

COMPETITION COMMISSION OF INDIA

Case No 52/2011

Dated:12.10.2011

Information filed by:

M/s P-TEX Builders Pvt. Ltd.

Information Against:

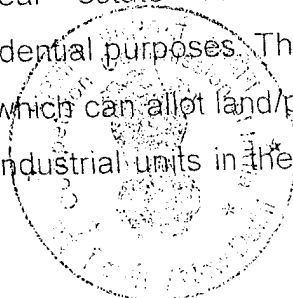
1. M/s U.P State Industrial Development Corporation, Kanpur
2. Zonal Forest Officer (Social Forest Division), Ghaziabad, U.P

Order under Section 26(2) Of The Competition Act, 2002

The instant information has been filed by M/s P-TEX Builders Pvt. Ltd, New Delhi (hereinafter referred to as the 'Informant') on 05.09.2011 under Section 19 of the Competition Act, 2002 (hereinafter referred to as 'the Act') against U.P State Industrial Development Corporation, Kanpur (hereinafter referred to as the Opposite Party No.1 or UPSIDC) and Zonal Forest Officer (Social Forest Division), Ghaziabad, U.P (hereinafter referred to as the 'Opposition Party No.2) *inter alia* alleging the contravention of the provisions of Section 3 and Section 4 of the Act by the Opposite Parties.

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

2.1 The Informant is a Company registered under the Companies Act, 1961 and is engaged in the business of real estate including development of plots/land/projects for industrial & residential purposes. The Opposite Party No.1 is a statutory body in the state of UP which can allot land/plots/sheds/buildings to entrepreneurs for setting up of their industrial units in the state of UP, whereas,



the Opposite Party No.2 is the sole body to allow the cutting of trees in the state of UP.

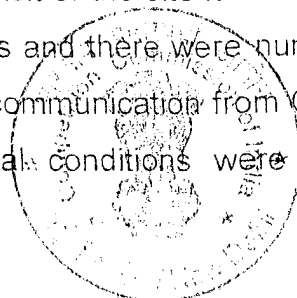
2.2 As per the Informant, on 20.12.2000, Opposite Party No.1 issued a public notice inviting bids from developers, entrepreneurs – associations and societies for development of 33 acres of land, situated at Loni Road, Mohan Nagar, Ghaziabad(U.P), which was meant for industrial/institutional purposes.

2.3 It has been alleged that an allotment letter dated 09.02.2001 was issued by the Opposite Party No.1 to it wherein certain unilateral and arbitrary conditions were imposed, which were contrary to the proposals made by the Informant and duly approved by the Opposite Party No. 1 in its Tender Committee meeting, held on 29.01.2001. As per the said conditions, the Informant was required to adopt the layout plan approved by Ghaziabad Development Authority (GDA) whereas, there was no such condition imposed when the proposal of the Informant was approved by Opposite Party No.1.

2.4 As per the Informant, when it approached the GDA, it was informed that GDA has already delegated its powers to Opposite Party No.1, and it has no role to play in sanction of layout plans. It has been alleged by the Informant that Opposite Party No.1 deliberately and intentionally incorporated above clause so that the Informant may not be able to start work which tantamount to unfair trade practice on the part of Opposite Party No.1.

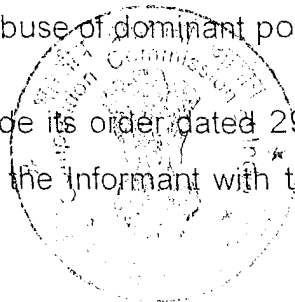
2.5 It has been further alleged that on 24.02.2001 the Opposite Party No.1 accorded the approval of layout plan but imposed two new conditions viz; to keep provisions for service road in between the plots and also to keep a minimum open area of 10% in the layout plan, an act which amounts to abuse of its dominant position by adopting unfair trade practices.

2.6 The Informant has also alleged that on visit of the site it had been found that the land was not free from all encumbrances and there were number of trees grown up in the plot. On 03.03.2001, another communication from Opposite Party No.1 was received, wherein other additional conditions were imposed; such as



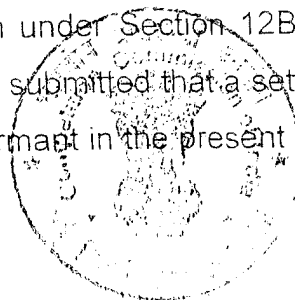
providing space for making arrangement for supply of electricity and installation of electricity sub-station in between the plots, to make arrangement for necessary landscaping and plantation in accordance with environment laws etc.

