

COMPETITION COMMISSION OF INDIA

Case No. 2/2012

Filed by

M/s Jakarso Pack Aids Ltd. & Ors

Informant

Against

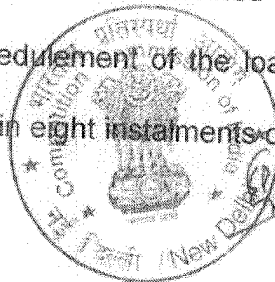
State of U.P. through
Principal Secretary & Ors.

Opposite Party

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

The information has been filed under section 19(1) of the Competition Act, 2002 (the Act) by the legal heirs of the deceased directors of M/s. of Jakarso Pack Aids Ltd. (the informant) against State of Uttar Pradesh through Principal Secretary (opposite party no.1), UP Financial Corporation, (UPFC) (opposite party no.2) and one Shri G.S. Bhatia (opposite party no.3).

2. The informant, M/s Jakarso Pack Aids Ltd. (JPAL), a Private Ltd. Company, incorporated under the Companies Act, 1956 was engaged in manufacturing of corrugated boxes and sheets. The said JPAL took a loan of ₹3,87,000/- on 08.09.1981 from UP Financial Corporation (UPFC) which was re-scheduled after JPAL was transferred to Late Shri Lal Chand Yadav, and others on 12.09.1988. The UPFC vide letter dated 23.01.1989 had informed the then director Late Shri Lal Chand Yadav about the re-scheduling of the loan and to make payment of the outstanding loan of ₹3,18,000/- in eight instalments of diverse amount till 15.11.92.



2.1. It is stated by the informant that due to natural calamities and other financial hardship, the said Shri Lal Chand Yadav defaulted in making the payment of two instalments. Consequently, a demand notice was issued to the informant according to which a sum of ₹3,73,795.60/- was shown due to the JPAL and this amount was required to be paid by 20.03.1993.

2.2. The informant has alleged that UPFC without waiting upto 20.03.1993, the period given to the informant to deposit the outstanding loan by the UPFC itself, and published an advertisement on 07.03.1993 in newspaper "Sandhya Dainik Amar Ujala" and invited sealed offers for the sale of immovable property of the JPAL. Last date for submitting the sealed offer was shown as 15.03.1993 in the said advertisement. Aggrieved by the aforesaid conduct of UPFC, the informant challenged the above action in the High Court of Judicature at Allahabad and the Hon'ble High Court *vide* Order dated 29.03.1993 stayed UPFC from proceeding further with the sale and directed the payment of dues in periodic installements. However, despite High Courts intervention informant still did not deposit the due amount in the manner as directed by the High Court and UPFC proceeded to recover its dues by sale of immovable assets of JPAL. Thereafter, the informant made a representation to the regional manager, UPFC to take an appropriate action so as to save the Informant's company. However immovable property of the JPAL was sold to Shri G.S. Bhatia, (opposite party no.3) in public auction at a price of ₹6,50,000/-. The informant alleged that the prevalent market price of the property was ₹12 Lac. The informant again approached Allahabad High Court which directed the UPFC to decide the representation of the JPAL within two weeks. On UPFC allegedly not deciding the representation of JPAL as directed by Allahabad High Court, a Civil Misc. Contempt Petition was filed by the informant against the UPFC. The Allahabad High Court discharged the contempt notice on 01.12.2009 holding that there was

substantial compliance of the writ order of High Court by the UPFC. After exhausting all these remedies, the informant through RTI applications obtained information relating to the outstanding loan, auction and bidding process etc.

2.3. On the basis of the information obtained through RTI applications, the informant had a feeling that a fraud was perpetuated on him by the opposite parties in connivance with each other, and the actual due balance against the JPAL was not ₹3,73,795.60/- as demanded by UPFC but a lesser amount.

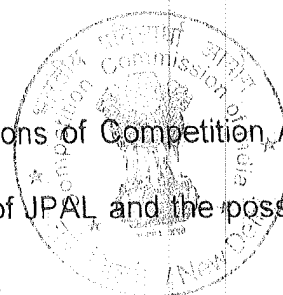
2.4. The informant, approached this Commission and alleged that there UPFC was a monopolistic enterprise and it abused its dominant position in connivance with opposite party no.3, allegedly the actual beneficiary of fraud and conspiracy. It is alleged that the detailed accounts for the period from 12.09.1988 to 28.09.1993, show that the entries with regard to repayment of ₹88,000/- towards the principle amount had not been shown. Further, UPFC had been misrepresenting and concealing material facts from the courts.

2.5 It is stated that it was a clear cut case of fraud by UPFC as well as opposite party no. 3 and both were liable to be prosecuted under the Indian Penal Code for forging the official record and high-jacking by legal means and illegally taking possession of the informant's running factory.

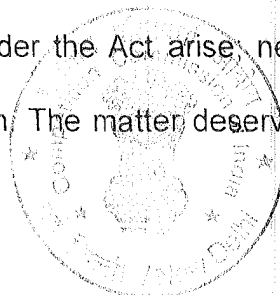
2.6 It is also alleged that despite the advertisement dated 07.03.1993, the tenders for sale of factory were invited in collusion with opposite party no.3.

2.7 The informant has made following prayers:

- i) That an inquiry be ordered under the provisions of Competition Act, 2002 for forcible, illegal taking over of the factory of JPAL and the possession of the same should be restored to the informant.



- ii) A general direction be issued to the opposite party no. 1 & 2, not to perpetuate fraud by malafide exercise of its powers on the innocent entrepreneurs like the informant in the future. In case, the above said prayer cannot be allowed, as an alternative to the above prayer, grant compensation of ₹40 lacs to the informant to be recovered from the opposite parties.
- iii) The trade inquiry under section 26(1) of the Act may kindly be held and the fraud perpetuated by opposite parties be detected and appropriate remedies may be granted to the informant.
- iv) Any other / modified relief which the Commission may deem fit in the peculiar facts of the case may also be granted in favour of the informant and the opposite parties be directed to comply with the same.
3. The information and documents filed by the informant make it clear that the informant considers that a fraud was played upon it by UPFC in auction of the property of JPAL and it discovered this fraud after seeking information under the RTI Act. The informant had been ill advised to move this Commission for abuse of dominance as alleged. The case of informant is absolutely not covered under any of the provisions of the Act. Even if a fraud had been committed upon it, the remedy would lie somewhere [✓] else and not by invoking provisions of the Competition Act which came into force in May, 2009 whereas the entire period of fraud is stated to be between 1988-1993. No competition issues under the Act arise, neither there is a prima facie case to be referred for investigation. The matter deserves to be closed and is hereby closed.



4. The Secretary is directed to inform all concerned accordingly.

Sd/-
Member (C)

Sd/-
Member (R)

Sd/-
Member (GG)

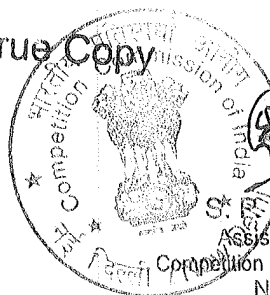
Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy



S. R. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi