BEFORE THE
COMPETITION COMMISSION OF INDIA
[MRTP Case No. 161/2008]

Dated: 24.01.2012

In Re: Glass Manufacturers of India

Order under section 26(6) of the Competition Act, 2002

The present matter relates to suo-motu cognizance taken by the erstwhile Monopolies and Restrictive Trade Practices Commission (MRTPC) on the basis of an article published in the magazine 'The Outlook Business' dated 16th - 19th April, 2008 alleging cartel like practices of leading Indian manufacturers of float glass. Consequent upon the repeal of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), the case was received on transfer by the Competition Commission of India (the Commission or CCI) under section 66(6) of the Competition Act, 2002 (the Act).

2. The facts of the case, in brief, are as under:

2.1 The article under reference published in the magazine "Outlook Business" brings out the competing claims of Indian float glass manufacturers and float glass importers. In the said article, glass manufacturers have projected their concerns

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regarding cheaper imports from China and rising cost of inputs, which are allegedly eroding their competitiveness.

2.2 The said article also mentions that the float glass importers have alleged that the Indian Float Glass Industry is an oligopoly of three big manufacturers, namely Saint Gobain Glass India Ltd. (Saint Gobain), Asahi Glass Ltd.(Asahi Glass) and Gujarat Guardian Ltd. (Gujarat Guardian). The article also brings out that All India Glass manufacturing Association (AIFGMA), a representative body of the Glass Industry in India, is dominated by the these three float glass manufacturing companies.

2.3 It has also been alleged that the float glass manufacturers have been operating as a cartel since the mid 1990s and have been increasing prices and controlling supplies in the domestic market. Further their constant concerns over cheaper Chinese imports are just part of the strategies to ensure that imports do not impair their ability to control the domestic prices. The said article also brings out that the Commission for European Communities slapped a fine of Euro 486.9 million in November 2007 in case No.COMP/39165 on these leading glass manufacturers besides Pilkington (UK) for coordinating price increase and other commercial conditions for deliveries of float glass in the European Economic Area.

2.4 The article further mentions that it has been alleged by the glass importers that in mid-nineties a series of spikes in float glass prices was due to the concerted action of the three glass manufactures which led to imports from China and Indonesia. The AIFGMA took the matter of the said imports of float glass from China and Indonesia to the erstwhile MRTPC. The matter went upto the Hon'ble Supreme Court wherein it was held that MRTPC could not stop the imports.

2.5 It has also been alleged that at the behest of AIFGMA, Ministry of Commerce imposed anti-dumping duty in January 2003 for a period of five years on imports of select categories of 2 mm to 12 mm clear and tinted float glass from Indonesia and China. The Ministry of Commerce began its 'sunset review' in December 2007 as to whether to continue with the additional duties or not. According to the article, glass manufacturers were keen for continuation of the anti-dumping duties but also for widening its scope to cover other categories of glass.

2.6 The Article has also reported that according to 'Glass Yug', a leading magazine of Glass Industry, the prices of float glass increased from Rs.40/- per metre to Rs.50 per metre during the period between April to December, 2007 which was a result of the cartel like practices of leading Indian glass manufacturers.

3. DG (I&R), MRTPC and later on MRTPC, taking cognizance of the said article, initiated an inquiry in the matter. The inquiry instituted by DG(I&R) was challenged by All India Float Glass Manufacturers Association and Asahi India Glass by way of filing Writ Petitions in the Hon'ble High Court of Delhi. The Writ Petitions, however, were dismissed and the office of DG (I&R) continued with the proceedings. Replies were also received from AIGFMA, Saint Gobain and some of the importers. At this stage, consequent upon repeal of the Act, the case was transferred to the Commission under section 66(6) of the Act.

4. The Commission, having formed an opinion that that there exists a prima-facie case, directed the Office of Director General, (DG) vide its order dated 19.05.2010 under section 26(1) of the Act, to conduct investigation into the matter.

5. DG conducted investigation and submitted his investigation report dated 13.10.2010 to the Commission. After considering the aforesaid report of DG, the Commission decided to ask DG to collect additional information on certain issues. In compliance of the directions, DG submitted his supplementary report of investigation dated 26.09.2011 to the Commission.

