COMPETITION COMMISSION OF INDIA

Case No. 71/2010

Dated:07.04.2011

Informant	:	Shri Ravindra Badgaiyan
Opposite parties	:	M/s Bureau of Indian Standards (BIS)

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

The present information has been filed Under Section 19 of the Competition Act, 2002 (hereinafter referred to as the Act) by Shri Ravindra Badgaiyan (hereinafter referred to as the 'informant') against M/s Bureau of Indian Standards (hereinafter referred to as the 'BIS') alleging contravention of section 3 and 4 of the Act.

2. The facts of the case, in brief, as provided in the information are as follows:

2.1 The informant is a manufacturer of Vermicompost bed, which is a tub like structure (12 ft long, 4 ft wide and 2 feet deep). These beds are filled with cow dung, organic waste and earthworms for making organic manure. Vermicompost beds are made by laminated HDPE Fabric.

2.2 BIS, a government enterprise under the Department of Consumer Affairs, Ministry of Consumer Affairs, Agriculture, Food & Supplies and Public Distribution and has been established by Bureau of Indian Standards Act, 1986.

2.3 BIS is exclusively mandated with setting up of and regulation of Standards that govern various products, processes as well as some services. As per the informant, if the BIS has set a certification standard for a product then that product cannot be produced or manufactured and thereafter introduced within the Indian market without the mandatory certificate. This, therefore, implies that whenever certification is required for any product, this standard becomes integral part of the production process of the said product.

2.4 As per the informant, the BIS on account of its statutory mandate is enjoying a dominant position in the market. It has been stated that BIS brought out a standard i.e. IS code for HDPE Vermicompost Bed (IS 15907:2010) in the month of Feb 2010. BIS set certain technical quality parameters for this bed and also created a document called STI

(Scheme of Testing & Inspection). STI is a scheme for testing & inspection to ascertain whether the unit fulfils technical quality requirements of the IS code (IS-15907). Therefore, the license for manufacturing Vermi bed can be granted only if the parameters listed in the STI are satisfied.

2.5 It has been alleged by the informant that even though the BIS has not issued standards for the fabric required for the production of Vermicompost bed, it is not granting licenses to the eligible manufacturers unless conditions provided in the 'Policy Guidelines' in respect of fabric are met. The informant was also not granted license for manufacturing of Vermi beds of BIS specification and was informed by BIS that license can be granted only when following conditions are fulfilled :-

a. A unit having its own facility for making HDPE Fabric and manufacturing of bed from the same fabric can apply for IS certification.

b. A unit not having own facility of making HDPE fabric but having a facility for the manufacturing of bed, provided that the laminated HDPE fabric is procured by the unit from a licensee of IS 15907.

2.6 It has been stated by the informant that though there are large number of micro, small and medium units who purchase fabric from producer and make these beds but there is only one manufacturer who produces HDPE Fabric and also makes beds with it. Therefore, the aforesaid conditions of the policy are tailored to favour a particular private company who is making HDPE fabric and is the only licensee of IS 15907.

2.7 As per the informant the production of the Vermicompost bed starts from the point where the fabricator procures the raw material i.e. fabric. It has been alleged that by prescribing the eligibility conditions in 'Policy Guidelines' the BIS is, in fact, forcing the manufacturers of Vermi beds to buy fabric from the sole producer who is himself a competitor. The above conduct of BIS is clearly abuse of its dominant position in violation of section 4 of the Act.

2.8 It has also been alleged by the informant that the BIS has also violated the provisions of Section 3 (4) of the Act as it is an enterprise which is an indispensible part of the production chain of the Vermicompost beds and the policy of the BIS benefits only one and the same private manufacture of Vermicompost bed.

3. The matter was considered by the Commission in its meeting held on 04.01.2011 and 01.02.2011. The informant appeared before the Commission in the meeting dated 01.02.2011 and made oral submissions. The informant was allowed to file certain

additional information and it was also decided to send a copy of the information to the BIS for seeking their comments.

4. The informant filed additional information on 01.02.2011 and 17.02.2011. The BIS also filed its reply vide letter dated 01.03.2011. The representatives of the BIS also made oral submissions on 22.03.2011. Finally, the matter was considered by the Commission in its meeting held on 07.04.2011.

