



Competition Commission of India



Case No. 05 of 2014

In Re:

TDI Fun Republic Shop Owner Welfare Association

... Informant

And

M/s E-City Property Management & Services Pvt. Ltd

... Opposite Party No. 1

Shri Vikas Ladhe

... Opposite Party No. 2

M/s Tyagi Anand Mall Management Co. Pvt. Ltd

... Opposite Party No. 3

M/s TDI Infrastructure Ltd.

... Opposite Party No. 4

CORAM

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. S. L. Bunker
Member

Mr. M.L. Tayal
Member

Present: Mr. Manjit Singh Ahluwalia, Advocate for Informant



ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

1. The present information has been filed by TDI Fun Republic Shop Owner Welfare Association, through its President, Shri Amardeep Kohli (hereinafter referred to as the “**Informant**”) on 30.01.2014 under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as “**the Act**”) against M/s E-City Property Management & Services Pvt. Ltd. [EPMS] (hereinafter referred to as **Opposite Party No. 1**), Shri Vikas Ladhe [of EPMS] (**Opposite Party No. 2**), M/s Tyagi Anand Mall Management Co. Pvt. Ltd. (**Opposite Party No. 3**), and M/s TDI Infrastructure Ltd. (**Opposite Party No. 4**), alleging contravention of the provisions of Section 4 of the Act by the Opposite Parties.
2. As per the information, Informant is a registered Welfare Association representing the shop owners of TDI Fun Republic Mall, having its office at Shop No. F-21, first floor, TDI Fun Republic, Moti Nagar, Main Najafgarh Road, Old Natraj Cinema Building, New Delhi. The informant stated that Opposite Party No. 1 has claimed that it maintains the operation of the TDI Fun Republic Mall and that Opposite Party No. 3 represented through Shri Hemant Singh is the Mall Manager. It is also submitted that Opposite Party No. 4 is a well known company in real estate.
3. The informant has alleged that the Opposite Parties have contravened the provisions of section 4 of the Act. It is the allegation of the informant that the Opposite Parties have formed a group with the intention to ‘fleece’ the shop owners of the said Mall (TDI Fun Republic Mall) and are controlling the assets of the mall for their illegal gains. It is further alleged that they have abused their dominant position by imposing internal development charges at their own whims and are indulging in anti-competitive practices.
4. The informant submits that they were lured into buying the shops at exorbitant rates in the said mall by Opposite Party No. 4 and its management citing various highlights like energy efficient central air conditioning, 100% power back up, high speed capsule glass elevators,



landscape central atrium, well furnished entrance lobby, passage with Italian marble and granite, central security systems, parking services, food court etc.

5. The informant has stated that the mall is in pathetic condition with no basic amenities like proper ventilation, air conditioning, etc. making it difficult for the shop owners to sit and work in their offices. It has also highlighted the poor conditions of washrooms, leakage, absence of proper lightning in the mall especially in the basement, etc. The informant has stated that with the inhumane conditions in the mall it had become difficult for the shop owners to continue their businesses and in such situation they were compelled to close down their shops.
6. The informant has also stated that till date they're not clear as to who is managing the Mall. They have been served notices by Opposite Party No. 1 and Opposite Party No. 3 but Informant submits that they're not aware under what authority Opposite Party No. 1 and Opposite Party No. 3 are representing to manage the mall and that till date no documents have been provided to the shop owners regarding the same. It is further alleged that Opposite Party No. 1 and Opposite Party No. 3 have asked for exorbitant rates from the shop owners at their own discretion, without realising what is the cost and what services are being provided.
7. It is alleged that Opposite Parties are illegally charging exorbitant rates from the shop owners on the pretext that they have to run the air conditioning plant and to maintain and manage the mall. However, the condition of the mall has not improved till date. The informant further submits that they have been asked to install their own air conditioners vide a notice dated 22.10.2013.
8. The informant has alleged that the Opposite Parties are arbitrarily and unreasonably charging Central Area Management (CAM) charges at higher rates from the shop owners @Rs. 20 per sq.ft. which is not acceptable to the informant. The informant further submitted that the only business of the Opposite Parties so far is to collect the CAM charges every month from the shop owners and nothing has been done to improve the foot fall in mall or to



maintain the mall despite several requests by the informant. It is also alleged that the said charges for CAM are on super area and not on the carpet area.

