



Case No. 96 of 2013

In re:

Rahul S DudheInformant 1
Dr. Priyanka R DudheInformant 2
Dr. Shomit SinghInformant 3
A 23 Goodwill Vrindawan, Behind Anand Park, Wadgaon Sheri, Pune - 411014

And

Dr. Batra's Positive Health Clinic Pvt Ltd. ...Opposite Party (OP)
2nd Floor, H. Kaltilal Compound, Andheri- Kurla Road, Sakinaka, Andheri (E)
Mumbai - 400072

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

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

Mr. S.L.Bunker
Member

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

The OP, a company registered under the Companies Act, 1956, was engaged in the activities of providing Homeopathic service (Homeopathic Health & Wellness Service) through its 89 clinics across India (as on 31 March 2012) having a turnover of around Rs. 96 crores. Dr Mukesh Batra was stated to hold 99% equity shares in OP which claimed to be "world's largest chain of homeopathic clinics". The Informants 2 and 3 were working with the



OP as consultant homeopathic doctors and Informant 1 was the husband of Informant 2 (collectively referred to as „the informants“).

2. The informants were primarily aggrieved by the alleged anti-competitive terms and conditions of the „Consultancy Agreement“ (hereinafter referred to as „the Agreement“) entered into between OP and newly appointed homeopathy doctors. The informants were also aggrieved by abuse of dominant position by OP in hiring the Homeopathy Doctors for its health clinics. These, as per the informant, resulted in contravention of provisions of Sections 3 and 4 of the Competition Act, 2002 (hereinafter referred to as „the Act“).

3. Briefly, the OP, at the time of hiring a doctor/consultant, required them to sign the Agreement which *inter alia*, required doctors to deposit with the OP an undated cheque for rupees 4 lacs in order to facilitate OP to recover the liquidated damages in case there is breach of any of the conditions stated in the said Agreement. Further 10% of professional fee was kept as retention money which was payable only after one year from the date of termination of agreement subject to the condition that the doctors did not practice in any of the cities where OP was having its clinic. This, as per the informants, amounted to abuse of dominant position. To substantiate the case, Informant 2 annexed the demand notice (for Rs. 4 Lacs) issued to her when she left the OP“s clinic for health reasons. It was alleged by the informants that the terms and conditions of the Agreement were highly onerous and anti-competitive as they restricted doctors from private practice and bound them to render multiple years of service (4 years in case of informant 2) to the OP.

4. The informants alleged that the OP held a dominant position in the market for provision for homeopathy services having 7.68% market share and considerable size and resources in the form of 89 operational clinics across India and economic power in terms of Rs. 96 crores of turnover. The informants also relied on OP“s self assertion of being world“s largest chain of homeopathic clinic to establish dominance. The informants also alleged that



because of OP's dominant position in the market for provision of homeopathy services, it commanded dominant position even in the market for hiring homeopathy doctors. OP was stated to have abused its dominant position by demanding an undated cheque, as highlighted before, and by forcing doctors to enter into an Agreement which contained non-compete clause restraining its doctors from practising homeopathy outside its clinics during the job tenure and one year after completion of tenure. Based on these allegations, the informants prayed for an inquiry into the matter to analyse the conduct of OP vis-à-vis the provisions of the Act, besides seeking other reliefs.

5. The Commission has perused the information on record. Considering the facts of the case, „market for hiring of doctors by homeopathy clinics“ seems to be the relevant product market. Since there is no restriction on doctors practising anywhere in India, the whole of India seems to form the relevant geographic market. The relevant market, therefore, will be „market for hiring of doctors by homeopathy clinics in India“. It may be noted that this market, i.e. market for hiring doctors, is a derived market for which the primary market is „market for provision of homeopathy services“. The informant has basically pressed on OP's market share, size and economic resources as indicative of its dominance. The OP, undoubtedly, own homeopathy clinics across India and is a renowned name in the market for homeopathy services. However, it is apparent from information available in public domain that there is no dearth of companies owning homeopathy clinics in India. There seems to be fierce competition in the market for homeopathy services having players like Baksons, SBL, Ayush and Schwabe competing with the OP and inter se. The information available in public domain suggests that the competitors of OP also own 100+ homeopathy clinics across India with high turnover and resources. Further, it may be noted that self claims by companies such as „world's largest“ or „world's best“ cannot be taken as self submission of dominance. Many companies/brands use such puffery statements to enhance their sale as part of their marketing strategy.

