especially export credit insurance to banks in India. Thus according to the Informant, the categorization of products and services offered by OP1 were distinct, commercially non-substitutable and non-comparable in any form with other insurance companies.

5. The Informant submitted that banks concluded insurance contract with OP1, to which an exporter was not made party, at a particular premium to cover their export credit portfolio from risks. If the exporter defaulted in making payments to the bank, the concerned bank invoked a claim with OP1 and OP1 settled the same in accordance with the terms of its insurance policy. Subsequent to settling the claim,



OP1 registered the name of the exporting company, its directors/ promoters/ sister concerns/ group companies in the Special Approval List (“SAL”) or defaulters list maintained by it. In some cases the defaulting exporting company and the bank negotiated a one-time settlement (“OTS”) following which procedure the bank repaid proportionate amount recovered from the exporter to OP1. However, prior to entering into an OTS, banks had to seek the consent of OP1. The Informant alleged that even in circumstances where the bank had cleared the name of the exporting company and issued no dues certificate, OP1 continued to maintain the name of the exporting company in the SAL. The Informant averred that as long as the exporter company and its directors/ promoters/ sister concerns/ group companies figured in the SAL, no bank would grant credit facility to any of them until the names were removed from that list.

6. It was also stated that an exporter was forced to accept supplementary obligations including making payment to OP1 for removal of name from SAL. Unlike an insurance company, OP1 secured all its risks by charging an insurance premium and then recovering all the payments made under insurance policy from the exporter company. Further, the Informant stated that OP1 imposed restriction on banks availing insurance cover for those exporters whose name figured in the SAL. OP1 vide circular dated 06.08.2007 (“**ECGC Circular**”) communicated to all banks that names of exporter companies figuring in SAL maintained by it would be retained for a period of three years; but in the present case the name of the Informant, its directors, promoters and sister concerns was appearing in the SAL since August 1999 and has not been removed despite several reminders. In the light of the above, the Informant alleged that by imposing unfair and discriminatory conditions on the sale of services by banks to exporter companies, OP1 was violating Section 4 of the Act. Further, OP1 was violating provisions of Section 3 of the Act, through its agreement with various banks, by imposing unfair condition of not extending trade credit to the Informant whose name appeared in the SAL.

7. The Commission considered the information, facts and data placed on record by the Informant. Trade credit insurance according to IRDA Circular, is a type of non-life insurance taken by suppliers of goods or services against risk of non-payment by their buyers situated in same country or different country, as a result of insolvency of buyer/non-payment after an agreed number of months after due date/non-payment following an event outside the control of buyer or seller.



According to OP1's website, OP1 provides export credit insurance facilities to banks and exporters. Therefore the relevant product market in this case would be market for provision of services of export credit insurance to banks. The relevant geographical market would be whole of India as the registration with IRDA entitled OP1 to provide insurance policies to entities across the territory of India. Therefore, the relevant market in the instant case would be market for *provision of services of export credit insurance to banks in India.*"

8. According to the information available in the public domain, OP1 is the seventh largest credit insurer in the world in terms of coverage of national exports. Pursuant to the IRDA Circular, OP1 was the only insurer in India permitted to provide export credit insurance to banks in India. Based on the above submissions, it can be concluded that OP1 was dominant in the relevant market as defined above.

9. The gist of the allegation of the Informant in this case was that even after the OTS with OP2 for export credit loan taken from it, OP1 refused to delete the name of the Informant from the SAL. Clause 6.2 of ECGC Circular is as follows *It has now been decided that no fresh exposure can be taken in respect of any exporter or group and they will not be delisted from the SAL if the Corporation has sacrificed the claim paid amount either in part or full, unless the entire claim paid amount is received by the Corporation.*" In OP1's letter to the Informant dated 10.11.2011, OP1 stated that since the claim paid amount was not fully realised they were not in a position to remove Informant's name from SAL. There was nothing on record before the Commission to suggest that OTS of the Informant with OP2 was approved by OP1. The legality of SAL was tested in *Export Credit Guarantee Corporation of India Limited v. A Jaya Kumar & Anr* (writ appeal no. 717 of 1999) and *Export Credit Guarantee Corporation of India Limited v. A. Vimal Kumar & Anr* (writ appeal no. 718 of 1999) before the Madras High Court. The High Court held that inclusion of name of the petitioners in the SAL did not amount to blacklisting and it was neither arbitrary, nor illegal and there was no violation of the principles of natural justice. Moreover retaining the name of Informant in SAL is in accordance with the terms of Clause 6.2 of the ECGC Circular, knowledge of which cannot be denied by the Informant when the credit facility given to the Informant by OP2 was insured by OP1. Based on the above discussion, *prima facie*, no case of violation of the provisions of Section 4 of the Act arises out against OP1. Further, *prima facie*, no case of violation of Sections 3(3) or 3(4) of the Act could be construed from the facts



of the case due to absence of any horizontal and vertical arrangement/agreement between the Informant and OP1.

10. For the reasons mentioned above, the Commission is of the opinion that there arises no competition concern actionable under Sections 3 or 4 of the Act and the case deserves to be closed under Section 26(2) of the Act. The case is therefore, hereby closed under Section 26(2) the Act.

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

New Delhi
Date: 12.02.2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
Member

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

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