



Competition Commission of India

Case No. 07 of 2015

In Re:

Shri Brajesh Asthana,

Proprietor M/s Arpita Engineering

Informant

And

Uflex Limited

Opposite Party

CORAM

Mr. S.L.Bunker

Member

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U.C. Nahta

Member

Appearances:

For the Informant:

Shri Navdeep Shridhar, Advocate



सत्यमेव जयते



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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (the “Act”) by Shri Brajesh Asthana, Proprietor M/s Arpita Engineering (hereinafter referred to as the “**Informant**”) against M/s Uflex Limited (hereinafter referred to as “**OP**”) alleging contravention of the provisions of section 4 of the Act.
2. As per the information, the Informant is engaged in the business of manufacturing and trading of horizontal type pouch packing machines for the last 20 years. It is submitted that his firm is registered as an importer, wholesaler, retailer and manufacturer in the Department of Commercial Taxes, Government of Uttar Pradesh with a taxpayer’s identification number (TIN). It is submitted that the Informant also possesses certificate of Registration of Design No.255077 in class 15-99 issued by the Patent office on 09.07.2013 and a certificate of the Copyright No. L-57321/ 2014 issued by the Registrar of Copyrights for the abovesaid machine.
3. The OP is stated to be one of the competitors of pouch packing machine business. It is alleged that the OP is hampering the business of the Informant by threatening him to wind up his said business. The OP is alleged to have filed an application before the Controller of Patents & Designs, Kolkata on 01/08/2014 requesting cancellation of the registered design of the Informant.
4. It is stated in the information that the industrial designs refer to creative activity which result in the ornamental or formal appearance of a product and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. That it is an



element of intellectual property and have been provided minimum standards of protection under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

5. The Informant has alleged that the OP is big and powerful entity having its area of operations of its business in different countries. The OP allegedly threatened and raided many small manufacturers for the reason that it possesses all the Intellectual Property Rights on the above mentioned machines. The Informant has cited a case of M/s Narendra Engineering owned by its proprietor Mr. Narendra Srivastava, which was allegedly raided by the OP on 18.06.2013 using undue influences and resources of local police and even lodged an FIR under different sections of the Indian Penal Code (IPC). It is stated that the Patent and Copyright applications of the OP are still pending before the respective Registrars for consideration.
6. Based on the above allegations which have been detailed in the information and additional submissions, the OP is alleged to have contravened the provisions of section 4(2)(a)(i) of the Act. Accordingly, the Informant has prayed, *inter alia*, for investigation by the Director General (DG) against the OP under the provisions of the Act.
7. The Commission perused the material available on record including the information, additional information placed on record by the Informant. The Counsel on behalf of the Informant was also heard by the Commission on 25.03.2015.
8. Facts of the case reveal that the Informant is primarily aggrieved by the alleged verbal threats by the OP to wind up his business of



manufacturing and trading of pouch packing machines since it is one of the competitors of the said business.

9. As per the information available on the website of the OP, since its inception in the year 1983, it has turned into a multi-billion company with consumers spread across the world. It has offices in UAE, Europe, North America and enjoys a formidable market presence in more than 85 countries.
10. The information lays out the facts that OP is dominant in its respective manufacturing domain since it is a big and powerful entity having its area of operations of its business in different countries. This information is substantiated by the information available on the website of the OP. But as a matter of fact, the position of dominance *per se* is not bad. It is the 'abuse of dominant position' which is prohibited under section 4 of the Act and this is what is required to be ascertained in the present case.
11. In view of the above fact, the Commission does not feel it necessary to define the relevant market as the allegation of verbal threats to the Informant and its clients do not appear to fall in the category of abuse in terms of the provisions of section 4 of the Act. It is noteworthy to mention that the OP has filed an application before the Controller of Patents and Designs at Kolkata for examining the issue of impugned design.
12. In the light of the above analysis, the Commission finds that, *prima facie*, no case of contravention of the provisions of section 4 of the Act is made out against the OP in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.



13. The Secretary is directed to inform all concerned accordingly.

Sd/-

(S. L. Bunker)

Member

Sd/-

(Sudhir Mital)

Member

Sd/-

(Augustine Peter)

Member

Sd/-

(U. C. Nahta)

Member

New Delhi

Dated: 23.04.2015