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COMPETITION COMMISSION OF INDIA

Case No. 06 of 2021

In Re:

Gagan Gandhi

Chamber No.103, New Lawyers Chamber
C.K. Daphtary Block, Tilak Lane
Supreme Court of India, New Delhi- 110001

Informant

And

Stonex India (P) Ltd

D-176, Mansarovar Garden,
Ring Road, New Delhi- 110015

Opposite Party

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present information has been filed by Mr. Gagan Gandhi, an advocate by profession, practicing in Delhi/NCR (hereinafter, '**Informant**') under Section 19(1) (a) of the Competition Act, 2002 (hereinafter, '**Act**') alleging contravention of relevant provisions of Section 4 of the Act by Stonex India Pvt. Ltd (hereinafter, '**Opposite Party/ OP**').

Facts and allegations as stated in the Information

2. The Informant has stated that the Opposite Party is a company engaged in the business of trading, marketing, import and export of all types of Indian



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and imported marbles and stones under the name and style of *Stonex India Pvt. Ltd.* with its registered office in Delhi. The Informant has alleged that the Opposite Party entered into an agreement with *Laminam Italy* by virtue of which it was appointed as the sole distributor in South Asia and is abusing its dominant position in the market in respect of price, application and warranty condition.

3. In 2016, the Informant is stated to have carried out construction work at his residence and thus, purchased marbles and Laminam sheets for the exteriors, from the Opposite Party. The bills and invoices raised were duly paid by the Informant and the Opposite Party assured the Informant that a warranty certificate would be issued to him after the full and final payment. The last bill, *vide* invoice no. RI/17-18/0495, was generated on 05.05.2017 amounting to ₹3,01,183/-. The Informant submitted that a '*security cheque*' bearing no. '068573' was drawn on Oriental Bank of Commerce, Kirti Nagar in favour of the Opposite Party amounting to ₹3,01,183/- which was to be presented, subject to delivery of the remaining goods and issuance of warranty certificate. As alleged by the Informant, the Opposite Party with *malafide* intentions presented the '*security cheque*', (without any intimation to the Informant) to the Standard Chartered Bank on 08.05.2017 and the same was returned unpaid due to insufficiency of funds.
4. The Opposite Party issued 'warranty certificate' *vide* e-mail dated 03.10.2017. Article 10 of the 'warranty certificate' provides for the following:

'This Warranty is governed by and shall be construed in accordance with the laws of Italy. Any dispute arising out or in connection with this Warranty will be submitted to the exclusive jurisdiction of an Italian judge and the Courts of Modena'.
5. The Informant alleged that the Opposite Party has abused its dominant position in the market by concealing the material facts with respect to the warranty of goods and has played fraud upon the Informant.



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6. The Informant further alleged, despite sending repeated reminders *vide* emails dated 16.12.2017, 19.12.2017 and 18.10.2019 asking for the terms of the agreement between the Opposite Party and the principal supplier in Italy, the same has never been shared with the Informant by the Opposite Party. The Informant also alleged that the Opposite Party is '*controlling the application of the Laminam sheet by having panel of applicator(s) with pre-decided rate of application*'.
7. Thus, being the sole distributor in the market authorised to deal with imported material like Laminam the Opposite Party is abusing its dominant position in the market under Section 4(1) of the Act.

Reliefs Sought

8. Accordingly, the Informant has prayed for the following reliefs as under:
 - 8.1. To pass an order in favour of the Informant and against the Opposite Party to act in accordance with the 'present competitive laws' as they are in violation of Section 4(1) of the Act;
 - 8.2. To impose damages on the Opposite Party for carrying out anti-competitive activities;
 - 8.3. To prohibit the Opposite Party from selling Laminam sheets in India till the pendency of the information;
 - 8.4. To pass any other direction or order which this Hon'ble Commission may deem fit or necessary in the interest of justice.
9. The Informant has also claimed for interim relief under Section 33 of the Act seeking prohibition on the Opposite Party from selling the Laminam sheets till the pendency of the Information.



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10. The Informant stated that a Civil Suit No. 231/2018 titled as *M/s Stonex India (P) Ltd. v. Gagan Gandhi* is pending adjudication in the District Courts, Delhi. The Informant also disclosed that in 2019 he sought pre-litigation mediation which was declined by the Opposite Party. The Informant further stated that he has filed a criminal complaint titled as *Gagan Gandhi v. M/s Stonex India (P) Ltd.* which is also pending adjudication in the District Courts, Delhi.
11. The Commission considered the present information in its ordinary meeting held on 18.05.2021 and decided to pass an appropriate order in due course.
12. The Commission perused the information on record and the information available in public domain. The Informant though has made some reference to Section 3 & 4 of the Act, however, the gravamen of his allegations is under the provisions of Section 4 of the Act whereby the Opposite Party is stated to be abusing its dominant position in the market *qua* price, application and warranty conditions. He has alleged that the Opposite Party is controlling the application of the Laminam sheets by having a panel of applicator(s) with pre- decided rate of application.
13. To analyse the applicability of Section 4, it is to be seen that whether the Opposite Party is an 'enterprise' within the meaning of Section 2(h) of the Act. The term 'enterprise' has been defined under Section 2(h) of the Act, *inter alia*, as a person or a department of the Government, engaged in any activity relating to the production, storage, supply, distribution of articles or goods or provision of services. In the present matter, it is noted that the Opposite Party is engaged in business of trading, marketing, import and export of all types of Indian and imported marbles and stones. Thus, fulfilling the criteria of being an enterprise.
14. The Informant states that the Opposite Party entered into an agreement with Laminam Spa Italy and is its sole distributor in South Asia. The Commission notes that the Informant has levelled allegations in respect of product of Laminam sheets without actually delineating any proper relevant



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market. The Informant further states that as per Article 10 of warranty condition all disputes shall be subject to the jurisdiction of court of Italy.

15. The Commission notes from the information available in public domain that Laminam is a large sized minimum thickness ceramic slab,¹ which are used in exterior architecture, interior design and furnishings.² The Commission is of the *prima facie* view that the market of material used for interiors/exterior cannot be so narrowly defined being restricted to Laminam sheets only as the consumer has the choice to opt for other products like Ceramic Tiles, Marbles, Granite, Sandstone, *etc* based on his taste and preferences. In so far as the warranty condition (in Article 10) is concerned, the Commission notes that other than a mere iteration of the dispute clause in the information, there is no whisper as to how the Informant is prejudiced by the same as the Invoice dated 05.05.2017, issued to the Informant by the Opposite Party, contains a stipulation that all disputes *inter se* the Informant and the Opposite Party shall be subject to jurisdiction of Delhi.
16. The Commission, therefore, does not *prima facie* find any competition concern to have arisen in the Information filed under the provisions of Sections 3 and 4 of the Act and the information filed is directed to be closed forthwith against the Opposite Party under Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises and the same is also rejected.
17. Since the parties are already at litigation in various forums as disclosed in the Information, it is clarified that this order is from the perspective of the Competition Act, 2002 and the Commission has not expressed any opinion on the merits of the litigation pending between them.

¹ <https://www.laminam.com/en/history/> (accessed on 24.05.2021)

² <https://www.laminam.com/en/about-us/> (accessed on 24.05.2021)



18. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 03/06/2021