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6. Investigation by DG

6.1 In course of proceedings, DG ascertained that float glass is a type of flat glass which is produced using float process. There are other processes also which are used in the production of flat glass like sheet and rolled processes. However, the Indian flat glass industry is primarily based on the float process.

6.2 DG called for information by issuing probe letters to various parties like AIFGMA, Gujarat Guardian Limited, Asahi India Glass Limited, Saint-Gobain Glass India Limited and other glass manufacturers. Information from leading processors and sources like 'Glass Yug Magazine' were also obtained. In addition, statements of certain key persons belonging to float glass manufacturing companies were also recorded.

6.3 In its reply before DG, Indian Glass Manufacturers Association (erstwhile AIFGMA) has submitted that the float glass industry has been witnessing both positive and negative growth over a period from 2005-2006 to 31st March, 2009 with real estate and automotive sectors being its major consumers. According to the submissions and replies of association, although float glass industry was having impressive growth in terms of production capacity and rising demand since 2005-06, there were also concerns with respect to rising input costs. This concern is also expressed in the annual reports of AIFGMA for the years 2008-09 and 2009-10, wherein it is reported that besides crude prices, the price of soda ash, another major raw-material in the glass industry, had also gone up substantially during the period under reference, causing increase in input cost.

6.4 The companies under investigation have also submitted before the DG that in the relevant period there was a rise in the input cost of raw materials and cost of power and fuel. The concern over higher input cost has also been expressed in the annual reports of all the three major companies- Asahi, Saint Gobain and Gujarat Guardian. These companies while denying the charges of collusion and cartelization have submitted that the industry is highly competitive in India. From the submissions of the companies, it has been found by DG that although there was an increase in price of float glass during the reference period, the cost of inputs had also gone up, which might have contributed to the price rise.

6.5 Gujarat Guardian in its reply to DG has submitted that it is engaged in the manufacture and sale of both float glass and mirrors. However, for the last three years it has produced only clear float glass of various thicknesses and not the tinted glass. It has been stated by the company that the industry has been witnessing strong growth and is expected to grow at healthy and competitive pace in the coming years. The company is also utilizing its capacity to the fullest and has sold nearly all the produced stocks in the relevant year. Further, for the last three years 2007-08 to 2009-10, it has been selling 100% of products in the domestic market and no export sales have been made.

6.6 However, according to the company, the price of its major raw material i.e. soda ash which has the contribution of about 25% towards the manufacturing cost had increased substantially in 2008-09 as compared to 2007-08. Although it was reduced subsequently in 2009-10, it remained above the price of 2007-08. According to the company, apart from an increase in the expense on raw materials, there was increase also in cost of power/fuel per metric tonne of production in the year 2008-09 and 2009-10, which contributed to overall increase in its manufacturing expenses.

6.7 The company has also informed that it markets its products through dealers' network and dealers who buy float glass from the company. The dealers are free to sell the product at a price decided by them unilaterally as no price list is issued by the company which is required to be adhered to.

6.8 In its reply before DG, Asahi India Glass Limited (AIS) has submitted that it has ventured into glass business in India in the year 2001 with the acquisition of Float Glass India Limited and is engaged in production of both clear float glass and various varieties of tinted float glass. On examination of the replies and data of invoices provided by the company for different varieties/specifications of float glass, DG has concluded that the prices of soda ash and power/fuel, which are the major contributors to the manufacturing cost of the company, had increased in 2009-10 as compared to 2007-08. Asahi India has also submitted it does not sell float glass directly to the consumers but through dealers to whom price lists are not circulated but verbally communicated. On the basis of submissions of the company, DG has submitted that although its average ex-works prices for the float glass for the last three years has shown an increase, it was in consonance with the increase in cost of inputs.

