

COMPETITION COMMISSION OF INDIA

Dated: 26.10.2010

Case No. 46/2010

Informant : Shri Pramod Kumar Arora

Opposite parties : M/s New Look Retailers & another

Order under Section 26(2) of Competition Act, 2002

1. The present information has been filed by Shri. Pramod Kumar Arora (hereinafter referred as 'Informant') against M/s New Look Retailers and its Managing Director Mr. Tom (hereinafter referred as 'opposite parties') under section 19 of the Competition Act, 2002 (hereinafter referred as 'the Act')

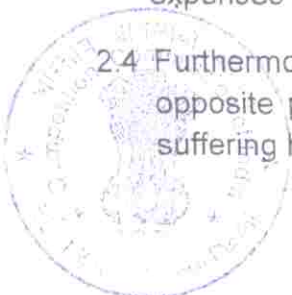
2. The facts, in brief, as stated in the information are as under:-

2.1 The Informant is the sole proprietor of M/s Flying Fashions *inter alia* engaged in the business of manufacturing and export of ready-made garments. The opposite parties are the importer and customer of the Informant. The Informant has been dealing with the opposite parties since year 2003 and more than 95% of the production capacity of the Informant was utilized by the opposite parties.

2.2 In the year 2005 the Managing Director of opposite party no. 1, Mr. Tom visited the factory of the applicant and requested the Informant to increase the production capacity to 1,00,000 pieces per month and also gave guarantee of minimum order of 1,00,000 pieces per month after the expansion of production capacity.

2.3 Based on the assurance of the opposite parties the Informant took loan from the financial institution/bank for expansion of infrastructure in order to increase its production capacity from 75,000 pieces to 1,00,000 pieces per month. However, in violation of the mutually agreed terms, the opposite parties failed to fulfill their commitment for placing orders for minimum 1,00,000 pieces of garments per month. Consequently the Informant suffered losses in terms of increased overhead expenses and high interest rate on the loan taken for adding infrastructure.

2.4 Furthermore, the Informant in order to keep the production capacity free for opposite party refused the orders of other customers and consequently ended up suffering huge financial losses.



- 2.5 On the basis of the above, the Informant has alleged that the opposite parties are engaged in unfair trade practices, anticompetitive practices and abuse of dominant position and have thus violated provisions of section 3 and 4 of the Act.
3. The Informant has prayed that the Opposite Parties should be held guilty of contravening section 3 and 4 of the Act and they be directed to pay for the loss of profit incurred for the year 2006 – 08 alongwith compensation and damages.
4. The matter was considered by the Commission, in its meeting held on 09.09.2010 and the Informant was asked to appear on 28.09.2010 to explain the case. Mr. Bhupesh Tiwari, Advocate on behalf of the Informant appeared before the Commission on 28.09.2010 and on his request the case was adjourned for 30.09.2010. On 30.09.2010 Mr. Bhupesh Tiwari, Advocate sought further time to file the details/submissions. The Informant filed additional information on 19.10.2010 which was considered by the Commission in its meeting held on 26.10.2010.
5. The Commission has carefully considered the allegations made in the information in the light of material available on record.
6. The main grievance of the informant is that in year 2005 acting on the promise of the Managing Director (Opposite Party No.2) of M/s New Look Retailers (Opposite Party No.1) to buy minimum 1,00,000 pcs. of garment per month he raised the production capacity by taking loan for expansion of infrastructure but the opposite parties failed to honor their commitment and thereby he suffered huge financial losses.
7. It is evident that cause of action of the Informant emanates from the alleged breach of promise made by the Opposite Parties which by itself is not sufficient to bring the conduct of the Opposite Parties within the ambit of the Competition Act. The Informant has entirely failed to show how the alleged breach can be said to be anti-competitive. Even otherwise no document has been placed on record to show that the Opposite Parties guaranteed purchase of minimum 1,00,000 pcs. from the informant. Similarly, not an iota of evidence has been adduced to show that the Opposite Party No.1 is in a dominant position in the relevant market and has abused its position.
8. Additionally, on close scrutiny of the material available on record it is apparent that the alleged conduct of the Opposite Parties relate to a period which is prior to coming into force of section 3 and 4 of the Act. On this ground also the information is not maintainable.



9. In view of the foregoing discussion, the allegations made in the information do not fall within the mischief of either Section 3 or Section 4 of the Act. Therefore, the Commission is of view that the information filed by the Informant and the material as placed before the Commission do not provide basis for forming a, *prima facie*, opinion for referring the matter to the Director General (DG) to conduct the investigation. The matter is therefore, liable to be closed forthwith.
10. The matter is therefore closed under Section 26(2) of the Competition Act, 2002.
11. Secretary is directed to inform the informant accordingly.

Certified True copy



(SP) 20/11/2010

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Government of India
New Delhi