- 2.7 As per the Informant, the Opposite Party No.1 abused its dominant position by adopting unfair trade practice as the said plot/site allotted by Opposite Party No.1 to the informant, was not free from encumbrances. There were dues of Municipal Corporation Ghaziabad, pending against the Opposite Party No.1 and also number of trees had grown in the Plot/site for which the necessary permission to cut the trees was yet to be accorded by Opposite Party No.2.
- 2.8 As per the Informant, the Opposite Party No.1 had thrust upon the Informant to receive legal approval from the Executive Engineer, PWD Ghaziabad (EE) for reaching the plots which was denied by the EE and the Informant was further directed by EE to revise its layout plan.
- 2.9 As per the Informant, all of its efforts to develop the plot/site, in accordance with the terms of allotment letter dated 09.02.2001 and duly approved layout plan, were shattered and thwarted, when permission by the Opposite Party No.2, to cut the trees was refused vide its letter dated 27.04.2001 on the ground that the plot/ land falls under the category of forest area, in terms of the orders dated 12.02.1996 passed by the Hon'ble Supreme Court of India.
- 2.10 It has been contended by the Informant that it suffered a total loss of Rs.7,75,11,175.00/- on the said project. However, despite its own wrong, the Opposite Party No.1 vide letter dated 08.08.2001 cancelled the allotment of the plot. It has also been alleged that the said act of the Opposite Party No.1 amounts to abuse of dominant position by it.
- 2.11 Being aggrieved by the conduct of the Opposite Party No.1, the Informant filed a petition before the Monopolies and Restrictive Trade Practice Commission ('MRTPC'). During the pendency of the proceedings, although the counsel for the Opposite Party No.1 offered a settlement proposal, he did not file any such proposal before the MRTPC. As per the Informant, the said conduct of the Opposite Party No.1 also amounts to abuse of dominant position.
- 2.12 The Competition Appellate Tribunal vide its order dated 29.03.2011 disposed of the compensation application filed by the Informant with the observation that in



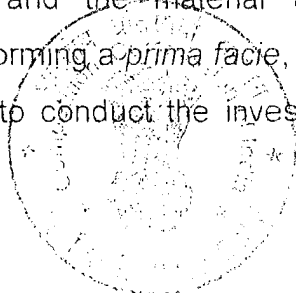
the absence of the separate proceedings, alleging unfair monopolistic or restrictive trade practice, an application for compensation u/s 12 B of the MRTP Act was not maintainable.

3. The Commission considered the matter in its meeting held on 14.09.2011 and decided to give an opportunity to the Informant to present its case. The matter was again considered by the Commission on 12.10.2011, when Shri Arun Jain, Managing Director of the Informant Company and Shri A.N Aggarwal, Advocate appeared and explained the case.
4. The Commission has carefully gone through the information filed by the Informant, the arguments of the Advocate and the other relevant materials available on the record.
5. The Commission observes that it was in 2001 that UPSIDC had allotted plots of land at Ghaziabad to the Informant, in pursuance to the tenders for the allotment of industrial plots issued in December 2000. Certain conditions were imposed while approving the lay out plan submitted by the Informant. The Social Forest Division, Department of Forest, UP, also refused permission to cut down the trees grown on the site of the plot in accordance with the directions of Hon'ble Supreme Court. The Govt. of UP cancelled the allotment of the plot vide letter dated 08.08.2001, informing the informant that it was being done since reservation money of Rs. 6.17 crore had not been paid by the Informant within 30 days as mentioned in clause 4 of the allotment letter dated 09.02.2001.
6. The Commission notes that it is a case where after a process of tender, the informant was allotted plots of land. Due to some disputes on account of the contractual obligation and conditions, the allotment was subsequently cancelled. There is no issue of competition involved in the matter within the meaning of Competition Act, 2002.
7. The Commission also notes that the informant had filed compensation application in June 2002 before MRTP Commission under Section 12B of MRTP Act 1969. Before MRTP Commission, UPSIDC had submitted that a settlement proposal was being considered with the applicant (Informant in the present case). After the refusal



of the MRTPC Act, the case was heard by COMPAT and vide order dated 29th March, 2011 it was decided that in the absence of separate proceedings, alleging unfair, monopolistic or restrictive trade practices, an application for compensation under Section 12B of the MRTP Act was not maintainable.

8. The Commission further notes that it is after the aforesaid orders of COMPAT rejecting its claim of compensation that the informant has been filed the present information under Section 19 of the Competition Act, 2002.
9. The Commission observes that while the cause of action accrued to the Informant in the year 2001, provisions of Section 3 (anti-competitive agreements) and 4 (abuse of dominant position) of the Competition Act, 2002 came into force only with effect from 20.05.2009. Further, for cases pending under MRTP Act, the Commission would have jurisdictions only if the matter was pending before DGIR, MRTPC. However, no inquiry was pending with the DGIR of MRTPC in the matter; otherwise the same would have been transferred to the Commission after the repeal of the MRTP Act. The COMPAT in its order while disposing of the compensation application has also observed that there was no proceeding, alleging unfair monopolistic or restrictive trade practice, separate from an application for compensation u/s 12 B of the MRTP Act, which was pending in the matter.
10. The Commission notes that essentially it is a case of compensation filed before the MRTPC for a dispute relating to the allotment of land by UPSIDC in the year 2001, which was also cancelled in the same year. The cases of compensation under MRTP Act are to be adjudicated by the COMPAT and on the basis of statutory provisions the COMPAT has already passed an order in the case.
11. In view of the foregoing discussion, the Commission is of the 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.



- 12. The matter, is therefore, closed under Section 26(2) of the Competition Act, 2002.
- 13. Secretary is directed to inform the informant accordingly.

Sd/-
Member (R)

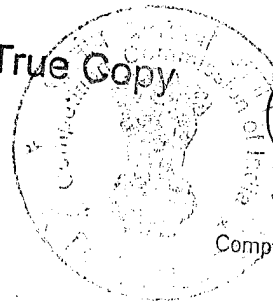
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Member (CC)

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Member (AG)

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Member (T)

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Chairperson

Certified True Copy



S. P. Gahlaut
02/XI/2011
S. P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi