



COMPETITION COMMISSION OF INDIA

Case No. 88 of 2015

In Re:

Dr. Sudheesh Goel

House No. 3343, Sector – 23D, Chandigarh

Informant

And

Metropolis Health Care Limited

250-D, Udyog Bhawan, Hind Cycle Marg,

Behind Glaxo, Worli, Mumbai

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U.C. Natha
Member**

**Mr. S. Sahoo
Member**

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



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

1. The present information was filed by Dr. Sudheesh Goel (hereinafter, the “**Informant**”) under section 19(1) (a) of the Competition Act, 2002 (hereinafter, “**the Act**”) against Metropolis Health Care Limited (hereinafter, “**Opposite Party**”/“**OP**”), alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.
2. It is submitted that the Informant was running a pathology laboratory in name and style of Dr. Goel’s S K Diagnostic Centre since 1985 to 2011 in Chandigarh. Dr. Goel’s S K Diagnostic Centre is stated to be one of the leading pathology laboratories in the private sector in Chandigarh. OP is stated to be a non-listed company based in Mumbai and one of the private players providing pathological diagnostics services in healthcare sector in India.
3. It is stated that in 2011, OP approached the Informant and both entered into a Memorandum of Understanding (MoU). As per the MoU, OP was to take over the Informant’s existing business in Chandigarh. Along with the MOU, both parties also signed Business Transfer Agreement (hereinafter the ‘BTA’), Share Holders Agreement (hereinafter the ‘SHA’), Consultancy Agreement and Rent Agreement. As per the arrangement between the Informant and OP, the Informant agreed to transfer its interest in the existing pathology laboratory business in Chandigarh to OP and OP agreed to pay Rs. 6 lacs per annum to the Informant and 30% share in the profits.
4. It is alleged that the sole intention of OP was to capture the market share of the Informant by indulging him in multifarious corporate, financial and legal terminologies, in disguise of working together. It is alleged that as per clause 14 of the MoU under sub heading ‘non-compete’, the Informant was constrained not



to compete with the business transferred to OP for a period of 5 years. Accordingly, the Informant was restricted from pursuing his core specialized expertise earned through thorough study of Bio-Chemistry stream and experience gained after working 26 years in the relevant field, from the date of signing this agreement i.e. 29.08.2011 without any similar restriction on OP.

5. It is submitted that after signing the above mentioned agreements till date, the Informant has adhered to the non-compete clause despite the fact that OP has not adhered to the clauses of all the agreements including non payment of the agreed consultancy fee to the Informant as per clause 2 of the Consultancy Agreement. Taking undue advantage of indented non-compete clause in his favour, OP has started competing with newly formed joint venture company by opening a separate laboratory despite the fact that joint venture company has full-fledge laboratory in sector 22, Chandigarh. This, as per the Informant, has been done by OP with the aim to destroy one of the potential regional players (i.e. the Informant) in Chandigarh region.
6. It is alleged that by including unilateral limitation in the form of non-compete clause in the MOU and BTA, the OP has created barriers to new entrants in the market. It is further alleged that OP laid a trap to eliminate the Informant in the Chandigarh region diagnostics market which was an established player otherwise. It is also alleged that OP refused to pay the agreed sale price of the Informant's business citing reasons of low earnings and then from March 2015, consultancy fee payable to the Informant as per the Consultancy Agreement was also stopped by OP unilaterally.
7. It is alleged that OP used the Informant as a platform to enter into the regional market of Chandigarh and is now misusing Informant's brand value and market reputation by entering into various other arrangements with other local players like Malhotra Medical Laboratories Pvt. Ltd., Atulaya Healthcare Pvt. Ltd., Max



Super Speciality Hospital, etc. for sending the samples collected by them to its Mumbai based main Laboratory for examination.

