



COMPETITION COMMISSION OF INDIA

Case No. 86 of 2014

In Re:

M/s Bhasin Motors (India) Private Limited

Informant

And

M/s Volkswagen Group Sales India Private Limited

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

Appearances: S/ Shri Apar Gupta and Tariq Khan, Advocates for the Informant.

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

1. The present information has been filed by M/s Bhasin Motors (India) Private Limited ('the Informant') under section 19(1) (a) of the Competition Act, 2002 ('the Act') against M/s Volkswagen Group Sales



India Private Limited ('the Opposite Party'/ OP), alleging *inter alia* contravention of the provisions of section 4 of the Act.

2. Facts, as gathered from the information, may be briefly noted:
3. The Informant is a company which deals with the distribution of cars in Delhi/ NCR regions. It is stated to be an authorised dealer of the Opposite Party for the territory of Delhi/ NCR regions. The Opposite Party is a company that manufactures and sells automobiles. It offers cars through dealerships in India. It operates as a subsidiary of Volkswagen AG.
4. It is stated in the information that a Dealer Agreement dated 10.02.2012 was executed between the parties and after a year another 'Basic Agreement for Sales and Purchase of Volkswagen Products' dated 09.05.2013 was executed between the Informant and OP for marketing, sales and service of the Volkswagen products. It is further stated that as per the Agreement dated 09.05.2013, the Informant was allotted the territory of Delhi/ NCR Region.
5. The Informant alleged that OP with a view to increase its sales and to the detriment and loss of the Informant, appointed another dealer *viz.* M/s Frontier Automobile Pvt. Ltd. in the vicinity of the Informant's showroom despite clearly demarcating the territories as agreed in their agreement. It is alleged that this has impacted the demand for cars from the Informant's showroom and was contrary to the agreed promises between the parties. It is further averred in the information that OP has discriminated between the dealers and has given higher targets to the new dealer as compared to other dealers.
6. The Informant stated that as per the said agreement it was required to establish a line of credit with OP to place orders for cars which would then be supplied by OP. This line of credit could be established either through



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the sanction of a line of credit by a financial institution or through the submission of a bank guarantee. It is further stated that OP, through its concern Volkswagen Finance Private Limited, sanctioned a credit facility on 04.02.2013 for a sum of Rs.18 crores in favour of the Informant but failed to disburse the funds. It also mentioned that the rate of interest which was payable under the terms of the said sanction letter was on a floating rate of interest at 12% per annum.

7. It is alleged that Informant was coerced by OP to extend the Bank Guarantee dated 31.08.2010 despite the sanction letter without any purpose. On this issue, the Informant submitted that the Line of Credit as per the sanction letter dated 04.02.2013 created several securities in the nature of, a) first charge by way of hypothecation over the financed cars, sales receivable, assets; b) personal guarantee of the directors of the Informant; c) corporate guarantee from the Informant; and d) four post-dated cheques of the Informant from each guarantor. In these circumstances, it is averred that there was no reason to keep the Bank Guarantee alive.
8. It is further alleged that during the month of January 2014, OP suddenly made demands for payments of penal interest @ 21 %. It is averred that not only the Informant was made to purchase the cars of OP but was also levied an excessive rate of interest on the line of credit @ 21 %. It is further averred that OP made false and fraudulent claims on the Informant for interest on delayed payments amounting to Rs. 5 Crores by levying a rate of interest @ 21 %.
9. The Informant submitted that as per their oral agreement, OP agreed to impose a maximum rate of interest @12%. To substantiate, a tabulation sheet was enclosed to show that accounts under which payments were made by the Informant were for principal with interest. It is stated that the



rate of interest which has been charged from 07.03.2011 has been at the rate of 11-12% and not 21% which is the current status.

10. It is alleged that a notice dated 08.10.2014 was served upon the Informant by OP wherein several disputes were raised. It is stated that in the said notice, OP has also sought to encash the Bank Guarantee.
11. It is also alleged that OP, by virtue of its dominant position in the market, has exploited the Informant by forcing it to sign a unilateral agreement. It is further alleged that clauses in the agreement were unfair and one sided and have excluded OP from any obligation and liability thereunder. It is averred that OP has unilaterally cancelled the dealership on false and fictitious facts.
12. The Informant submitted that OP's act of levying penal interest on goods sold to its dealers ultimately results in increase in prices which in turn affects the consumers. It is stated that the bank PLR (prime lending rate) is already at 18-12% and that the OP cannot charge the interest at the rate of 21-24% as penalty. It is further stated that such act of levying penal interest is an unfair trade practice which impacts the ultimate retail cost of cars as well as spare parts.
13. It is stated that as per the established business practice, dealers offer customers discounts on the MRP of cars which are in their inventory. It is submitted that OP's act of incorporating penal interest clause in the agreement impacts the benefits which may be offered by dealers to the customers.
14. Aggrieved by the above detailed alleged abusive conduct of OP, the Informant has filed the instant information.



15. The Commission has perused the material available on record besides hearing the counsel appearing for the Informant.
16. The Commission notes that the Informant was one of the authorised dealers of OP in respect of passenger cars manufactured by it. Further, the Informant is aggrieved by the termination of its dealership agreement by OP and appointment of another dealer *viz.* M/s Frontier Automobile Pvt. Ltd. in the same geographical area of its showroom. The Informant also appears to be aggrieved of the fact that its employees left and joined the new dealer.
17. On a careful consideration of the information and the material available on record, the Commission is of opinion that the issues arising out of and related to the dealership agreement between the Informant and OP such as unilateral terms and conditions, Bank Guarantee, high penal interest, higher sales target to M/s Frontier Automobile Pvt. Ltd. *etc.*, do not disclose any competition concern.
18. Even otherwise, from the information available in the public domain, it appears that OP has a very negligible share in the passenger car segment in India which is dominated by a number of players. As a result, in dealership network also, OP will not have much spread than that of Maruti, Hyundai, Tata *etc.* who command significant market share. In such a market construct, OP cannot be said to be a dominant player and as such the question of abuse of dominance will not arise. It may be noted that the Informant has not placed any material on record which may persuade the Commission to hold OP to be dominant in the market.
19. In view of the above, the Commission is of view that no case is made out against OP for contravention of the provisions of section 4 of the Act and



the information is ordered to be closed forthwith in terms of the provisions contained in section 26 (2) of the Act.

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

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi
Date: 11/02/2015