9. The informant has drawn a comparison with the DLF mall in the neighbouring area which is just one km from the said mall. DLF is apparently charging Rs. 18/sq.ft. including 12.36% service tax on the CAM charges whereas Opposite Parties are charging Rs.30 along with service tax @12.36%. As per the Informant the DLF is running the air condition and properly maintaining the mall whereas in the said mall i.e. TDI, there is deficiency in services, negligence in maintaining the mall and equipments, no ventilation in the common area or inside the shop etc. The informant alleged that the shop owners are facing step motherly treatment at the hands of the Opposite Parties. Informant has drawn similar comparison with another mall namely, Classic Ansal Tower in Rajouri Garden.
10. It is alleged that Opposite Parties are taking unilateral decisions in the management of the mall without consulting the shop owners. Informant has cited the incident of removing the glasses and putting walls for Reliance Company's 4G internet on the ground floor by Opposite Parties which is allegedly to causing inconvenience to all shop owners. Informant has referred to the Municipal Corporation Guidelines which provide that 'no 4G internet exchange can be opened in the mall as it will cause health hazards to the people who visit the mall.
11. Informant has stated that for the last seven years escalators, lifts, common area lightning, security, housekeeping, diesel generator sets and chillers are being used from 8 p.m. to 2 a.m for the FUN Cinema purpose for which the shop owners have no liability whatsoever, yet they are being charged for the same. It is stated that Opposite Parties have given undue advantage in terms of the facilities to the FUN Cinema at the cost of the shop owners. The Informant further alleged that the Opposite Parties have rented out the main atrium for placing the snooker table which has caused disturbances to the shop owners since all day the boys create nuisance, consume alcohol and gamble.



12. The Informant submits that Opposite Parties have several huge projects in Delhi and by virtue of it, it is in a dominant position. The Informant further submits that Opposite Parties have abused their dominant position by illegally charging exorbitant rates from the shop owners on one pretext or the other to manage the mall. The informant further alleged that Opposite Parties contracts are one sided, and under duress and coercion shop owners had no option but to subject themselves to Opposite Parties' dominant position.
13. The informant alleged that besides suffering from mental agony, harassment and loss of reputation when Opposite Parties failed to provide the space in the said mall within the stipulated time as per their agreement, further demands made from them which the informant claimed that Opposite Parties were not entitled to, have increased their agony. It also submitted that security deposits of the shop owners amounting to about Rs.30-35 lakhs paid to Opposite Party No. 3 have not been accounted for and is being siphoned off by the Opposite Parties.
14. Aggrieved by the anti-competitive conduct of the Opposite Parties, the informant has prayed before the Commission *inter alia* to initiate inquiry into the matter and to direct Opposite Parties to withdraw the advisory information dated 22.10.2013 and also to direct the Opposite Parties to refund the excess amount paid to them by the shop owners.
15. The Commission has carefully perused the information and the relevant materials placed on record. The Commission has also heard the counsel for the Informant on the matter.
16. The Commission observes that allegations and averments raised in the present information relate to contravention of Section 4 of the Act. The issue which needs to be determined in the present case by the Commission is whether there is any violation of Section 4 of the Act by the Opposite Parties.
17. Prior to assessment of dominance of Opposite Parties, the relevant market is required to be ascertained which necessitates identification of relevant product market and relevant geographic market. The Commission observes that the relevant product market in the present



case is the market for commercial space in shopping malls and the relevant geographical market is the Delhi/NCR region, thus establishing the relevant market to be the market for commercial space in shopping malls in Delhi/NCR Region.

18. While arriving at the relevant product market, the Commission took into consideration the fact that the commercial space in shopping malls is a distinct product. Shopping malls are perceived to attract the “cream” crowd and act as hubs of leisure offering various dimensions of leisure to the customer in terms of shopping, movies, food, games, etc at one place. Thus, the buyers of space in a shopping mall are much likely to have a distinct mindset and objectives from buyers of commercial space in general shopping centres. Also, the consumer profile of shoppers in a shopping mall is perceived to be more upscale than in general shopping centres. In addition, the most popular and established shopping centres command unusually higher per sq. feet retail prices (in some cases even higher than upscale malls) owing to their popularity and brand name and buying a space for a premium brand (usually opened in shopping malls) in a new or upcoming is commercially more riskier due to absence of an anchor store, thus lowering the scope of demand substitution.
19. While considering the relevant geographical market, the Commission notes that the commercial real estate prices vary from one location to another depending on various factors such as development of the region, supply of land, location of business establishment etc within the Delhi/ NCR region. A buyer of commercial space in shopping mall is likely to take into account all these factors to maximise his returns. They are usually looking for an upcoming mall with existing or potential factors of success. Given the rapid growth of Delhi/NCR region and the frequency of introduction of new malls in the region, buyers of commercial space are willing to invest in a shopping mall regardless of geographical distance, if the returns look attractive. Therefore, it is not uncommon for a shop buyer located in Delhi to buy a retail space in an upcoming mall in Noida/Gurgaon if the returns look attractive enough as travelling/transportation costs are coming down due to introduction of metro, BRT system, new flyovers, underpasses etc. Therefore, distance in NCR is highly unlikely to be an overriding factor in selection of a shopping mall to buy a commercial space



in. Therefore, the Commission identifies the Delhi/NCR region as the relevant geographic market.

