

## COMPETITION COMMISSION OF INDIA

Case No. 22 of 2010

Kapoor Glass Pvt. Ltd.

:

Informant

Against

Schott Glass India Pvt. Ltd.

:

Opposite Party

Date of Order: 29<sup>th</sup> March, 2012

**As per R. Prasad (separate order)**

### **Order under Section 27 of the Competition Act, 2002**

I am in agreement with the majority order in case of Kapoor Glass Pvt. Ltd. The facts of the case have been mentioned in that order and there is no need to discuss the facts again. But it is necessary to highlight some of the facts some of which are historical. Schott Glass Pvt. Ltd. entered the Indian market in 1998. There were five manufacturers of glass tubing in India namely Seraikalla Glass Works Ltd, Bharat Glass Tubes Ltd, Twincity Glass Pvt. Ltd., Kapoor Glass Ltd and Triveni Glass Ltd. Seraikalla Glass Works Ltd. closed down its business in 1996, Twincity Glass Pvt. Ltd. exited from business in 2007 and Kapoor Glass exited from the manufacture of glass tubing in 2008. Bharat Glass Tubes Ltd. was taken over by Schott Glass Pvt. Ltd. Triveni Glass Ltd. was taken over in 2010 by NIPRO a foreign company. The informant has alleged that all these manufacturers of glass tubes exited the market because of the superior technology of Schott Glass and because of predatory pricing followed by the said company. It was stated by the informant that the predatory pricing was done because Schott Glass was selling the goods at below the cost of production and also below the international market price. The market at that time consisted of glass manufacturers and converters who converted the tube into vials, cartridges etc. The converters used to





Rs.70lakhs was required by the O.P. But the O.P. discriminated by giving special discount to some chosen converters.

3. On 14<sup>th</sup> May 2008 a sister concern of Schott Glass in Germany took over 50% equity in Kaisha Manufacturing Pvt. Ltd. company belonging to Shapoorji Pallonji group. Thus a joint venture was formed between Schott packaging of Germany and the SP Group. The main idea of forming this joint venture was to capture the downstream market and remove the other converters from the downstream market. The business of this company prior to entering into the joint venture agreement was quite minimal but after it entered into a joint venture agreement, Schott Glass intended to nurture it. This was done in a roundabout manner by having a system known as target discount and functional discount. The other converters were getting target discount 2% to 12% whereas the joint venture was getting a discount of over 30%. Under the functional discount the conditions to buy Schott Glass were that the converter would promote O.P.'s tubing and that it would be not use the tube of any other manufacturer. Even the functional discount given to the joint venture was much more than that given to the other converters. The price fixed of the glass tube sold to the joint venture was at 2008 prices whereas the prices at which the tube was given to the other converters were at prices which were increased after 2008. In 2011 the price of tubing for the other converters was much higher than the price which was charged to the joint venture. As a consequence the profitability of the other converters decreased and in the long run they would be thrown out of the market and the entire business would go to the joint venture. The purpose of joint venture is therefore anti-competitive, as it was created to finish off competition in the downstream activity. As the joint venture arises out of an agreement for anticompetitive practices, the Commission is required to take action against the joint venture. Schott Glass as well as its joint venture told the other converters that they cannot sell the tubing at prices below that charged by the joint venture. This amounts to resale price maintenance and this is in contravention of Section 3(4) of the Competition Act. In 2010 the O.P. asked the converters to enter into a



market license agreement and marketing support agreement. By these agreements Schott Glass took upon itself the power of entering into the premises of the converters and examine as to whether they are dealing with the tubing of or the tubing of any other manufacturer. It was also found by the DG that in addition to the discount offered by the O.P.s the joint venture was getting a bonus at 20% of the sales from Schott packaging. This bonus was given to the advantage of the joint venture. This also put the joint venture in a better situation as compared to the other converters. There is no doubt that there was an abuse of dominance by Schott Glass and the majority has held this view. I agree with that view. It is also observed that Schott Glass wants a right of exclusive supply and if any converter bought tubing from any other source or any other manufacturers then Schott Glass would not supply any goods to the said converter. This is also a contravention of Section 3(4) of the Competition Act. It is also observed that fiolax clear and Amber Tubing meant mainly for export was given by the O.P. to the joint venture. This was also discriminatory. In the long run as the customs duty was 10% on imported tubes and as the O.P. would give discount to its converters it would work as an entry barrier for any other players to enter the market. This is so because the said players would have to match the prices as well as the quality of the O.P. in order to survive in the market. Further, D.G. has found during his investigation that the tubing given to the other converters was always in short supply and for this reason, the converters had to maintain a large inventory. This led to a strain on the financial resources of the converters which would lead to their exit from the market. Though technically, it is not refusal to deal but giving short supplies amounts to an element of refusal to deal. This is also a contravention of Section 3(4) of the Act.

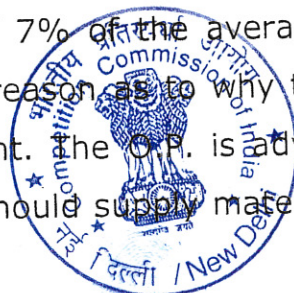
4. Before establishing that the O.P. had entered into anticompetitive agreements with the converters and the joint venture i.e. Kaisha, it is necessary to examine the factors mentioned in Section 19 of the Act. As there is a customs duty of 10% on imports and as there are agreements



which prohibit a converter from using the material of any other tube manufacturer and also through the system of discounts a barrier to the new entrants in the market has been created. It has also led to foreclosure of competition by hindering entry into the market. Thus clauses (a) and (c) of Section 19(3) are clearly attracted. Moreover by its refusal to deal and by its policies of discounts, for which various agreements have been entered into with the converters, the O.P. is working for the benefit of its joint venture. This would lead to the exit of some of the converters from the market. Thus, clause (c) of Section 19(3) is also attracted. The conditions of Section 19(3) for establishing appreciable adverse effect on competition (AAEC) in India are therefore satisfied.

5. Further, in view of the provisions of Section 48(1) of the Competition Act, the Commission has to proceed against the directors of the opposite party. These would be separate proceedings which the Commission would need to initiate after following the necessary procedure.

6. To sum up I agree with the majority view that there was a violation of Section 4 of the Competition Act as detailed in that order. But there are also contravention of clauses (a), (b), (d) and (e) of Section 3(4) of the Competition Act through various agreements, which the O.P. had entered with the other converters and the joint venture. There is also a barrier to entry. In the long run in the entire market in India the O.P. would become a dominant or a monopoly player in the upstream and the downstream products. This arises due to the various anticompetitive practices followed by the O.P. This practice followed by the O.P. requires that a large penalty should be levied on the O.P. Therefore I do not agree with the majority view that the penalty should be restricted to 4%. In my view penalty should be levied at the rate of 7% of the average turnover of the last three years. There is also no reason as to why the O.P. had refused to supply material to the informant. The O.P. is advised that it should not indulge in refusal to deal and should supply material to the informant. A



compliance report be submitted within two months of receipt of this order by the O.P.

7. The Secretary is directed to serve this order on the concerned parties.

sd/-

(R. Prasad)  
Member, CCI

Certified True Copy



SANJEEV KUMAR  
Asst. Director (C.S.)  
Competition Commission of India  
Government of India  
New Delhi

02/04/2012