



COMPETITION COMMISSION OF INDIA

Case No. 08 of 2018

In Re:

Mr. Jaideep Ugrankar

B-304, Accord Co-op HSG Society, Charat Singh
Colony, Near Andheri Kurla Road,
Chakala, Andheri East, Mumbai – 400093

Informant

And

Client Associates

308, 3rd Floor, World Trade Center, Babar Road
Connaught Place, New Delhi – 110001

Opposite Party

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U.C. Nahta
Member



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

1. The information in the present matter was filed by Mr. Jaideep Ugrankar (hereinafter, '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against Client Associates (hereinafter, '**Opposite Party**') alleging contravention of the provisions of Section 3 and 4 of the Act.
2. As stated, the Informant has been employed by the Opposite Party for last 10 years. The Informant claims to be a simple, hardworking, disciplined and dedicated employee during his course of employment with the Opposite Party for which he was awarded with praises and appreciation at different occasions.
3. The Informant has further stated that he was highly motivated to give his best performance towards the progress of the Opposite Party despite the Opposite Party's falling standards and loss of competitive edge. The informant highlighted the falling status of Opposite Party and provided details as to the serious rot which was setting into the working of the Opposite Party. The informant further stated that the employees at all levels of the organization were quitting for greener pastures outside and as a result, there was a serious talent deficit. The Informant had also tendered his resignation in the month of April 2017 but he withdrew it after getting retention bonus of Rs. 50 lacs. This was divided into two components: (i) to increase the annual salary by Rs. 30 lacs and; (ii) a one-time bonus of Rs. 20 lacs after completion of 10 years in November, 2017.
4. The Informant has further stated that after re-joining the office in April, 2017, the Opposite Party started harassing him and therefore, he resigned again in July, 2017. The grievance of the Informant arose when he found out that the Opposite Party was recovering the revised salary that had already been paid



to the Informant for the months of April to June, 2017. The same was allegedly recovered from the Informant's remaining salary till September, 2017 and thus, denying the Informant his rightfully earned income. The Informant has annexed an email dated 18th September, 2017, wherein the Opposite Party had stated that the Informant would be relieved from its services with effect from September, 2017. In the same email, the Informant's full and final settlement details were also communicated by the Opposite Party. The informant has claimed that when he withdrew his resignation earlier in the month of April, 2017 and re-joined the Opposite Party, Rs. 30 lacs were added to his CTC of Rs.70 lacs. Further, he stated that there was no documented claw-back clause in the above said lump sum payment as well as in the employment agreement that the Informant had signed while joining the Opposite Party in 2007.

5. The Informant has further submitted that the Opposite Party has also imposed various unconstitutional, impractical, unwarranted, hypothetical post-employment obligations as to restrain the Informant's progress and future growth in other organizations. Following terms of the Non-solicit and Non-compete Agreement imposed by the Opposite Party are alleged to be abusive by the Informant:

5.1 **Confidential Information**

Informant shall take all reasonable steps to preserve the confidentiality of the confidential information and he has agreed to indemnify and hold the company harmless in case of all losses, damages and expenses (including legal expenses) which the company may incur or sustain as a result of any unauthorized use or disclosure of the confidential information by the Informant. This



obligation of confidentiality shall continue notwithstanding the Informant ceasing to be an employee of the company.

5.2 **Post-employment Obligations**

Unless a written consent of the Opposite Party has been obtained, during the transition period and for a period of twelve months following termination, the Informant shall not: (i) be engaged or concerned in any business which competes with any business now carried on by the Opposite Party or any of their related corporations; (ii) perform any work or services for any client of the company or induce any client of the company to use the services of any person or entity in direct competition with the company; (iii) induce, solicit any director, manager, officer, staff member, servant, agent, contractor etc. of the OP to terminate any contract with the OP or any of its related entity; (iv) except under legal process, divulge or utilize any matters relating to the company's transaction, which are of confidential nature and; (v) for a period of one year after the termination of his employment canvass, solicit or endeavor to take away from the company the business of any customers or clients of the company who have been dealing with the company at any location where the company is situated.

