



**COMPETITION COMMISSION OF INDIA**

**Case No. 03 of 2021**

**In Re:**

**Confederation of Professional Baseball Softball Clubs  
A-119, 1st Floor, Krishe Emerald  
Wework, Kondapur Main Road  
Laxmi Cyber City, Whitefields Kondapur  
Hyderabad  
Telangana -500081**

**Informant**

**And**

**Amateur Baseball Federation of India  
B - 19, 1<sup>st</sup> Floor, Sushant Lok, Phase 2  
Sector - 56  
Gurugram  
Haryana--122011**

**Opposite Party**

**CORAM**

**Mr. Ashok Kumar Gupta  
Chairperson**

**Ms. Sangeeta Verma**

**Member**

**Mr. Bhagwant Singh Bishnoi  
Member**

**Order under Section 33 of the Competition Act, 2002**

1. This order shall govern the disposal of prayer of the Informant seeking interim relief, as sought for, *vide* para 15 of the Information filed in the instant matter.
2. In this regard, the Commission notes that *vide* separate order of even date passed under Section 26(1) of the Competition Act, 2002 ('the Act'), the Commission has *prima facie* opined that Amateur Baseball Federation of India/ ABFI/ Opposite



Party (OP) has violated the provisions of Sections 3 and 4 of the Act through its impugned conduct, as detailed therein, and the matter warranted investigation. Accordingly, the Commission directed the Director General (DG) to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also directed the DG to complete the investigation and submit the investigation report within a period of 60 days from the receipt of the said order.

3. Briefly stated, the Information in the present matter has been filed by Confederation of Professional Baseball Softball Clubs (**CPBSC/ 'the Informant'**) on 02.03.2021 against Amateur Baseball Federation of India (**ABFI/ 'Opposite Party'/ 'OP'**) alleging *inter alia* contravention of the provisions of Section 4 of the Act.
4. As per the averments made in the Information, the Informant is a not-for-profit organisation registered and incorporated under Section 8 of the Companies Act, 2013 on 23.06.2020. The Informant avers to work with the sole objective of promotion and development of sports of baseball and softball in India. The Informant, as a member of the baseball ecosystem, engages with players, coaches, clubs, and other partners in India and abroad. OP is a society registered under the Haryana Registration and Regulation of Societies Act, 2012 and it has been recognized as National Sports Federation by Ministry of Youth Affairs and Sports, Government of India and is primarily working for the general promotion of baseball and players. It is the responsibility of ABFI to conduct Zonal, National and International Baseball Tournaments in India. ABFI is affiliated to Baseball Federation of Asia (BFA) and also to World Baseball and Softball Confederation (WBSC).
5. The Informant has scheduled to organise 'Club National 2021' Championship in Hyderabad, India during 16.02.2021-21.02.2021 with an objective to provide a platform for the best baseball clubs to compete with each other and also intended to encourage players to enhance their skill in their respective playing careers in order to play in the major baseball leagues.



6. The Informant further states that it has received 14 (fourteen) club registration requests to participate in the aforesaid event and it shortlisted 8 (eight) clubs in the final pool for the event. Subsequently, it has come to the knowledge of the Informant, that a letter dated 07.01.2021 was sent by ABFI to the Presidents/ Secretaries of State Baseball Associations throughout the country prohibiting the State Associations from dealing with bodies and leagues not recognised by it and threatening with disciplinary action if any of the players took part in the leagues and tournaments not recognised by it.
7. As a consequence of the OP letter, the clubs who had paid their registration fees and expressed their interest to participate in the event started withdrawing their participation due to the fear of getting banned and threats by the OP. Resultantly, the Informant had to cancel the ground, transportation, accommodation bookings made for the event leading to severe financial distress for the organisation. The Informant rescheduled the event to 30.03.2021-04.04.2021 and announced the revised schedule to all the members of the event.
8. Subsequent to the filing of the Information, the Informant brought to the attention of the Commission, another communication dated 01.03.2021 issued by ABFI to its State Associations whereby OP announced to conduct the 34<sup>th</sup> Senior National Baseball Championship from 29.03.2021-03.04.2021 at Nandyal, Kurnool in Andhra Pradesh. The Informant alleges that the motive of OP in organising this event was to sabotage the event of the Informant by scheduling it during 29.03.2021-03.04.2021 *i.e.* starting it just one day prior to the beginning of the Club Nationals 2021 and closing one day prior to the closing of the same. In the said letter, OP has directed that that no team will be allowed to leave the station before the closing ceremony of the championship and also informed that men and women players will be selected during the said championship by Selection Committee for participation in forthcoming International events.
9. The Informant has delineated the relevant market as market of organising, conducting baseball tournaments, leagues and alleges that it has been denied access