20. The Commission observes that opening up of the economy and the resultant increase in consumer demand had led to rapid growth of shopping malls in the Delhi/NCR region but unplanned projects without proper brand positioning, optimal tenant mix and circulation design, coupled with oversupply of malls in the region and a shift of consumer preference towards bigger sized malls has led to high vacancy rates and low conversion ratios resulting in high maintenance cost for the developers.
21. To examine the alleged abusive conduct of Opposite Parties, it may be noted that though in its complaint the informant has mentioned four Opposite parties, reference has been made several times to Opposite Party No. 4 as the main concern. It has referred Opposite Party No. 4 as the real estate company through which the shop owners had purchased the office/retail space in the said mall. Regarding the abuse the dominant position, informant has referred only Opposite Party No. 4's projects. The rest of them i.e. Opposite Party No. 1 and Opposite Party No. 3 are mall/property management companies and Opposite Party No. 2 is one of Opposite Party No. 1's staff members. Therefore, it would be appropriate to analyse the market position of Opposite Party No. 4 i.e. M/s TDI Infrastructure Ltd. in the instant case.
22. The informant has submitted that Opposite Party No. 4 is in a dominant position since it has several real estate projects in the Delhi-NCR area. To assess the dominance of Opposite Party No. 4 in the relevant market a comparison between Opposite Party No. 4 and its rivals on certain parameters such as number of projects in commercial segment, Gross Lettable Area (GLA) etc. may be considered.



23. In terms of number of projects, as per the information gathered from the websites of the competitors of Opposite Parties, some of Opposite Party No. 4's competitors in the relevant market are having much higher/comparable number of projects than Opposite Party No. 4. Some examples are – Parsvanath (10 projects), DLF (9 projects), MGF (4 projects), Ansal Housing (3 projects). Thus based on this criteria, Opposite Party No. 4 cannot be stated to be dominant in the relevant market.
24. On the second parameter i.e. Gross Lettable Area (GLA), a report named “*Demand and Supply of Mall Space in Delhi and NCR*”, *Asiapac, May 2011* lists top 10 shopping malls in Delhi/NCR region featuring Ambience Mall (Gurgaon), Great India Place (NOIDA), Select City Walk (Delhi), Ambi Mall (Delhi), Ansal Plaza (Greater NOIDA), Mahagun Metro Mall (Delhi), DLF Place (Delhi), East Delhi Mall (Ghaziabad), Pacific Mall (Delhi) and Crown Interiorz (Faridabad) in that order. It is clear that any shopping mall of Opposite Party No. 4 does not feature in the top 10 shopping malls in the relevant market in terms of GLA and hence cannot be termed dominant in the relevant market based on this parameter.
25. In view of the above, the Commission observes that Opposite Party No. 4 cannot operate independently of competitive forces prevailing in the relevant market and also cannot affect its competitors or consumers or relevant market in its favour. Therefore, Commission infers that Opposite Party No. 4 may be one of the reputed players in real estate market for retail outlets but it cannot be said to be a dominant player.
26. The Commission observes that since the Opposite Party No.4 does not appear to be dominant in the relevant market hence there arises no need to assess the abuse of dominance by the Opposite Party No. 4 in the relevant market.
27. The Commission is, therefore, of the opinion that no case of violation of Section 4 is made out against the Opposite Parties.



Competition Commission of India



28. In view of the above discussion, there does not exist a case for directing the Director General under Section 26(1) of the Act to cause an investigation into the matter. It is a fit case for closure under 26(2) of the Act and the same is hereby closed.

29. The Secretary is directed to inform the parties accordingly.

New Delhi:

Dated: 02/04/2014

Sd/-

(Ashok Chawla)
Chairperson

Sd/-

(Dr. Geeta Gouri)
Member

Sd/-

(Anurag Goel)
Member

Sd/-

(M.L. Tayal)
Member

Sd/-

(S. L. Bunker)
Member