

COMPETITION COMMISSION OF INDIA

Case No 18/2011

Dated : 24.05.2011

Information filed by: Mrs. Randhir Kaur Sidhu

Information Against: 1. Fargo Estates Pvt. Ltd.

2. Fargo Facilities Management Pvt. Ltd.

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

The instant information has been filed by Mrs. Randhir Kaur Sidhu (hereinafter referred to as the 'Informant') under Section 19 of the Competition Act, 2002 (hereinafter referred to as 'the Act') on 20.04.2011 against M/s. Fargo Estates Pvt. Ltd., Delhi (hereinafter referred to as the 'Opposition Party No.1) and Fargo Facilities Management Pvt. Ltd., Delhi (hereinafter referred to as the 'Opposite Party No.2) *inter alia* alleging the contravention of the provisions of Section 3 and Section 4 of the Act.

2. The facts as stated in the information are , in brief, as under:
- 2.1 The Opposite Party No.1 is the promoter and developer of a multi-storied centrally air-conditioned shopping mall located at Saket, New Delhi. The Opposite Party No.2 is a sister concern of the Opposite Party No.1 and the maintenance agency of the said mall.
 - 2.2 The Informant had applied for the allotment of 2 shops/ commercial spaces in the said mall and was allotted one shop at the first floor of the said mall and one shop at the second floor for a total consideration of Rs. 75,60,000 and Rs.44,85,000 respectively.
 - 2.3 As per the Informant, the Opposite Party No.1 in its allotment letter has specifically kept the common areas / facilities of the mall with itself and further made the use of the shops subject to the payment of heavy monthly maintenance charges payable either to Opposite Party No.1 or the maintenance agency appointed by it.

- 2.4 The Informant has alleged that the Opposite Party No.1 has arbitrarily appointed itself as the permanent maintenance advisor of the said shopping mall and has fixed a monthly remuneration for the advisory services. The Opposite Party No.1 has appointed its nominee / sister concern i.e. the Opposite Party No.2 as the maintenance agency of the said mall.
- 2.5 As per the Informant, the maintenance charges have to be calculated subject to the prevailing market price of the relevant commodities as specified in clause 21(b) of the agreement executed between the Informant and the Opposite Party No.1. But the maintenance agency i.e. the Opposite Party No.2 has fixed the maintenance charges on the shops at an exorbitant high rates Rs.22 per sq.ft. and has increased the same to Rs. 25 per sq. ft. per month in departure of the clause 21(b) of the agreement.
- 2.6 As per the Informant, the maintenance of the shopping mall is the mutual responsibility of the shop owners and not the developer, but the Opposite Party No.1 has imposed an unfair condition on the consumer that the maintenance shall be done by it or the agency appointed by it.
- 2.7 It has been alleged by the Informant that the Opposite Part No.1 and Opposite Party No.2 are engaged in the anti-competitive practices by firstly keeping control of maintenance service into their own hands and secondly, preventing and restricting fair competition by not allowing the outside agency to maintain the mall and keeping the right of appointment of the maintenance agency exclusively with Opposite Party No.1. Further, the Opposite Party No.1 is also arbitrarily asking for the security deposit for the maintenance charges equivalent to three month maintenance charge or maintenance security of Rs. 300 per sq. ft. payable to Opposite Party No.2.
- 2.8 It has been further alleged by the Informant that the Opposite Party No.2 is continuously increasing the maintenance charges irrespective of the fact whether the shops are being used or not. As per the Informant, the Opposite Parties are threatening the consumers to disconnect the electricity and water supply of the shops, if the maintenance charges are not paid.
- 2.9 As per the Informant, due to the non-payment of alleged arbitrarily maintenance charges, the Opposite Party No.1 vide its legal notice dated 12.02.2010 has restricted the entry of the Informant in one of her shops.

2.10 As per the Informant, the construction of the shopping mall and the maintenance services of the shopping mall constitute the relevant market as defined in the Act, and the Opposite Party No.1 and 2 are in the dominant position as they are operating independently of the competitive forces prevailing in the relevant market.

2.11 The Informant has alleged that the Opposite Party No.1 and 2 have abused their dominant position by imposing the aforesaid alleged unfair and discriminatory conditions in the sale of shops and maintenance services.

3. The Commission considered the matter in its meeting held on 10.05.2011 and decided to give an opportunity to the Informant to explain the case. The matter was again considered by the Commission on 24.05.2011. Sh. G.S.Raikhy, Advocate on behalf of the Informant appeared and made oral submissions in support of the case.
4. The Commission has carefully perused the information filed by the Informant, the documents annexed, the arguments of the Advocate and the other relevant material available on the record.
5. It is observed that the crux of the allegations is centered around the aspect of charging the alleged exorbitant maintenance charge by the Opposite Parties and the appointment of Opposite Party No. 2 as the sole/exclusive maintenance agency of the Shopping Mall in question.
6. In the instant case the developer of the Shopping Mall i.e., the Opposite Party No. 1 and the maintenance agency i.e. the Opposite Party No. 2 are, *prima-facie*, not in the similar trade of business, hence, Section 3(3) of the Act is not applicable. The agreement between the Opposite Party No. 1 and 2 for providing the maintenance service by the Opposite Party No. 2 is also not, *prima-facie*, covered under the provision of Section 3(4) read with section 19(3) of the Act. Therefore, there is no, *prima-facie*, violation of the provisions of Section 3 of the Act by the Opposite Parties.
7. As per the information available on the public domain, it is noted that there are number of shops inside the various Shopping Malls in South Delhi area which were developed by various developers. There are numbers of maintenance agencies which cater the needs of aforesaid shopping malls. In view of the above it can be held that the Opposite Party No. 1 and 2, *prima facie*, can't operate independently of the competitive forces in the relevant market. Otherwise also, the Informant has been not able to produce any cogent evidence in

support of the dominant position of the Opposite Parties in the relevant market. Therefore, in view of the discussion above, *prima facie*, the Opposite Parties are not in a dominant position in the relevant market hence, the question of abuse does not arise.

8. In view of the foregoing discussion, the allegation made in the information does not fall within the mischief of either Section 3 or Section 4 of the Act. Therefore, 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.
9. The matter is therefore closed under Section 26(2) of the Competition Act, 2002.
10. Secretary is directed to inform the informant accordingly.

Member (G)

Member (R)

Member (P)

Member (AG)

Member (T)