8. In light of the above mentioned facts, the Informant has *inter alia* prayed for an order from the Commission under section 27 of the Act for declaring all agreement signed between OP and the Informant to be in contravention of section 3 and 4 of the Act. Besides, the Informant has also requested for an interim order under section 33 of Act, directing OP for releasing his consultancy fee regularly along with its arrear outstanding till date.
9. The Commission has perused the information and documents placed on record. From a complete reading of the facts presented in the information and the various annexures submitted by the Informant including the BTA, SHA, Consultancy Agreement etc., it seems that the dispute in the present case has arisen because of the estranged circumstances between private parties post-execution or non-performance of the contractual obligations. Apparently, the Informant and the OP entered into a BTA wherein the Informant was required to transfer its interest in the existing pathology laboratory business in Chandigarh to OP. As apparent in the terms of those agreements, there were reciprocal promises moving from OP to the Informant as is generally applicable to all such commercial agreements where the parties to the agreement agree to certain terms and conditions to safeguard their respective commercial interests in future. The impugned BTA included conditions like non-compete obligation on the Informant which required it not to compete with the transferred business for a period of 5 years. The Informant is aggrieved that OP has not been bound with the same condition of non-compete and that OP has expanded its business by opening Pathological Laboratories within Chandigarh.



10. Further, the Informant is aggrieved by the fact that because of the expanding business of OP in Chandigarh, the Informant and similar regional players (operating in the pathology laboratory business) are not able to compete with a big player like OP. The Informant has also mentioned that OP has defaulted in fulfilling its agreed promises under the various contracts entered into between them.
11. The Commission has examined the facts and allegations contained in the information. The Commission is of the view that the allegation pertaining to non-payment of consultancy fee is a purely contractual issue without any competition perspective. Similarly, the issue regarding the existence of non-compete obligation on the Informant without any reciprocal obligation on OP is devoid of any merit. It is apparent from the facts placed on record that the agreements were entered into between the Informant and OP for a consideration wherein the Informant was to receive an annual consultancy fee and a share in the profits for agreeing to such a condition. Admittedly, the Informant was receiving the consultancy fee till March 2015. The agreements were executed between the parties in the year 2011 and the Informant did not question the legality of such clauses for almost 4 years. It appears from the facts that the triggering point of the present information is the fact of non-payment of consultancy fee by OP to the Informant sometime in March, 2015. The BTA clearly states that the Informant transferred its business to OP for commercial reasons and valuable consideration comprising of money as well as 30% of the share in the transferred business. It is not the case of the informant that at the time of entering into this contract, OP was in a dominant position so as to impose this allegedly one-sided condition on the Informant. In view of the foregoing, the Commission is of the opinion that this issue raises no competition concern.



12. Further, the allegation regarding the inability of the Informant and other regional players to compete with OP because of the expanding business of OP in Chandigarh seems to be misplaced. The Commission is of the view that the issue itself is anti-thesis to the spirit of competition as enshrined under the Act. The Preamble and other provisions of the Act suggest that the objective of the Act is to protect the process of competition not the individual competitors.
13. Considering the aforesaid, the Commission is of the view that none of the allegations raise any issue which can be looked into under section 4 of the Act.
14. With regard to section 3 of the Act, the allegations appear to be misplaced. Section 3 of the Act deals with agreement, arrangement or understanding or action in concert among two or more entities, which causes or is likely to cause appreciable adverse effect on competition within India. None of the agreements raise any competition concern under section 3 of the Act as the available information does not show any appreciable adverse effect on competition.
15. Having regard to the foregoing, the Commission is of the opinion that the present case squarely pertains to contractual dispute between the Informant and OP without any competition issue involved therein. As such, the facts of the case do not highlight any competition issue which requires intervention.
16. No case of contravention of the provisions of the Act is made out against the OP under any of the provisions of the Act. The case is accordingly closed under section 26(2) of the Act herewith.



17. 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**

**Sd/-
(U.C. Nahta)
Member**

**Sd/-
(M.S. Sahoo)
Member**

**Sd/-
(Justice [Retd.] G.P. Mittal)
Member**

**New Delhi
Date: 17.11.2015**