



COMPETITION COMMISSION OF INDIA

Case No. 66 of 2017

In Re:

Asmi Metal Products Pvt Ltd.

Informant

110-112, 115-117,

Indrayani Industrial Co. Op. Estate Ltd.,

Takwe Budruk, Taluka:Maval,

Pune – 412106, Maharashtra.

And

SKF India Ltd.

Opposite Party

Chinchwad, Near Chapekar Chowk,

Pune – 411033, Maharashtra.

CORAM

Mr. Devender Kumar Sikri

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. Justice G. P. Mittal

Member



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

1. The information in the present matter has been filed under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') by Asmi Metal Pvt. Ltd. ('Informant') against SKF India Ltd. ('Opposite Party'/ 'OP') alleging, contravention of the provisions of Section 4 of the Act.
2. The Informant is stated to be a company engaged in the business of forging and machining of bearing rings and other fabricated metal products and provides metal working services. OP, a multi-national company, is engaged in the activities of production, supply and distribution of mechanical products. The Informant has been undertaking the machining work on forged rings for the bearing industry as per the requirement of the OP which is further processed by the OP to sell to the automobile and electrical companies in the open market.
3. The Informant has alleged that the OP has abused its dominant position *qua* the Informant by forcing the Informant to make irrelevant expenditures on expansion of manufacturing capacity and by imposing unfair and discriminatory conditions at the time of awarding contracts for forging and machining of bearing rings and other fabricated metal products.
4. It is alleged that the Informant, on the suggestion of the OP, established a forging plant near Pune in 2004 with investments to the tune of Rs. 1,15,00,000/- to reduce its costs towards procurement, transportation of raw materials and to ensure timely delivery of products to the OP. Within a year of establishment of the forging plant, the Informant also agreed to upgrade its conventional machines to CNC (Computerised Numerical Control) turning machines on assurance by the OP to provide financial assistance upto Rupees One Crore. However, the OP only provided Rupees Thirty Lacs to the



Informant, that too at an interest rate of 9%. Even though the said amount was given for a period of 365 days, it was taken back in less than 90 days.

5. It is submitted that between 2004 to 2006, the OP made several false assurances to the Informant, asking it to upgrade its plant to get assured business along with monetary incentives from the OP. However, the OP, allegedly back-tracked from its commitments which resulted in heavy losses to the Informant. It is further submitted by the Informant that on various occasions, it was assured by the OP that the Informant would be given additional work since it was exclusively supplying to the OP. However, no monetary incentives were given and orders, if given, were small in nature. It is alleged that the Informant was forced to manufacture those products which required extra forging strokes which reduced the production considerably and resulted in production losses to the Informant. Due to this, the financial condition of the Informant deteriorated and it had no option but to accept such orders against its wishes.
6. It is further alleged that the OP unilaterally decided to import raw materials from China instead of allowing the Informant to procure the same from domestic suppliers in India. As a result of this, the Informant had to pay import duty and clearing charges of up to Rs. 20,00,000/- per order which were though reimbursed by the OP at a later date but led to closure of forging and machining units of the Informant in October 2009 due to additional financial burden and liability imposed upon it.
7. It is averred that from 2006 onwards, the OP stopped calling the Informant for rate revision and negotiations and that several protest e-mails with regard to this were sent time and again by the Informant to the OP but no favourable response was received. It is also averred that the OP failed to pay for VAT on the steel purchased by the Informant for the period 2005-2009 which was in violation of an express agreement dated 28.04.2005 executed between the



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Informant and the OP and thus, the Informant was forced upon the liability to pay an excess amount of Rs. 57,56,028/-. It is further stated that the Informant could not bear the burden of bank loans and that the OP gave assurances of supporting the Informant in submitting a rehabilitation proposal to the bank for its revival but it failed to act on its promises.