6.9 Saint Gobain Glass India Limited in its reply to DG has submitted that the article published in the magazine on the basis of which investigation has commenced is motivated and appears to have published at the behest of trade rivals/business competitors. It has been stated that glass Industry in India is highly competitive and there is a healthy inter-se competition among the manufacturers. It has also been submitted that the product is freely importable without any restrictions. As regards anti-dumping duties, the company in its reply has submitted that none of the importer/exporter at any stage has sought a midterm review with the Designated Authority for anti-dumping. Further, the Designated Authority has also found that the domestic industry has been unable to get fair return on its investment in its both original and sunset review investigation which indicates that there is no cartelization in the sector. In addition, some of the domestic producers alleged to be part of cartel are actually the importers of the products concerned. According to the company, in view of such a conflicting interest, cartel like situation is not possible.

6.10 The company has also submitted before DG that there was steep increase in the cost of soda ash and furnace oil which contributes to about 24% and 35% respectively of the manufacturing cost and margins on clear float glass continued to decline.

6.11 DG has also sought information from Glass Yug magazine on the issue. Based upon the materials published in the magazine in its issue of April-June 2010, it has been stated that Indian float glass industry is witnessing tremendous growth after the third quarter of 2009-10 recording a sales of 3500 tonnes per day. Glass Industry returned a growth at rate of 35- 36% during October-March 2009-10 and growth at the rate of 37.15% during April-June 2010-11. Besides new entrants in the industry are also gaining firmly. Earlier there were three float glass manufacturers in the country, namely, Gujarat Guardian Limited, Asahi India Glass Limited and Saint Gobain Glass India Limited. Float glass production has increased considerably by the entry of three new Indian float glass industries, namely, HNG Float Glass Limited, Gold Plus Glass Industry Limited and Sezal Float Glass Limited gaining a market share of 12.56% 8.94% and 7.49% respectively since 2008.

6.12 It has been noted by the DG that Gold Plus started commercial production from January 2009, HNG from February 2010 and Sezal from June 2010 though Sezal Glass Limited has been acquired with effect from 01.06.2011 by Saint Gobain Glass India Limited. With the entry of these new players the float glass production capacity in the country has increased from 3150 Tonnes per day (TPD) to 4760 TPD, an increase of over 51% within a period of two years (2009 to 2010). Not only has the capacity increased, additional capacities are also being created. According to DG, the successful entry of three new players reveal that there are no barriers to entry as new manufacturing firms have entered the market successfully increasing the additional capacity.

6.13 According to DG, Indian float glass manufacturers produce different variants of float glasses - clear float, tinted, reflective and mirror, with clear float glass segment leading the sales. DG has come to the conclusion that float glass production has increased considerably and glass industry is witnessing impressive positive growth rate since last decade except for some brief period of 2008-09. There is no withholding of production or supplies by the float glass manufacturers. The industry is energy intensive and prices of crude oil play a major role in deciding the cost of manufacturing and freight. The price of soda ash, an important raw material which has around 15 to 25% of share of manufacturing cost has increased during the recent years pushing the cost upwards. The trend of the prices of float glass does not reveal any unjustified aberration. It is fluctuating with the rise in input cost. The price increased substantially during 2008-09, the year which saw major hike in the price of crude oil.

6.14 DG has also noted that the concerned authority in Government while recommending imposition of anti-dumping duty had observed that the most significant cause of injury to the domestic industry had been the price under cutting and price under selling. As a result of lower landed value of imports of subject goods, the domestic industry had not been able to realize a fair and reasonable price for its products. The importers and other parties adversely affected by the anti-dumping duty also did not seek any midterm review of the aforesaid anti-dumping duty.

6.15 AIFGMA had filed a petition on behalf of Saint Gobain and M/s Float Glass India Ltd., Mumbai in accordance with the Customs Tariff Act, 1975 and Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 before the Designated Authority alleging dumping of float glass originating in or exported from China and Indonesia and requested for anti dumping investigations and levy of anti dumping duties. The Authority initiated anti dumping investigation for the period covering 01.04.2001 to 31.12.2001. As the result of the investigation, the Authority had concluded that the exporters from China and Indonesia indulged in dumping the subject products with the dumping margin ranging from 44% to 79% which has caused the domestic industry to suffer material injury.