to utilise the services of players and caused obstructions in its engagements with the State Baseball Associations, which is a blatant misuse of the regulatory power of OP and a clear contravention of the provisions of Section 4(2)(c) of the Act. The Informant also alleges that OP has abused its dominance as it is placing restrictions on players participating in tournaments/private professional leagues not recognised by ABFI and the same is a violation of Sections 4(2)(a)(i) and 4(2)(b)(i) of the Act.

10. OP in its reply submitted that it may be a 'person' as defined under Section 2(i)(v) of the Act, however, it is not involved in any commercial activities and as such not an 'enterprise' in terms of the definition thereof as provided under Section 2(h) of the Act. It is also submitted by OP that it is not in a dominant position in the market and so has no occasion to abuse the same.
11. OP submitted that it is not aware of the functioning of the Informant, as it is not an affiliated body to ABFI. It was reported to ABFI that some un-affiliated organizations were planning to conduct Baseball Tournaments, only with a profit motive, without the permission or approval of ABFI and since it is not in the best interest of the Baseball Game as such or the players, ABFI with a view to restrict such illegal and unauthorized events, sent letter dated 07.01.2021 to the office bearers of the affiliated State Baseball Associations requesting them not to entertain such unrecognized bodies to conduct such events.
12. OP further submitted that said letter was issued without any *malafide* intention or ill-motive to any particular organization but to apply generally, all over India in the best interest of the game and its players. The restrictions are only to the players who come under the purview of the affiliated State Associations and not to the general public. OP is not aware as to how the aforesaid letter affected the Informant or its activities, since OP has never dealt with any club who paid registration fee and expressed interest to participate in their event. OP is not having any control over such Baseball Clubs or their players. ABFI is having control only over the players attached to the Affiliated State Associations or the District Associations



and so ABFI is not causing any obstructions to the functioning of the CPBSC or its players. Therefore, there is no violation of the provisions of Section 4 of the Act.

13. The Informant in its rejoinder submitted that OP conducts tournaments and participates in international events and generates revenue through such activities which are economic in nature hence they fall within the purview of the term 'enterprise' as defined under Section 2(h) of the Act. The Informant emphasised that OP has failed to understand and acknowledge that the Informant being an independent body working with the sole objective of promotion and development duly incorporated under the Companies Act, 2013 as specified in the Memorandum of Association ("MOA") and Articles of Association ("AOA"), is not obligated or by any other means to seek the approval, permission or seek recognition of ABFI to conduct an independent and private baseball competition.
14. It has been further submitted by the Informant that for conducting a national level tournament or competition by an NSF, it should be participated by at least 2/3<sup>rd</sup> teams from the affiliated bodies whereas the 34<sup>th</sup> Senior National Championship has seen participation only from 12 men teams and 9 women teams. The impugned acts of ABFI were carried out with the sole motive to conduct the competition during the same dates of Club Nationals 2021 of the Informant, with an intent to disrupt and sabotage the event by refraining the players from participating in the Club Nationals 2021.
15. The Informant submitted that the announcement to conduct the 34<sup>th</sup> Senior National Baseball Championship from 29.03.2021 to 03.04.2021, starting one day prior to the beginning of the Club Nationals 2021 and closing one day prior to the closing of the Club Nationals 2021 so that no player considers appearing or making himself available for the event in Hyderabad was to only sabotage the Informant event. Therefore, CPBSC had to reschedule Club Nationals 2021 to June, 2021 by suffering financial loss and mental trauma.