8. Further, from 2014 to 2016, several e-mails were sent by the Informant to the OP with respect to the alleged non-execution of the promises made by the OP and to provide work to the Informant; however, the OP failed to do so. It is alleged that on 28.04.2017, the Informant and the OP entered into an MOU wherein Clause 12 stated that the OP would not be responsible for any kind of losses or damages caused to the Informant. This, according to the Informant, is abuse of dominant position by the OP and in contravention of the provisions of Section 4 of the Act.
9. The Commission has perused the information and the documents filed therewith. The Commission observes that the gravamen of the information filed by the Informant emanates from the conduct of the OP in forcing the Informant to make irrelevant expenditures on expansion of manufacturing facilities and non-performance of the agreements entered into between them which, as per the Informant, amounts to violation of Section 4 of the Act.
10. Further, the Informant is aggrieved by the conditions imposed on it by the OP as detailed out in the minutes of meeting, e-mails and Memorandum of Understanding. For instance, in 2004, the Informant opened a forging unit allegedly at the OP's behest but later, in December, 2005, the OP asked the Informant to change its machine type. Further in July, 2006, the OP launched a project viz. "Small Taper Roller Bearing /STRB" and the Informant was shortlisted for supply of 50% of the entire volume and therefore, it had to double its capacity. However, subsequently on 06.12.2006, SKF Germany conducted an audit of the Informant's plant and concluded that the product



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“STRB” being forged by the Informant would not be accepted as the same was required to be forged on fully automated machines viz. “Hatebur” and the Informant was required to get the same.

11. It is noted by the Commission that a majority of the alleged instances of abuse of dominance stated by the Informant have taken place prior to the year 2009. Hence, the same do not fall within the purview of the Competition Act, 2002, relevant provisions of which came into effect only in May, 2009. For the purposes of examining the remaining allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to first of all determine the relevant market. Thereafter, it is required to be assured whether the OP enjoys a position of strength that enables it to operate independently of the market forces in the relevant market. Only when such a position is established to be enjoyed by the OP, it is imperative to examine whether the impugned conduct amounts to an abuse.

12. As regards the relevant market, it is noted from the information that the Informant is in the business of forging and machining of bearings and supply the same as per the demand received from the OP. The Commission observed that the impugned products has been dealt by it in Case No. 72 of 2016, *In Re M/s Shah Associates vs Timken India Limited*. In the said matter, the Commission had delineated the relevant product market as ‘*market for industrial bearings*’ and observed that, “...*bearings also known as anti-friction components, are used in a variety of applications in automobiles, pumps, gearboxes, heavy earth-moving equipment and other industrial sectors*”. Even though different types of industrial bearing are manufactured in India, in the absence of any objective distinguishing factors being brought out in the information amongst various types of industrial bearings, the Commission is of the view that it is not necessary to further narrow down the relevant product market to any particular type or class of industrial bearings. Thus, the Commission considers the ‘*market for industrial bearings*’ as the



relevant product market in this case. As regards to the relevant geographic market, it is noted that the conditions of competition for supply of industrial bearings are homogenous and the manufacturers of bearings can supply the same to any customer located across India. Therefore, the relevant geographic market in the instant matter is considered as '*India*'. In view of the above, the relevant market in the instant matter is defined as '*market for industrial bearings in India*'.

13. Next, regarding the position of the OP in the relevant market, as per the data compiled by Centre for Monitoring Indian Economy Pvt. Ltd. (CMIE) Industrial Outlook, there are several players operating in the market for industrial bearings in India. As per the said data base, the top three players (on the basis of market shares) in the market for industrial bearings in India are National Engineering Inds. Ltd., Schaeffler India Ltd., and the OP. In 2013-14, 2014-15 and 2015-16, the market share of National Engineering Inds. Ltd. was 10.13%, 11% and 12.19% respectively whereas the share of the OP was 17.1%, 16.26% and 10.41% respectively. The share of Schaeffler India Ltd. in the years 2013-14, 2014-15 and 2015-16 was 10.76%, 11.27% and 8.48% respectively. It is also noted that in 2015-16, the OP enjoyed 10.41% market share though its competitor National Engineering Inds. Ltd. enjoyed a higher market share of 12.19%. From the aforesaid discussion on the market shares of various entities, the Commission observed that in the aforesaid period, none of the players in the relevant market enjoyed a position of strength for a long duration. Further, it is observed that as per the said data, for the year 2015-16, domestic production of bearings accounted for 51.26% and imports accounted for around 44.8% indicating that imports also offer a competitive constraint on the domestic manufacturers and the market for industrial bearings is fragmented in nature. Accordingly, the OP does not appear to enjoy a position of strength required to operate independently of the market forces in the relevant market. Since, the OP does not appear to be in a



dominant position in the relevant market, the question of abuse of dominant position by the OP does not arise.

14. In view of the above, the Commission is of the *prima facie* opinion that no case of contravention of the provisions of the Act is made out against the OP in the instant matter and the information is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
15. The Secretary is directed to communicate this order to the Informant, accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi

Date: 24/01/2018