



COMPETITION COMMISSION OF INDIA

Case No. 13 of 2019

In Re:

Shri Anil Rathi

Partner, M/s Laxmi Polymers
Street No. GR 2/2A
Ganpati Dham Industrial Area
VPO. Sankhol, Bahadurgarh
Haryana – 124507

Informant

And

Oriental Insurance Company Limited

Registered Office: Oriental House
A-25/27, Asaf Ali Road
New Delhi

Opposite Party

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Mr. U.C. Nahta
Member

Ms. Sangeeta Verma
Member

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

1. The present information has been filed by Mr. Anil Rathi (hereinafter, the 'Informant') on 03.04.2019 under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the 'Act'), alleging abuse of dominant position by Oriental Insurance Company Limited (hereinafter, the 'OP') under Section 4 of the Act.
2. As stated in the information, the Informant is a partner of M/s. Laxmi Polymers (the 'firm') having its office at street no. Gr 2/2A, Ganpati Dham Industrial Area, VPO Sankhol, Bahadurgarh, Haryana. The OP, having registered office at Oriental



House, A-25/27 Asaf Ali Road, New Delhi, is a public sector general insurance company.

3. The Informant has stated that the firm, engaged in trading and processing of rubber, plastic and glass, was extended financial assistance by financial institutions and that the bankers had been making periodic checks of the premises and stocks. To carry on with its activities, the premises of the firm has been developed into 2 parts: one used for treading/ resoling of tyres and the other used for placing industrial installations. The is energized with industrial load sanctioned by Haryana Vidyut Prasaran Nigam Ltd. (HVPN); however, on account of erratic power supply, an alternative power supply has been taken from another factory premises, a sister concern of the Informant, which is located in front of the unit.
4. The Informant has further stated that due caution, by adhering to all safety measures, was taken and quality gadgets/ wiring material were used in the premises of the firm. Further, the aforesaid premises were inspected by Haryana Fire and Emergency Services, Bahadurgarh, who, after inspection, had given No Objection Certificate ('NOC') to the firm for a period of one year w.e.f. 12.04.2016 to 11.04.2017.
5. The Informant has averred that the firm availed an insurance policy bearing no. 261402/48/2016/235 from the OP, a Burglary Standard Policy covering risk for the period from 10.06.2015 to 09.06.2016, giving broad description as stock of plastic, rubber PVB-EVA, rubber compound lying in the premises of the firm. Owing to storage of volatile material and use of high tension wires at the premises, the firm availed another policy from the OP bearing no. 261602/11/2017/54, a Standard Fire and Special Perils Policy on the basis of information and details of earlier insurance cover. The Informant has claimed that list of activities and stock lying in the premises of the firm were disclosed to the OP while purchasing the said insurance policy. However, the OP issued the insurance policy "On stock in trade the property of the insured pertaining to his business or trade". The insurance cover described the firm as engaged in 'Leather goods manufacturing (incl. boot/shoe)' and SMI description as 'stock of plastic, rubber PVB, EVA, rubber compound lying in the



insured premises'. The Informant has further averred that since the insurance policy was issued after inspecting the premises, there can be no occasion for the OP to be unaware either of activities being carried on by the firm or of the stock lying in the premises of the firm.

6. The Informant has stated that on the intervening night of 20/21.12.2016, a fire broke out in the premises of the firm, which was immediately reported to the police as well as to the fire department. Pursuant to the loss occurred on account of fire, a claim was lodged by the Informant with the OP, in terms of the purchased insurance cover. In response to the claim, OP appointed S.K. Aggarwal & Co. as the surveyor to investigate and make assessment of loss suffered by the firm. Subsequently, the Informant received a letter dated 02.11.2017 from the OP repudiating the claim on the ground that the firm of the Informant is in breach of condition Nos.1 & 3 of Standard Fire and Special Perils Policy. The Informant has stated that since the survey report was not shared with him, he was not able to clarify the position on the observations and findings of the surveyor. The Informant has also submitted that while repudiating the insurance claim, NOC given by fire department was completely ignored.
7. The Informant has averred that being a layman, he was totally unaware of the technicalities and specifications of the insurance cover, which could protect the firm in situation of adversity. Moreover, being a layman, he could only explain his requirements to the OP to cover its risk and as such, the insurance covering the risk could only be best suggested by the OP.
8. Furthermore, the Informant has also stated that after being disappointed by the decision of the OP, he, then, approached other authorities, including IRDA for redressal. Later on, the legal representative of the Informant also sent a legal notice dated 28.09.2018, calling upon the OP to re-examine and reconsider the claim submitted by the Informant, which was nullified *vide* the OP's reply dated 12.11.2018.
9. Based on the above facts and averments, the Informant has alleged that the conduct



of the functionaries of OP is not only deficiency in service but also the manner in which the claim of the Informant was repudiated, is a case of unfair trade practice. Furthermore, the Informant has alleged that acts of the OP reflect abuse of dominant position, under the provisions of Section 4 of the Act.