5. The gist of reply filed by BIS is as under :-

i. The informant had applied for grant of license for HDPE woven beds for Vermi culture as per IS 15907:2010. During scrutiny of the application it was noticed that the informant did not have the facility for lamination of the HDPE fabrics as required in terms of clause 4.3 of the Indian Standard.

ii. Since the standard specifies minimum thickness of lamination in clause 4.3.1 and 4.3.2 of the standard and it can be measured at the time of its manufacturing, it becomes inevitable for the manufacturer to have the facility of lamination of the HDPE fabric.

iii. Considering the issue relating to non-availability of lamination facility with the manufacturers of HDPE woven beds for Vermi culture, BIS issued note No.2 in June, 2010 vide amendment No.1 to the existing scheme of testing and inspection. Note No.2 reads as follows :-

" In case of purchase of laminated HDPE fabric from outside, it shall be purchased from a BIS licensee for HDPE woven beds for Vermi culture. Each lot/consignment shall be accompanied with test certificate indicating conformity of the Control Unit No.(s) in the supplied lot (consignment) to IS 15907. Record(s) of such certificate(s) shall be maintained. "

iv. Subsequent to the said amendment the informant approached BIS and insisted that permission for purchase of laminated fabric from open market be granted to him claiming that he would demonstrate in his lab that such laminated fabric meets the requirement of IS 15907.

v. BIS considered the request of the informant and afforded him an opportunity to demonstrate his claim before a team of three officers conversant with the subject. However, the informant failed to demonstrate his claim regarding thickness of lamination as required in sub clauses of 4.3.1 and 4.3.2. Therefore, the application of the informant could not be processed further.

vi. In response to the query raised by the Commission the BIS has submitted that certification only for the laminated fabric according to IS 15907:2010 is not feasible

as the license is granted against an Indian standard for a specific product only. It has also been submitted by BIS that presently three licenses are in operation viz. Lami Fab & Papers Pvt. Ltd. Aurangabad, Maharashtra; Neo Corp International, Pithampur, M.P. and Jay Poly Tarp Industries, Silvassa and all are having manufacturing facilities for lamination of fabric.

6. The Commission has considered carefully all the allegations made in the information, the entire material available on record with regard to the facts of the case and the additional information filed by the Informant and the reply filed by the BIS. It has also been noted that the informant, through various emails, has requested the Commission to close the matter.

7. On scrutiny of the matter, it is observed that BIS cannot be said to be engaged in any activity relating to production of Vermi beds. BIS has been established under the Bureau of Indian Standards Act, 1986 for the harmonious development of the activities of standardization, marking and quality certification of goods. Therefore, the question of its being part of production chain in respect of Vermi beds does not arise. Thus, the contention made by the informant with regard to the violation of section 3(4) of the Act by BIS cannot be accepted.

8. The informant has alleged that by abusing its dominant position the BIS is contravening the provision of section 4 of the Act. It has been alleged that although IS 15907 has prescribed standards for Vermi beds only but BIS through its policy guidelines is forcing the manufacturers of Vermi beds either to install capital intensive manufacturing unit for laminated HDPE fabric or to procure it from the sole manufacturer of such fabric who also happens to be the competitor in the Vermi bed market. As has been seen above that the BIS is not engaged in any activity relating to production of Vermi beds, therefore, it cannot be said to be dominant in the Vermi bed market. Further, the allegation of the informant that conditions specified in policy guidelines are tailored to favour Lami Fab & Papers Pvt. Ltd. appears to have no substance in context of the submission made by BIS that at present three licensees are having manufacturing facilities for lamination of the fabric.

9. It is evident that BIS has specified certain standards for manufacturing Vermi beds with a view to maintain quality, as part of their duties/functions under the Bureau of Indian Standards Act, 1986. Any enterprise which is capable of producing Vermi beds which are compliant with the specifications provided by IS 15907 is eligible to get the certification from BIS. There is also no compulsion by BIS for purchasing material from any specific company. Thus, the market for Vermi beds continues to be a competitive

market, with certified as well as non-certified products available. This gives a choice to the consumers in terms of the quality of the product they want to buy, and an option to the producers to market certified and/or non-certified products. Therefore, it cannot be held that above conduct of BIS in setting the standards is unfair and constitutes an abuse in terms of the provisions of section 4 of the Act.

10. It is thus evident that as the BIS is neither dominant in the market of Vermi beds nor its alleged conduct can be said to constitute abuse, the allegation with regard to violation of section 4 of the Act by BIS has no force. Further, BIS is not engaged in any production activity. It is primarily a Standard setting organisation whose activities would normally be not covered under the Competition Act, unless there are strong grounds to suggest otherwise.

11. In view of the foregoing discussion, no case of violation of either Section 3 or Section 4 of the Act is made out against BIS. 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. Thus, the matter is liable to be closed.

12. The matter is, therefore, closed under Section 26(2) of the Competition Act, 2002.

13. Secretary is directed to inform the informant accordingly.

Certified True Copy

09/5/2011

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New Delhi