COMPETITION COMMISSION OF INDIA

22.11.2011

Case No.64/2011

Filed by : M/s METHODEX SYSTEM LTD.,
607-608, Meghdoot, 94, Nehru Place,
New Delhi-110019 ... Informant

Against :
1. United Bank of India, Kolkata,
2. Bank of Maharashtra, Pune,
3. Syndicate Bank, Bangalore,
4. Bank of Baroda, Mumbai ... Opp. Parties

ORDER UDER SECTION 26(2) OF THE ACT

The applicant in this case is a Distributor and supplier of 'Note Sorting Machines.' He claims to have a 'Distributorship Agreement' for such machines with M/s LIAONING JULONG FINANCIAL EQUIPMENT CORPORATION (LJFEC) for India. He submitted that the 'Note Sorting Machines' of which he was Authorized Distributor, had been specially developed and designed for Indian Rupee. His machines have been successfully tested by authorized banks and institutions and he has been given certificate by these institutions about the excellent performance and accuracy of the machines. His grievance is that the Opposite Parties namely United Bank of India, Bank of Maharashtra, Syndicate Bank and Bank of Baroda, in recent past, had taken out tenders for supply of 'Note Sorting Machines' and in the tenders the aforesaid banks provided an eligibility criteria for the tenderers and this eligibility criteria was violative of provision of Section 3 and 4 of the Competition Act, 2002. It is submitted that aforesaid 4 banks were larger banks and have dominant position and they have abused their dominant position by providing such eligibility

criteria (as mentioned in the Tenders) due to which the applicant was not in a position to fill the tender.

2. The eligibility criteria given by each bank has been reproduced in the application. All the banks have provided that the tenderers should have past experience of similar work of supply of 'Note Sorting Machines' to RBI / Public Sector / Commercial Banks and other financial institutions. Each of the Banks has specified eligibility requirement of 3 years to 5 years experience. Except United Bank of India, other banks have also specified that the Firm should have made profits during last 3 financial years. All the banks have required that the tenderers must have supplied a minimum number of 'Note Sorting Machines' during last 3 years. This minimum number varies from Bank to Bank.

3. We have to examine whether providing of eligibility criteria in tender document amounts to violation of provisions of Competition Commission Act. Section 3 of the Competition Act is attracted only where certain agreement between the applicant and the opposite parties is in existence and it is alleged that the agreement was anti-competitive. Section 3 is not attracted in this Case since there is no agreement between the applicant and the respondent.

4. Section 4 of the Competition Act is about abuse of dominant position by an enterprise. Presuming, though not believing that the aforesaid 4 banks were having dominant position, what is to be seen is whether providing a condition in the tender of 'Minimum Eligibility Criteria' violates Section 4 of the Competition Act? The relevant provision of Section 4 of the Competition Act, Sections 4(1) and 4(2)(a) reproduced hereunder :-

4. "**Abuse of dominant position** -

4.1 No enterprise or group shall abuse its dominant position.

4.2 There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group

(a) directly or indirectly, imposes unfair or discriminatory-

(i) condition in purchase or sale of goods or service ; or

(ii) price in purchase or sale (including predatory price) of goods or service"

5. It is apparent from reading above provisions that a condition put by a dominant enterprise for purchase or sale of goods or services has to be unfair or discriminatory so as to attract Section 4 of the Competition Act. Putting an eligibility criteria for tenderers to fill the tender and providing for minimum experience of the similar kind and providing criteria of prior execution of similar nature of work, can be said to be discriminatory only if the eligibility conditions are quite stringent and have been prescribed to keep out a large number of players from bidding / filling Tenders. Every enterprise in the field, whether dominant or not, has a right to select a reliable and experienced supplier so that the services being provided by the supplier are efficient and reliable. Such conditions can be put in the tender document that supplier shall have a minimum experience of supplying similar equipment or a minimum turnover. However, if the eligibility criteria is shown to have kept out a large number of players in order to benefit only a few selected, the conditions can be considered unfair or discriminatory finding foul with Section 4 of the Competition Act. In the present case it is not even alleged that apart from applicant any other player in the field could not fulfill the condition due to stringency of the condition. Merely because

6. applicant was not eligible cannot be a ground to hold that the eligibility condition was unfair or discriminatory. Therefore, I consider that the eligibility conditions put in the tender were not unfair or discriminatory. It also cannot be said that the eligibility conditions were violative of Section 4(2)(c) i.e. resulting in denial of market access. The applicant already had market access and it is not that due to this condition his distributorship agreement has come to an end and no other bank or financial institution was willing to take machine from him. I therefore, consider that there is no prima facie case made out for referring the matter for investigation and it is a fit case for closing.

6. The matter is hereby closed.

7. Secretary is directed to inform the parties accordingly.

Certified True Copy

S.P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi

28/12/2011

Sd/-

(Justice S.N. Dhingra)
(Retd.)
Member

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