6.16 DG has noted that some of the conclusions drawn by the Designated Authority regarding domestic market of the float glass during the period of investigation are relevant. The Designated Authority has found that the imports from other countries in comparison to domestic production in percentage terms have increased from 0.45% in the base year of the injury period to 4.25% and the market share of the domestic industry declined from 97.71% during base year 2004 to 93.49% during the period of investigation. The demand grew by 47% over the injury period, whereas the sales of the domestic industry in the domestic market grew by 59% and if captive consumption is included in sale, it grew by about 69%. The export sales of the domestic industry have also shown a significant increase. Thus, the sale of domestic industry did not suffer because of imports of goods form subject countries. Findings of the dumping authority also show that the levy of anti-dumping duty has not restricted imports in the country and has also not altered the conditions of competition for the domestic producers within the geographic boundaries of India. It does not appear that anti-dumping duty on imports from China/Indonesia can be said to have insulated the domestic industries from competitive pressure from outside and allowed them to have operated as a cartel in the country since imports from other countries on which no anti-dumping duty is levied, is also being made.

6.17 According to DG, the allegation in the matter appears to be based chiefly on the assumption of the parties affected by the imposition of the anti-dumping duties and there is no evidence on record that the domestic manufacturers had indulged in cartelization. DG has concluded that as suspected in the article published , increase in price of float glass due to cartelization during the period of investigation does not get substantiated. In fact, DG has noted that the float glass industry is having strong growth trend and in less than two years of their entry, the new players have gained a market share of around 30%.

6.18 DG has also come to the conclusion that the increase in market share of new entrants in float glass industries in a relatively very short period is a good indicator of healthy competition in the market. The increasing trend in prices appears to be on account of rising cost of inputs, basically raw materials, fuel and energy. However, factors like healthy competition and pressure from imports have kept rising prices in check.

6.19 DG in course of his investigation has also analysed price parallelism in the clear float glass segment which accounts for approx. 60-62% of the float glass market, by undertaking correlation exercise for the two variables- absolute prices and percentage change in prices of clear float glass. DG has noted that in terms of average monthly prices, there is very high positive correlation among the prices of clear float glass of established and some of the new players. Among the new players too, it has been seen that prices are highly correlated, although in case of one of the new players, there is also a very low or negative correlation between its prices and those of the other players.

6.20 On the basis of examination of data collected by him, DG has noted that the average monthly prices of some of the players are moving close to each other and there is some degree of price parallelism since prices tend to move in a band. However, according to DG, the price band is likely to exist in any industry since the price charged by a manufacturer in any industry would not deviate too far from the prices being charged by the other manufacturers. In order to determine the existence of a cartel, price parallelism must be supported by other evidence. However, the investigation could not find any corroborative evidence to establish that price parallelism was a result of any concerted action on the part of float glass manufacturers.

6.21 DG has also found that domestic float glass companies discover the best price they can command only in the market and their ability to seek a higher price would depend upon a variety of factors like the prices being offered by other manufacturers, capacity of a competitor to hold onto the desired price having regard to his inventory levels, cash flow requirements etc. On account of these factors, DG has concluded that the price of float glass appears to be determined by the dynamics of the market and do not appear to have been fixed by the float glass manufacturers. During the investigation, no evidence could be found to indicate that companies manufacturing float glass are acting in concert to fix the price of their products in the market place. DG has also noted that any attempt on the part of domestic manufacturers to increase the prices could be negated by the import of glass by traders and also by the processors.

6.22 DG has also brought out that firms try to form a cartel if they can jointly increase their profits. Therefore, their main focus is to increase their individual profits. Thus, it is necessary to check whether enterprises engaged in the float glass manufacturing are making profits. It has been noted by the DG that not all the players in all the segments are earning profits. DG has observed that while four of the players of the India glass industry are incurring losses, two are making overall profits even when in some segments they are making losses also. Among the established players also, DG has noted that not all of them are making profits. According to DG, one would not expect such a trend in a cartel where some of the parties of the alleged cartel have incurred losses, while profit of others has consistently declined over the period 2008-11. Based upon the profit analysis carried out by him, therefore, DG has concluded that there is no indication of existence of a cartel in the matter.

