

COMPETITION COMMISSION OF INDIA

Case No. 20/28 MRTPC

Dated 1-6-10

Shri Moharram Ali, Allahabad,  
Distributors Association for  
M/s. Balawant Singh & Sons.

complainant

v.

M/S Chelpark Company Limited.

respondent

Order

The present matter has been received by transfer from the office of DGIR, Monopolies and Restrictive Trade Practices Commission under section 66 (6) of the Competition Act, 2002.

Shorn of the details the facts of the case are as follows:

The complainant *vide* their complaint dated 30.11.2007 has stated that their Member Balwant Singh & Sons was distributor of the M/S Chelpark Company Limited. (the respondent) since 1974. He had deposited Rs. 250/- as security deposit in 1974, later it revised to Rs. 15000/- with interest of 14%. The complainant has stated that the respondent had stopped the supplies without settling the pending claims despite the notice being served on them.

1.2 The complainant had sent repeated notices and reminders to the respondent through the Association but the respondent allegedly neither returned the security nor the amount of interest over that. Thus the respondent did not take any concrete steps towards resolution of the matter. The complainant alleged the unfair and restrictive practice on the part of the respondent as per the Monopolistic and Restrictive Trade Practices Act, 1969 (MRTP Act).

2. The Director General of Investigation and Registration (DGIR) had undertaken preliminary investigation in the matter and *vide* their letter dated 27.03.2008 had called for comments from the respondent.

3. The respondent had furnished its reply on dated 11.08.2008. In the reply they have taken preliminary objection that the complainant has no *locus standi* to make the complaint for the complainant has neither signed the complaint nor authorized the complainant to file the said complaint. The Association did not even pass any resolution to file the complaint. They have also affirmed that the complaint is

time barred. The cause of action arose prior to 2001 but complaint was filed on 30.11. 2007. Further, the respondent had never denied the genuine claim of security deposit of the complainant which is only Rs. 32,931.20/-. They further stated that the complainant having *malafide* intention wanted to claim refund against the stock lying with the complainant to the tune of Rs. 36,980.48p i.e. paid up stock. They alleged that the complainant is demanding the aforesaid amount on the retail price whereas the stock was supplied to them on wholesale price. The respondent stated that they are ready to pay the genuine amount which is Rs. 32,931.20/- provided complainant returns the old stock pending with him.

4. DGIR *vide* its letter dated 25.03.2009 had forwarded copy of the reply from the respondent to the complainant and called for their comments within 7 days. The case has been transferred to Competition Commission of India under Section 66 of the Competition Act.

5. The respondent has refuted the allegations levelled by the complainant. The respondent submitted that the complainant's amount to the tune of the Rs.32,931.20/ is pending and he is ready and willing to refund it to the complainant. He has further argued that the complainant is demanding the amount on stock according to the retail price while the same was given to him on whole sale price. This demand of the complainant is against the business terms. Moreover, it is alleged by the respondent that complainant has not returned that above mentioned stock.

6. Section 2(o) of the MRTP Act defines restrictive trade practices as follows:

"restrictive trade practice" means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular,-

(i) which tends to obstruct the flow of capital or resources into the stream of production, or

(ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions.

7. The complainant has not filed any rejoinder and, therefore, has not controverted the averments made by the respondent in his reply. The respondent is agreed to pay the amount of the pending claim. The complainant has failed to establish any unfair trade practice on the part of the respondent.

8. Even otherwise the dispute between the parties basically arises from the terms of agreement between them. On the basis of allegations made no violation of the provisions of the concerned law appears to be made out nor the impugned action and conduct of the respondent company amount to restrictive trade practice. The

cause of action in this case has arisen in the year 2001 and the complaint has been filed at a highly belated stage in 2007 and no reasonable explanation has been offered for the delay. Therefore, the Commission is of the view that the facts as disclosed in the complaint are not enough to warrant a direction to the DG, CCI to cause any investigation in this matter. Resultantly the matter deserves to be closed.

9. Therefore, the case is hereby closed. The Secretary is directed to inform the parties accordingly.