6. It is submitted that the Opposite Party cannot deduct the Informant's revised salary from his current salary, as such recovery would be iniquitous and arbitrary. Further, the Opposite Party cannot impose arbitrary, unfair and discriminatory conditions on Informant, as it would be detrimental to his future growth and development, which causes or is likely to cause an appreciable adverse effect on competition within India. It would also breach the mandate contained in Article 14 of the Constitution of India.



7. Based on the above submissions, the Informant has alleged that the Opposite Party has indulged in unfair practices and has misused its dominance as per the provisions of the Act. The Informant has prayed to the Commission that the Opposite Party be directed to (i) withdraw the post-employment obligations and (ii) release the agreed revised salary for the months of April to September, 2017 along with agreed requisite bonus.
8. Having perused the information available on record, the Commission observes that the grievance of the Informant relates to imposition of arbitrary post-employment obligations upon the Informant and the act of the Opposite Party in recovering the revised salary from his current salary post resignation.
9. Although, Informant has alleged contravention of the provisions of Section 3 of the Act, no allegation has been specifically mentioned in the information. Further, the facts of the matter do not suggest any conduct on the part of Opposite Party that could be a subject matter of scrutiny under Section 3 of the Act. Accordingly, the facts of the case are being examined from the perspective of the provisions of Section 4 of the Act.
10. It is to be noted that determination of any contravention of the provisions of Section 4 of the Act requires: (a) delineation of the relevant market; (b) assessment whether the Opposite Party(ies) enjoy dominant position in the relevant market(s); and (c) if the Opposite Party(ies) is found to enjoy a dominant position in the relevant market, whether the impugned conduct amounts to an abuse.
11. It is observed that the Informant has not made any efforts to either define the relevant market or to produce any material to establish the dominance of the Opposite Party, if at all, in the relevant market. However, on an analysis of



the facts presented in the information, the Commission observes the following:

Relevant Market

11.1 As per the scheme of the Act, the relevant market is comprised of relevant product market and relevant geographic market. The relevant product market as defined under Section 2 (t) of the Act means “*a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.*” The determining factor for defining relevant product market is demand side interchangeability/substitutability of the product, which is to be ascertained on the basis of the factors enumerated under Section 19(7) of the Act such as physical characteristics/ end-use of goods, price of goods or service, consumer preference, exclusion of in-house production, existence of specialized producer, and classification of industrial products..

11.2 In the present case, the Informant an employee of the OP, is aggrieved by alleged recovery of the revised salary and imposition of post-employment obligations by the OP. Thus, the relevant market has to be defined in the context of OP as procurer of services offered by the Informant and likely placed professionals. From the consumption point of view, services offered by professionals in wealth management firms require specific professional degree or qualifications. No other service would be substitutable with the service provided by employees possessing particular professional degree or qualifications. The Informant has not detailed his professional abilities, qualification *etc.*, nor has provided the details of activities carried on by the Opposite



Party. However, the information available on the website of the Opposite Party suggest that Opposite Party is a private wealth management firm and it manages the financial affairs of its clients. To carry out its operation, the Opposite Party procures services of professionals to work in wealth management firm. Thus, the relevant product market in the instant case is the *'market for procurement of services offered by professionals to the private wealth management firms'*.

11.3 The relevant geographic market as defined under Section 2(s) of the Act means the *'market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.'* It appears that providing services by employees to employer upon payment of remuneration is largely standardized and therefore, uniform across India. Accordingly, the Commission is of the view that the relevant geographic market in the instant case would be India. Accordingly, relevant market is the *market for procurement of services offered by professionals to the private wealth management firms in India.*

Analysis of dominance and abuse:

11.4 The overall market of private wealth management services is very wide and presence of the Opposite Party would be relatively marginal. There are numerous firms like Opposite Party which procure the kind of services offered by the Informant. Thus, the Commission is of the view that the Opposite Party cannot be held to enjoy dominant position in the relevant market as a procurer or consumer of such professional services.



12. Since, the Opposite Party is not dominant, the Commission does not deem it appropriate to analyse the abuse.
13. Based on the above analysis, Commission is of the, *prima facie*, view that no case of contravention of the provisions of either Section 3 or Section 4 of the Act is made out against the Opposite Party in the instant matter. Therefore, the matter is ordered to be closed under the provisions of Section 26(2) of the Act.
14. The Secretary is directed to inform the Informant accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U.C.Nahta)
Member

New Delhi

Dated: 01-06-2018