6.23 DG has also concluded that that the float glass companies have been supplying their products all over the country and not restricting their supplies to select regions. Further, as could be seen from the invoices of the processors seen during investigation, the processors are free to procure glass from all the manufacturers including the new glass manufacturers. Hence, no evidence of cartel in terms of allocation of market could also be found during the course of investigation.

6.24 While concluding that allegation of cartelization against the said companies does not stand established and evidences on record do not indicate contravention of the Section 3 of the Act in the matter, DG has also reported that the float glass industry in India is having strong growth trend. The three players who are alleged to be part of cartelization in the case although are the major ones in the market but new ones are also gaining the market share. Until the end of 2008, there were only three major float glass manufactures namely M/s Saint Gobain, Asahi India and Gujarat Guardian, but in the year 2009- 2010, three new players namely, M/s Gold Plus, Sezal Glass and HNG Float have entered the market which shows a healthy competition in the market. The entry and exit of players in the market appear to be determined by the growth opportunities and other related market dynamics.

6.25 DG has also found that out of the existing manufacturers of float glass in India only three are the members of All India Float Glass Manufacturers Association. The new market players are not their member which shows that the association did not play any role in any anti-competitive act and conduct. There does not appear to be any coordinated action amongst all the players using the platform of the association and no evidence could be found during the course of investigation to indicate that there is a concerted action on the part of few manufacturers to create/ exit barriers.

6.26 Taking into account all the facts and evidences gathered in course of investigation, DG has concluded that the allegation of cartelization against the glass companies does not stand substantiated and there is no case of any formal/informal understanding of fixing up of prices by glass manufacturers in the Indian Market in contravention of section 3 of the Act during the period of investigation.

7. The Commission has carefully considered the report of investigation submitted by DG in its various meetings. The Commission notes that the instant case basically relates to the allegations of cartelization by three Indian float glass manufacturing companies, namely, Saint Gobain Glass India Ltd. (Saint Gobain), Asahi Glass Ltd.(Asahi Glass) and Gujarat Guardian Ltd.(Gujarat Guardian) which were operating during the reference period with a view to increasing prices of float glass in Indian market.

7.1 The Commission observes that DG after conducting extensive investigation and analysis has concluded that no evidence of cartelization among these glass manufacturers could be found which may be said to have contributed to the price rise during the period under investigation. It has also been concluded by the DG that increase in prices during the period was due to increase in cost of inputs rather than due to an anti-competitive agreement among the glass manufacturing companies. In the absence of any evidence of an agreement or action in concert on record among the glass manufacturing companies, the Commission feels, there is no reason to disagree with the conclusions drawn by the DG.

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7.2 The Commission notes that it has been found by DG that in case of some of the raw materials like Soda ash which constitutes upto 25% of the manufacturing cost of production, the cost had increased during the period pushing the manufacturing cost upwards. The cost of other raw materials including power and fuel, which are used in the production of glass, had also increased substantially. In backdrop of these findings of DG, the Commission observes that the conclusions of DG appear to be correct that the reasons for increase in price of float glass during the period under reference was due to the increase in cost of raw materials and not due to any cartelization.

7.3 The Commission also notes that while the price of all float glass manufacturing companies behaved together in a band and there was a case of price parallelism as has been found by DG in course of investigation, especially among the established players, namely Asahi India, Gujarat Guardian and Saint Gobain, merely instance of price parallelism cannot be said to be an evidence of existence of any cartel agreement. The commission observes that it is not unnatural to have a band of price or a price range to exist in an industry since the price charged by a manufacturer or a trader would not deviate too far from the prices being charged by the others. However, in order to determine the existence of a cartel, price parallelism must be supported by an evidence of an agreement or collusion or action in concert. Since the investigation could not find any evidence to establish that price parallelism was a result of any concerted action or an agreement, the Commission holds that the float glass manufacturers cannot be charged with cartelization for the period under investigation in contravention of provisions of the Act.