10. On the basis of the foregoing, the Informant has sought following relief from the Commission:

- a. Pass an order thereby directing the OP to liquidate a sum towards insurance claim for the loss suffered by the Informant against Insurance Claim Policy 61602/11/2017/54;
- b. Pass an order directing the OP to pay compensation for delay in liquidating the insurance amount to the claimants, which may be calculated @ Rs. 50, 000/- per month w.e.f. December, 2016, till the date of actual liquidation;
- c. Pass an order/ direction against the OP to pay interest on the delay in payment of insurance claim in terms of Insurance Policy No. 261602/11/2017/54, w.e.f. December, 2016, till the time of payment;
- d. Pass an appropriate order/ direction to award damages to the tune of Rs. 40,000/- per month for delay in liquidating the insurance claim/ compensation;
- e. Pass an appropriate order/ direction to award damages towards mental agony and physical discomfort for illegal and unauthorized acts of the OP;
- f. Cost of proceedings before this Commission;
- g. Pass any order(s)/ direction(s) imposing penalty on the OP.

11. The Commission has perused the contents of the Information, considered the material available on record and in the public domain. The Commission observes that the present matter pertains to non-life/ general insurance sector, wherein non-life insurance products are sold by general insurance companies, which are approved by the Insurance Regulatory and Development Authority, to sell such products.

12. The Commission notes that the Informant is primarily aggrieved by the manner and



ground on which the insurance claim was repudiated by the OP. The Commission also notes that the Informant has alleged that the conduct of the OP falls foul of the provisions of Section 4 of the Act.

13. The Commission observes that under the provisions of Section 4 of the Act, conduct of an enterprise or a group would be examined if the enterprise or the group is a dominant entity in the relevant market(s). Thus, the starting point while analyzing a matter involving Section 4 allegation is determining whether the entity against which allegations have been levied is covered under the definition of enterprise or group. The next step is to delineate appropriate relevant market(s) in which the conduct of such enterprise or group has been alleged to be abusive. Thereafter, it is to be determined whether such enterprise or group is dominant in the relevant market(s) so delineated. Under the scheme of the Act, the Commission, only after having found an enterprise or a group, as the case may be, to be dominant in a relevant market, would, then, examine the impugned conduct of the entity against which allegations have been levied as to whether the same results in abuse of dominant position.
14. The Commission notes that the OP is engaged in selling non-life insurance products, which is a commercial activity covered under provision of services. Thus, the OP squarely falls within the definition of enterprise.
15. As per Section 2(r) of the Act, the relevant market may be defined either in terms of relevant product market or relevant geographic market or both. While the Informant has not indicated a particular relevant market in which the alleged abusive conduct has to be analyzed, the Commission observes that a general insurance company (such as the OP) is engaged in selling various types of non-life insurance products, including motor, home, fire, marine, travel *etc.* The Commission further observes that each non-life insurance product is distinct in terms of end use, underwriting norms, coverage, risk *etc.* Thus, each type of non-insurance product is capable of being in a distinct relevant product market. To that extent and in the context of present case, fire insurance products offered by various



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non-life insurers are interchangeable and substitutable with each other. In other words, buyers of fire insurance policy can buy the same from any non-life insurance company. Accordingly, the Commission is of the opinion that the relevant product market in the instant matter is '*market for provision of fire insurance services*'. In respect of relevant geographic market, the Commission notes that the conditions of competition in the market for provision of fire insurance services, in terms of demand or supply of fire insurance services, are not distinct from one region to another within India. Therefore, the Commission is of the view that relevant geographic market in the instant matter is '*India*'.

16. Based on the foregoing discussion, Commission is of the view that the relevant market in the instant matter is the '*market for provision of fire insurance services in India*'.

17. Having delineated the relevant market, the Commission, next, needs to determine whether the OP is dominant in the aforesaid relevant market. The Commission notes that in terms of explanation (a) to Section 4 of the Act, dominant position means "*a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to: (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour*".

18. From information available in the public domain, the Commission notes that the market for general insurance/ non-life insurance is competitive with presence of about 25 general insurers and that all these non-life insurance companies offer fire insurance policies. Furthermore, the Commission also notes that in terms of gross premium income for non-life insurers (public sector and private sector), OP had a market share of about 9.5% in the year 2016-17, which declined to about 8.6% in 2017-18. In terms of gross premium earned from fire segment of non-life insurance, the OP enjoyed a market share of about 10.1% during 2016-17, which declined to about 8.6% during 2017-18. Thus, on the basis of market share, it can be concluded that the OP is not in a position of dominance in the relevant market delineated *supra*.



Moreover, there is no material on record to show that the OP operates independently of competitive forces prevailing in the relevant market or that it affects its competitors or consumers or the relevant market in its favour.

19. Having determined that the OP is not dominant in the aforementioned relevant market, the Commission does not propose to examine the allegations against it of having abused such position, being not germane.
20. In view of the foregoing, the Commission is of the opinion that there exists no case of contravention of the provision of Section 4 of the Act and accordingly, the matter is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
21. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U.C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

Date: 10.05.2019
New Delhi