



COMPETITION COMMISSION OF INDIA

Case No. 53 of 2020

In Re:

S. Kannan, Managing Partner,

Informant

M/s Arcus Enterprises,

2/9, K. K. Nagar,

Veppur, Melvisharam

Arcot, Tamilnadu -632509.

And

Asian Paints Limited,

Opposite Party No. 1

Asian Paints House

6A, Shantinagar, Santacruz (E),

Mumbai-400055.

Mr. K.B.S. Anand,

Opposite Party No. 2

M.D and CEO, Asian Paints Ltd.,

Asian Paints House

6A, Shantinagar, Santacruz(E)

Mumbai-400055.

Mr. K. Sundaram,

Opposite Party No. 3

Additional Manager, Solution IPR,

No. 32-13, J.P. Complex,

Mayur Vihar Phase

Delhi-110091



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. S. Kannan (“**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against Asian Paints Limited (“**Asian Paints**”/“**Opposite Party No.1**”), Mr. K.B.S. Anand (“**Opposite Party No. 2**”) and Mr. K. Sundaram (“**Opposite Party No. 3**”), alleging contravention of provisions of Sections 3 and 4 of the Act.
2. As per the facts stated in the information, the Informant is running a small scale industry by the name of M/s Arcus Enterprises at Muppadhuvetti village in Arcot Taluk, Ranipet District in Tamil Nadu. M/s Arcus Enterprises was established in the year 2005 and is registered with the Registrar of Firms, Arakkonam, Tamil Nadu.
3. M/s Arcus Enterprises is engaged in the business of manufacturing of primers and paints under the brand-name 'Arcus'. Besides manufacturing primers and paints, it purchases discarded paints which are disposed of by other paint manufacturing units and uses the said discarded products as raw-materials for further processing by treating and recycling and altering them, thereby, to become usable value-added products. It has been stated that the process of treating paints for sale can and would take place only when the customer comes to the factory for purchase of the paints. Further, the process



of treating paints cannot be done earlier and kept stored for future use because the products would be afflicted with fungi.

4. It has been submitted that the Opposite Parties lodged a false complaint with the police authorities of the Arcot Town Police Station on 04.09.2018, which resulted in a criminal case being filed against the firm in the court of the Learned District Munsif-cum-Judicial Magistrate, Arcot being Crime No. 561 of 2018. It has been alleged in the said complaint dated 04.09.2018 that M/s Arcus Enterprises is selling damaged products saying that it is Asian Paints. It has been stated that this was a patently false allegation raised by Asian Paints in abuse of its dominant position to drive competition out of the market by creating barriers to entry and deny market access to competitors. Further, it has been stated that Asian Paints is using its status as one of the largest manufacturer of paints to harass, humiliate and drive competitors out of the market. It has been alleged that Asian Paints is deliberately working to force the small scale industry to close down inspite of the fact that discarded products that M/s Arcus Enterprises uses, constitutes less than 10 percent of the firm's total manufacture.
5. It has been stated that false nature of the complaint filed by Asian Paints clearly shows that it has abused its dominant position to resort to a criminal case when the issue is only about the manufacturing and business practices.
6. It has also been stated that there can be no reason for the Opposite Parties to resort to the criminal proceedings in this case. If Asian Paints had considered necessary, legal notices could have been served upon M/s Arcus Enterprises to enable them to know more of what they, allegedly, came to know from others. Instead, they did not do so and went ahead to file a criminal case against the Informant and got it published in various local and national newspapers to defame the Informant and his partner. This incident was also published on social media.
7. It has been stated that FIR shows that the complainant therein, Opposite Party No. 3 herein, who acted on behalf of the other Opposite Parties, said that his company was selling, every year, by auction its 'damaged products' to the 'specified contractors'.



Opposite Party No.3 had stated that those contractors were permitted to sell those damaged products, after recycling them as per contract. As per the said contract, the contractor should not sell those damaged products, for whatever reason, either in their shops or to other organisations. It has also been stated therein by Opposite Party No.3 that those contractors should sell those damaged products only after changing them to the containers of 50, 100 and 200 litres, in their own organisation's name, where after, they should destroy the tins and packets of Asian Paints. Opposite Party No.3 emphasised that this had been clearly mentioned in the said contract.

8. It has been stated that the damaged products were purchased from one such contractor of Asian Paints, who runs his business concern under the name and style of M/s Hi-Tech Paints in Coimbatore who does not have any contract with Asian Paints incorporating all or any of the aforesaid conditions, mentioned in the complaint dated 04.09.2018. The intention of Asian Paints had, thus, been to coerce the small-scale industries out of the market.
9. It has been alleged that Asian Paints had, with *mala fide* intention, levelled serious allegations against M/s Arcus Enterprises, citing an imaginary and non-existent contract.
10. The Informant has, *inter-alia*, sought the following relief from the Commission: -
 - a) pass an order under Sec. 26 (1) of the Act directing the Director General to cause an investigation to be made into the matter.
 - b) direct the Opposite Parties to cease and desist from carrying on anti-competitive activities.
 - c) take appropriate action against the Opposite Parties for having levelled false allegation against M/s Arcus Enterprises and for having resorted to police action on the basis of that false allegations;



- d) pass an order under Section 27 of the Act against the Opposite Parties; and
- e) pass any other orders that the Commission may deem fit and proper on the basis of the facts and circumstances of the case.

