

9.

COMPETITION COMMISSION OF INDIA

18th May, 2010

Case No 14/2010

1. M/s Mittal Auto Sales and Service
8, 9 Akroor Market, Aligarh Road, Hathras-204101 U.P. Pin-204101
2. Shri Rajveer Gupta S/o Late Shri Narottam Lal Gupta R/o Gali Post
Office, MadhuGarhi, Venktesh Nagar, Hathras-204101(U.P)
(Proprietor, M/s Mittal Auto Sales and Service, Mobile No. 09992700341)
Through
Smt. Rashmi Sharma, Advocate, Dharam Kunj, Purana Mill Compound,
Hathras-204101, Mobile: 09259587969

...Informant

1. Global Automobiles Though General Manager/Managing Director
Head Office Horizon 3rd Floor,
Jawahar Lal Nehru Road, Kolkata-700071
2. Pooja Expo India Pvt. Ltd. (U.P) Village- Dundahera, NH-24
Near ABEF Engineering College Near Airtel Tower, Ghaziabad (UP)
Pooja Expo India Pvt. Ltd. (UP) Present Address: 697 Place City Sector No. 37,
Gurgaon, Haryana

...Opposite Parties

ORDER UNDER SECTION 26(2) OF COMPETITION ACT 2002

The informant no. 2 is the proprietor of informant no. 1 dealing with the sales and services of automobiles range of two wheeler (Motorbikes, scooters and scooterettes) operating at Hatharas, Aligarh Road U.P. Opposite party no. 1 is manufacturer of two wheelers and working under Xenitis group of companies having its head office at Kolkata. Opposite party no. 2 is C & F of Global Automobiles Pvt. Ltd. (opposite party no. 1).

2 The instant information has been filed by the informant on 01.04.2010 under section 19 of the Competition Act alleging that the opposite party has abused its dominant position by not reimbursing the expenditure incurred by the informant in relation to advertisement which was for promoting the product of opposite party no. 1.

3. The informant has supported the allegations by filling relevant material which is enclosed as annexures to the information. Smt. Rashmi Sharma advocate appearing on behalf of the informant elaborated the case of the informant in the ordinary meeting of the Commission held on 18.05.2010.

4. The relevant facts as culled out from the information and other material available on record are being summarized as under:

4.1 The informant applied for getting the dealership of the opposite party no. 1 at Hathras (U.P) and OP no. 1 appointed it as its authorized dealer of Global Automobile range of two wheeler at informant's commercial establishment. The dealer code allotted to informant is U-10011. The letter of intent was signed by the parties on 21.1.2008.

4.2 The informant started operating the dealership as per the terms and conditions of letter of intent and accordingly spent huge amount on free service of Automobiles of customers and advertisement to promote the sales of the product of Global Pvt. Ltd. The informant forwarded the bills of the amount spent by it to the opposite party no. 1 for reimbursement duly verified by the authorized signatory of OP no. 1 but no payment was made to the informant, which is alleged to be clear violation of the condition no. 9, 12 and 17 of letter of intent signed between the parties.

4.3 The opposite party no.1 has also appointed opposite party no.2 as C & F on behalf of Global Automobile Pvt. Ltd. located at Ghaziabad (UP). The informant deposited an amount of Rs. 50585/- as advance payment for purchasing the motorcycle with OP no. 2. The informant alleged that this amount remained due in informant's credit but with the collusion of OP no. 1, the OP no. 2 did not provide motorcycles nor paid the credit amount to the informant. The informant gave the notices to the opposite parties dated 7.10.2009 and 5.12.2009 but they did not care for the same. The informant has alleged that it has spent an amount of Rs. 3558178.63/- on various heads which is due towards the opposite parties.

5. The informant has alleged that it has complied with all the requirements of letter of intent but the opposite party no. 1 & 2 being in the dominant position did not comply with the terms and conditions of letter of intent. It is the case of the informant that having faith and trust in the Opposite parties and in view of the

4

provisions of letter of intent, it has spent substantial amount in anticipation of the reimbursement of the same from the opposite parties. On the basis of the said facts the informant alleged that the opposite parties have abused their position of dominance and have violated the provisions of section 4(1) and (2) of the Competition Act, 2002.

6. The informant has prayed for the following reliefs:

- (i) To protect the interest of applicant and ensure freedom of trade.
- (ii) To inquire into the matter of contravention of provisions contained in section 4 (1) and 4 (2) of Competition Act 2002.
- (iii) To direct the O.P. No.1 to discontinue the abuse of dominate position, and impose such penalty as it may deem fit and proper.
- (iv) To award cost of this information in favour of applicant against the O.Ps.

Interim relief

- (i) To direct the O.P. No. 1 & 2 to supply the two wheeler (Motorcycle) of Global Automobiles products for sale to the informant.
- (ii) To direct the O.P.No.1 to pay amount of credit memo the previous expenditure memo regarding the service/remuneration and other expenditure and to fulfill the liability as per condition No. 9 of letter of intent.

7. The Commission considered all the relevant material placed on the record and the submissions of the authorized representative of the informant made in the ordinary meeting of the Commission held on 18.05.2010.

8. On examining the entire material on the record in detail, it is evident that the main grievance of the informant is regarding the breach of contract by the opposite parties as the opposite parties have apparently not complied with the provisions of letter of intent. It has been pleaded that the informant has spent a huge amount and as per the clause 9 of LOI is entitled for reimbursement of the same. The informant has not mentioned whether it has approached any civil court for breach of contract by the opposite parties or not.

9. In view of the above, and after considering the entire material and submissions of authorized representative of the informant, the Commission is of the opinion that the allegations as made in the information and the reliefs as prayed by the informant do not fall within the ambit of Competition Act, 2002. The Commission is of the view that the case on these facts appears to be a case of breach of contract and effective remedy on the basis of allegations made in the information appears to be for specific performance of the contract, which remedy can be granted by a competent civil court and not by the Competition Commission under the

5.

Competition Act, 2002. The informant has also not been able to place any credible or cogent material to show or establish the infringement of section 4 of the Act in this case and hence the allegations made by the informant have remained unsubstantiated and uncorroborated. The Commission, therefore, comes to the conclusion that as no prima facie case is made out for making a reference to the Director General for conducting investigation into this matter under section 26 (1) of the Act, the proceedings relating to this information are required to be closed forthwith.

10. In view of the above, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.

Secretary is directed to inform the informant accordingly.

Sd-
Member (S)

Sd-
Member (R)

Sd-
Member (P)

Sd-
Member (G)

Sd-
Member (A)

Sd-
Member (T)