

COMPETITION COMMISSION OF INDIA

10.06.2010

F.No.DGIR/2009/IP/10

UTPE Case No.35/2009

In Re: Lifecell International Pvt.Ltd., Chennai

Order

Consequent upon the repeal of the MRTP Act, 1969 this case has been received by transfer on 04.03.2010 from the office of DGIR, MRTP Commission under section 66 of the Competition Act, 2002.

2. Factual background of this matter is as under:-
 - 2.1 The opposite party Lifecell International Pvt. Ltd., Chennai (hereinafter referred to as 'LIPL') is engaged in the business of collecting, processing and storing of Umbilical Cord blood stem cell banking which is also termed as private stem cell banking. The main activity of the LIPL is to preserve the stem cell from the umbilical cord for the potential future medical benefit for a prescribed fee from willing parents. The parents are required to register with them by filling a 'Client Enrolment Form and Agreement'.
 - 2.2 The MRTP Commission on the basis of the brochure and client agreement of LIPL after taking cognizance of the fact that the company is representing that its 'Lifecell' is No. 1 Stem Cell Technology and claiming that it is the first and only accredited Cord Blood Stemcell Bank in India and has a technical collaboration with Cryo-Cell International, Florida, USA, directed the Director General (Investigation & Registration) vide its order dated 13.3.2009 to undertake a preliminary investigation into the aforesaid unfair trade practices indulged into by the LIPL. The MRTP Commission also found clause 12 of the Client Agreement of the LIPL which limited the liability of the company in case of any possible loss of specimen amounting to unfair trade practice as defined under section 36(A) of the MRTP Act.
3. DG (IR) on receipt of the order of investigation issued probe letter dated 27.4.2009 under section 11(1) of the MRTP Act, 1969 to LIPL and sought information/documents relating to the matter.
4. The LIPL filed its reply in response to the probe letter along with the requisite documents on 4.7.2009. The reply, in brief, is as under:
 - 4.1 The LIPL has introduced a new client agreement w.e.f. 8.4.2009 which has inter-alia replaced the supposedly offending Clause 12 with the new clause 11 to make the factual position in respect of the liability abundantly clear. LIPL has taken the stand that as the earlier clause has been replaced, the present

enquiry has become infructuous. It has also stated that even under the old agreement, the investigation should not have been proceeded on the basis of impugned clause 12 which is a limited liability clause in a contract between LIPL and the clients and the same cannot be construed as unfair trade practice under section 36 of the MRTP Act. It has also furnished names and addresses of many public and private banking Stem Cell companies that are having a similar clause in their agreement.

- 4.2 The claim of the LIPL that it is No.1 in Stem Cell Technology is absolutely true and correct but is irrelevant and beyond the scope of the order dated 13.3.2009 forwarded by the DG(IR).
- 4.3 The LIPL is not offering different terms and different fees to the clients. However, different payment plans have been devised and the client has the option to pay the amounts due under different payment plans which is applicable for storing of stem cells for a period of 21 years.
5. DG(IR) did not submit any preliminary inquiry report and treating the matter covered under unfair trade practice as well as restrictive trade practice transferred the same to the CCI.
6. The matter was considered by the Commission on 10.06.2010 on the basis of relevant material available on record.
7. It is seen from the record that the instant investigation has been transferred with the observation that :-
 - a) LIPL has claimed that its 'Lifecell' is No.1 Stem Cell Technology and it is the first and only accredited Cord Blood Stem Cell Bank in India and as this claim has not been substantiated, the said trade practice of LIPL amounts to unfair trade practice and it has thus, contravened Sec.36A(1)(i) (ii) (iv) and (vi), of the MRTP Act.
 - b) By introducing limited liability clause in Client Agreement it has imposed unjustified cost on the customers by manipulation of condition of provision of service which amounts to restrictive trade practice under section 2(o) of the MRTP Act.
8. On careful examination of the material available on the record it is borne out from the reply submitted by LIPL that it has supported its claim of "No.1 Stem Cell Technology" by facts & figures. The LIPL has been stated to be established in the year 2004 as one of the first and largest Stem Cell Bank and solution providers with the technical collaboration with CRYO – CELL International Florida, USA which is world's first and largest private Stem Cell Bank. It has also been stated that over the past 5 years the respondent has been maintaining itself as one of the leader in the industry and as many as sixteen thousand (16,000) samples were tested from the stem cell of human

umbilical cord and it has capacity to store over 1,00,000 samples as per the norms with US, FDA Standard. Besides it has also been stated that its storage facilities are accredited by American Association of Blood Banks, USA and it has as many as 35 network in India and abroad and also has marketing centres in major cities. It has also claimed to hold certificate from DSIR, Govt. of India for its R & D facilities and has obtained ISO – 9001 certification. Alongwith its reply the LIPL has submitted copies of accreditation from AABB and BSIR, approval from Director of Drug Controller, details of party benefited etc.

Considering all the facts & circumstances of the present case it is evident that there is nothing on record to show that the claim of "No.1 Stem Cell Technology" is false or the services provided by LIPL are not of the claimed standard. There is not an iota of evidence to support the objection of false representation by LIPL raised by the DGIR.

So far as the objection against limited liability clause in the Client Agreement is concerned, first of all the respondent company has already modified the impugned clause 12 of the Agreement and secondly, what has been objected upon is a contractual term which is normally found in a contract between the parties. On perusal of the record it is seen that many other companies operating in the same area are also having such limited liability clause in their agreement. Therefore, by having provided the impugned clause in the Agreement the LIPL cannot be said to be indulging in restrictive trade practice.

9. On the basis of the foregoing discussion and taking into consideration the facts and circumstances of the case, it is amply clear that no case is made out and the matter deserves to be closed, *and the Commission orders accordingly.*

Sd/- **Sd/-** **Sd/-** **Sd/-** **Sd/-**
Member (G) **Member (R)** **Member (P)** **Member (GG)** **Member (AG)**

Sd/-
(Chairperson)