7.4 The Commission also observes that cartel formation usually takes place to enable the companies to earn abnormal profits. However, in the present case DG has indicated that not only the new players have been incurring losses, but the established players had also either been incurring losses in some of the segments of the float glass or their profits had been declining over the period between 2008 and 2011. The Commission is of view that one would not expect such a trend in a cartel since there would be no incentive for the loss making firms to be part of cartels.

7.5 The Commission further observes that in a span of last two-three years after 2008, three new players – Gold Plus Glass Ltd., Sezal Glass Ltd and HNG Glass Ltd have successfully entered the market with significant capacities and have also gained substantial market share. The Commission feels that had it been a cartel like situation among the existing three major big players, any new player would have found it difficult to enter the market and successfully capture a good part of market share. The existing players did not seem to be in a position to create any barriers for other players to enter in the market or foreclose the market. The DG has also come to the conclusion that the increase in share of new entrants in float glass industries in a relatively very short period is a good indicator of healthy competition in the market. In view of these, the Commission feels that there is no evidence to establish that any appreciable adverse effect on competition was caused in the market of float glass due to any anti-competitive agreement among the Indian float glass manufacturers.

7.6 The Commission also notes that DG has also found during investigation that all the glass manufacturing companies have been supplying their products all over the country and to all processors. Therefore, no case of allocation of the markets amongst the glass manufacturing companies in order to earn profits and reduce competitiveness in the market is also made out.

7.7 The Commission further notes that DG has found that the float glass production has increased considerably and glass industry is witnessing impressive positive growth rate over the last decade except for a brief period of 2008-09. It has also been noted by the DG that Gold Plus started commercial production from January 2009, HNG from February 2010 and Sezal from June 2010. With the entry of these new players the float glass production capacity in the country has increased by about 50% within a period of two years. Not only has the capacity increased, but additional capacities are also being created. The imports from other countries also did not impact the overall sales in the Indian market which shows that there was a healthy growth of the domestic industry in these years. In fact, according to DG, because of the external market forces like imports of glass from other countries and three new entrants in the Indian market, the existing players were forced to absorb the additional input costs and reduce their profits. Thus, the Commission feels that it cannot also be concluded that the glass manufacturers acted to restrict the supply or production of float glass in the market to increase their profits.

7.8 The Commission also notes that DG in his investigation report had concluded that while imposing anti-dumping duty, the Designated Authority had observed that the most significant cause of injury to the domestic industry had been the price under cutting and price under selling. As a result of lower landed value of imports of subject goods from subject countries, the domestic industry had not been able to realize a fair and reasonable price for its products. The investments in the float glass industry are quite heavy and the low return achieved on the investment by the industry reflects the injury suffered by the industry. In fact it is also noteworthy that DG has found that the allegation of cartelization by domestic manufacturers was based chiefly on the assumption of the parties affected by the imposition of the anti-dumping duties.

7.9 The Commission notes that DG has drawn his conclusions based upon information from various parties like the old and the new float glass manufacturers, his analysis with respect to price parallelism and prices, cost price & profit, cost of production, market allocation and entry and exit conditions in the market. The examination of the senior executives and the chief executive officers of the float glass companies were also carried out to find any possible leads but DG could not find anything significant emerging out from these depositions. According to DG, the minutes of the Association of the processors (FOSG) also did not give any lead regarding the existence of cartel. The processors, who could be expected to be suffering from the alleged cartel, also did not furnish any evidence or documents by way of written submissions and statements, to support the alleged existence of cartel. DG has also concluded that the investigation carried out in the absence of any direct lead or evidence from the manufacturers/ processors could not find facts in support of the allegation of cartel like arrangement amongst the clear float glass manufacturers in India during the reference period.

7.10 In view of aforesaid and in the absence of any evidence of determination of price, limit on supply or production of supplies in the market or sharing/allocation of market arising out of any agreement or action in concert, the Commission feels that there is no reason to disagree with the findings of DG that no case of violation of provisions of section 3 is made out in the matter for the period under investigation and the proceedings deserve to be closed forthwith.

8. Secretary is directed to inform the parties accordingly.

Sd/-
Member (P)

Sd/-
Member (GG)

Sd/-
Member (G)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

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01/02/2012

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