

COMPETITION COMMISSION OF INDIA

11.05.2010

MRTP Case No.C-133/2009/DGIR(14/28) (Transferred from MRTPC)

M/s. Weavurg International,
4852/24, ansari Road, Daryaganj,
New Delhi-110002.

... Complainant

Vs.

M/s. Johnson & Johnson Ltd.,
30, Forjett Street, Mumbai-400 036

... Opposite Party

ORDER

1. This complaint was filed by the complainant before the office of DGIR, MRTPC on 07.07.2009. Upon receiving the complaint, the DGIR decided to conduct a preliminary investigation under section 11(2) of the MRTPC Act and after forwarding a copy of the complaint, the reply of the opposite party was asked for but it was not furnished. Consequent upon the repeal of the MRTP Act, this complaint has been transferred to the Competition Commission under the provisions of section 66(6) of the Competition Act, 2002.

2. As per the averments made in the complaint, the complainant is doing business with the opposite party, a pharmaceutical company since last 35 years and was appointed distributor of the opposite party as per agreement dated 08.05.2008. It has been alleged that the complainant firm has made huge investment and generated lot of business for the opposite party by procuring orders from Government Departments but at the stage of finalization of the orders, the opposite party withdrew the authorization given to it and issued the same in favour of other distributor namely M/s. Delhi Hospital Supply Pvt. Ltd. without assigning any reasons. It has been alleged that not only the distributor agreement contains many clauses which are in nature restrictive to trade but also the conduct and action of the opposite party is unfair due to which the business of the complainant has been ruined and his goodwill and reputation has also been damaged.

3. The complainant has prayed that his distributorship may be got restored.

4. The Commission considered the matter on 4.2.2010 and decided that in order to ascertain facts and also in the interest of justice, notice to the opposite party to file its comments/reply be issued. The complainant was also directed to file supplementary material or documentary evidence to substantiate the contents of the complaint. In terms of the said order of the Commission, notices dated 24.4.2010 were issued to the complainant and the opposite party asking them to file their reply/supplementary material within 15 days. Although the notices were served on the complainant and the opposite party on 24.4.2010, there has been no response from them. In the absence of any response, the Commission has considered the matter on the basis of the material available on record.

5. On examining the matter closely, it appears that the main grievance of the complainant is that though he was appointed distributor of the opposite party and made efforts to procure orders for supply for it, the opposite party at the time of placement of the orders gave the authorization in favour of some other distributors but from the perusal of distributor agreement it appears that in terms of clause 5 of the agreement the opposite party was entitled to deal with any other party for sale of its products and in that case the complainant was not entitled to any remuneration in respect of any such business. Further clause 6 of the agreement clarifies that the complainant is not to the sole distributor of the opposite party and it can appoint any number of distributors for the sale of its products. Therefore in terms of the distributor agreement the opposite party is well within its right to authorize any other distributor for the sale of its products even if this assertion of the complainant is accepted that it had toiled hard to procure those orders. It is also common knowledge that pharmaceutical companies usually appoint more than one distributor for the sale of their products. Moreover the distribution agreement between the complainant and the opposite party is in a form of an agreement and if breach of any condition or clause of the agreement is alleged by the complainant then it is entitled to avail remedies in appropriate fora.

6. So far as the applicability of section 3 or 4 of the Competition Act, 2002 is concerned on scrutinizing the entire relevant material no infringement of the provisions of section 3 or 4 of the Act is seen. This complaint, therefore, is not found to be maintainable.

7. It is also noticed that although the complainant has sought the relief for restoration of its distributorship but from the record it is not made out that his distributorship has been terminated by the opposite party. It is also not clear that on what grounds the distributorship of the complainant was brought to an end. The correspondence available on the record pertains mostly to year 2006 whereas the complaint was filed in year 2009. It is thus seen from the record that the

complainant has not filed any credible material in support of its contentions. As no violation of provisions relating to anti-competitive agreement or abuse of dominance has been found to be established the relief prayed by the complainant cannot be granted.

8. On the basis of the forgoing discussion and taking into consideration the facts and circumstances of the case it is amply clear that the complainant has failed to make any prima facie case for the contravention of either section 3 or section 4 of the Competition Act, 2002 and the matter deserves to be closed.

9. The matter is hereby closed. The Secretary is directed to inform the informant accordingly.

Sd/ -
Member (G)

Sd/ -
Member (R)

Sd/ -
Member (GG)

Sd/ -
Member (AG)

Sd/ -
Member (T)

Sd/ -
Chairperson