6. The market share, though not a conclusive proof, is a relevant factor in assessing an enterprise's dominance in the relevant market. OP held a small



share of the homeopathy market i.e. 7.68% as submitted by the informants. Further the kind of facilities owned by OP were also owned by some of its competitors. Even Baksons, SBL, Ayush and Schwabe (OP's competitors) have clinics across India.

7. Based on the foregoing, *prima facie* OP does not appear to be in a dominant position in relevant market of the provision of homeopathic services in India. Since, the Opposite Party is not a dominant player in that market; it cannot possibly be a dominant player in the market of hiring of the doctors for the provision of homeopathy services in India. On the basis of foregoing, the Commission is of the view that OP is *prima facie* not dominant in the relevant market within the meaning of section 4 of the Act; the question of abuse thereof does not arise.

8. To examine the allegations of the informant with regard to section 3 of the Act, the Commission analysed the Consultancy Agreement entered into by and between OP and the homeopathy doctors intending to practise with OP. It is true that generally the contracting parties are free to exchange mutual promises and obligations between themselves. However, the Commission may interfere with such contractual arrangements if they are in contravention of the provisions of the Act. Since OP *prima facie* does not appear to be dominant, the clauses may be examined for contravention of section 3 of the Act, if any. The relevant clauses of the Consultancy Agreement are reproduced below:

7. ***Non compete and non solicitation***

a. *The Doctor will not, either on his/her own or with/ through anyone else during the Term, and for a period of 1 (one) year thereafter, carry on practice as a homeopathic doctor or be employed by any person or either by himself/herself or with or through any other person, nor will associate himself/herself with any other clinics / doctors who, engage in any activity that competes with the business of the Company. The Doctor is not, and will not during the Term and for a period of one year thereafter, be associated with any consultant/advisor or act as an associate, partner, shareholder or any other clinic, firm, company, or any other entity engaged in the business or professional of /*



concerning homeopathy medical treatment or any other business that is in direct or indirect competition with the business of the Company.

- b. *The Doctor agrees and undertakes that during the period of one year from the date of termination, the Doctor shall not carry on practice as homeopathic doctor or be employment by any person or either by himself/herself or with or through any other person, nor will associate himself/herself with any other clinics / doctors, consultant/ advisor who, engage in any activity that competes with the business of the Company, within the vicinity where he/she was employed or transferred during the Term.*

9. A plain read of clause 7(a) and 7(b) of the Consultancy Agreement clarifies that any doctor who chooses to practice with the OP is restricted to practise elsewhere even after the termination of the arrangement. Such restriction may fall foul of the provisions of the Act under section 3(1) read with section 3(4) of the Act if they have an appreciable adverse effect on competition in India. Considering that the market for provision of homeopathy services and market of hiring of the doctors for the provision of homeopathy services in India appears to be quite competitive, the restrictive condition does not seem to have appreciable adverse effect on the competition in the concerned markets in India. Further there is no dearth of doctors practising homeopathy in India. Therefore, the Commission does not consider it appropriate to proceed further with this matter.

10. For the reasons stated above, the case deserves to be closed down under section 26(2) of the Act. The Secretary is directed to send a copy of the order to all concerned.

New Delhi
Dated: 11/02/2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member



Sd/-
(Anurag Goel)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. N. Dhingra)
Member

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(S.L.Bunker)
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