11. The Commission considered the information in its ordinary meeting held on 28.01.2021. The Commission directed that a copy of information filed be forwarded to the Opposite Parties, who may file their comments/response to the same, with documents in support, if any, latest by 26.02.2021. *Vide* an application dated 24.02.2021, Asian Paints sought extension of time by two weeks to file their comprehensive reply/ objections along with documents to the Information filed by the Informant. On 02.03.2021, the Commission acceded to the aforesaid request of Asian Paints for filing its comments/response and documents by 12.03.2021. In terms of order dated 02.03.2021, Asian Paints filed its response in confidential and non-confidential version to the Information on 16.03.2021. Asian Paints also filed an application dated 16.03.2021 seeking confidential treatment over certain submissions in terms of Regulation 35 of the Competition Commission of India (General Regulations), 2009, which is dealt with by a separate order. The Commission considered the Information and response filed by Asian Paints on 31.03.2021 and decided to pass an appropriate order in due course.

12. The Commission notes that Informant appears to be primarily aggrieved by the conduct of Asian Paints, which has allegedly lodged a false criminal case against the Informant's partnership firm M/s Arcus Enterprises, which is engaged in the business of manufacturing of primers and paints under the brand-name 'Arcus'. It has been alleged that the Opposite Parties lodged a false complaint with the police authorities of the Arcot Town Police Station on 04.09.2018, which resulted in a criminal case being filed against M/s Arcus Enterprises in the court of the Learned District Munsif-cum-Judicial Magistrate, Arcot being Crime No. 561 of 2018. It has been alleged in complaint that M/s Arcus Enterprises is selling damaged products stating these were sold as 'Asian Paints'. This has been alleged to be false and being filed by Asian Paints in abuse of its dominant position to drive competition out of the market and deny access



to competitors. Further, it has been stated that Asian Paints is using its status as one of the largest manufacturer of paints to harass, humiliate and drive competitors out of the market and is in contravention of provisions of Sections 4 and 3(4) of the Act.

13. The Commission notes that Asian Paints, in its response has, *inter-alia*, stated that there is no merit whatsoever in the allegations levelled by the Informant and that it has always conducted its affairs in complete compliance of relevant laws. It has also stated that the Informant has failed to make out a case against it under the Act and the Information lacks any jurisdictional basis. There exists no agreement, either formal or informal between Asian Paints and the Informant. As such question of alleged violation of Section 3 of the Act does not arise. It has also been stated that as Asian Paints and Informant do not share any business relationship, there cannot be any abuse of dominance since there is no medium through which Asian Paints could have abused its dominant position under Section 4 of the Act. Further, the Informant has failed to state how the competition has been affected in the market as a result of Asian Paints exercising its legitimate rights to protect its intellectual property rights. It has been further stated that the Informant is seeking Commission's intervention with the sole objective of causing a distraction from the criminal prosecution that he is facing for cheating consumers. It has been stated that Informant has all appropriate remedies available to it under law, and, therefore, the filing of the present Information merely underlines the Informant's retributory intent to defame Asian Paints. Further, the Informant is evidently engaging in abusing the process of law by indirectly resorting to forum shopping, since the matter is already under investigation by the police.

14. Upon consideration of the facts and circumstances of the matter and other material on record, the Commission observes that the allegations in the instant matter relate to a criminal complaint being instituted against the Informant by Asian Paints, in which investigation is underway. The Commission is in agreement with the submissions made by Opposite Parties that no facts or evidence has been brought on record which indicate violation of either of the provisions of Section 3 or Section 4 of the Act. Infact, there is no relationship either of horizontal or vertical nature between Asian Paints and M/s Arcus Enterprises which can be examined under Section 3 of the Act. Further, the



information fails to disclose as to how the provisions of Section 4 have been attracted in the present case. It cannot be said that filing of criminal complaint is with a view to oust competition in the present case and such an action is an abuse under provisions of Section 4 of the Act. Accordingly, the Commission is of the opinion that no competition concern can be said to have arisen in the present matter. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case, and the information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act.

15. The Commission observes that it has expressed no opinion on the merits of the criminal case filed against M/s Arcus Enterprises, save to the extent of analysis undertaken in the foregoing paragraphs in light of the provisions of the Competition Act, 2002.

16. 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: 12/04/2021