16. The Commission considered the Information and other material available on record and based on the allegations levelled in the Information, it was observed *vide* its directions issued under Section 26(1) of the Act that the Informant is primarily aggrieved of the communications sent by ABFI to its affiliated State Baseball Associations whereby and whereunder they have been requested not to entertain unrecognized bodies and not to allow State level players to participate in any of the tournaments organized by them. The communication also threatens that strict action will be taken against the players who participate in such tournaments. This is alleged to be an abusive conduct by ABFI in contravention of the provisions of Section 4 of the Act.
  
17. Before examining the issues projected in the Information on merits, the Commission dealt with the preliminary objection raised by ABFI that since it is not involved in any commercial activity, it is not an 'enterprise' within the meaning of the term as defined in Section 2(h) of the Act and as such it cannot be proceeded against under the Act.
  
18. In this backdrop, it was noted that Section 2(h) of the Act defines 'enterprise' *inter alia* as a person or a Department of the Government, which is engaged in *any* activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, *of any kind*. The definition is very wide in its amplitude and covers all activities of specified nature of any kind. Further, as per Section 2(u) of the Act, 'service' means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.



19. The thrust of the definition of the term ‘enterprise’ is on the economic nature of the activities discharged by the entities concerned. It is immaterial whether such economic activities were undertaken for profit making/ commercial purpose or for philanthropic purpose. Thus, even non-commercial economic activities would be subject to the discipline of the Act as the Act does not distinguish economic activities based on commercial or non-commercial nature thereof. In ascertaining as to whether an entity qualifies to be an ‘enterprise’, the Commission examines this aspect from a functional than a formal approach.
20. Viewed in the above statutory scheme, from the allegations made in the Information, it was noted by the Commission that it cannot be gainsaid that ABFI *inter alia* is involved in controlling the provision of services which is manifested from its communication dated 07.01.2021 whereby the players affiliated to its State Baseball Associations have been warned not to participate in the tournaments organized by the bodies which are not recognized by it. Accordingly, the plea is misdirected and is rejected. It is held that ABFI is an ‘enterprise’ within the meaning of the term as defined in Section 2(h) of the Act and is therefore subjected to the discipline of Section 4 of the Act which prohibits abuse of dominant position. Moreover, it is also pertinent to point out that Section 3 of the Act prohibits anti-competitive agreements and *inter alia* mandates that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. This provision does not confine the entities, which are subject to this prohibition, to be an ‘enterprise’ as even the ‘person’ and ‘association of persons’ have been included within its purview. Further, the specified conduct of such entities in Section 3(3) of the Act, is presumed to have an appreciable adverse effect on competition. As pointed out previously, ABFI is stated to be registered under the Haryana Registration and Regulation of Societies Act, 2012 and as such qualifies to be a ‘person’ as defined in Section 2(l) of the Act being an association of persons.



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21. Having held ABFI to be an 'enterprise', the Commission proceeded to assess the impugned conduct of ABFI within the parameters of Section 4 of the Act which prohibits abuse of dominant position.
22. For the reasons detailed in the order issued under Section 26(1) of the Act, the Commission assessed the relevant market as '*market for organization of baseball leagues/events/ tournaments in India*'. On the issue of dominance of OP in the afore-delineated relevant market, the Commission noted from the submissions of OP itself that it is recognised as a National Sports Federation by the Ministry of Youth Affairs and Sports, Government of India and is primarily working for the general promotion of baseball and the players. It is also stated by OP in its reply that ABFI is affiliated to Baseball Federation of Asia, which is a continental level body and also to World Baseball and Softball Confederation, which is an International organization. ABFI is stated to have 26 affiliated State Associations across the country in 6 different zones. is an apex body in the country for promotion and development of baseball game recognized by Ministry of Youth Affairs & Sports, Government of India and Indian Olympic Association. Apart from conducting zonal, national and international baseball tournaments in India, ABFI is admittedly entrusted with the task of selecting Indian Baseball Team to participate in the international events.
23. In view of such admitted apex position of ABFI in the baseball ecosystem coupled with linkages/ affiliations with continental and international organizations, it was observed by the Commission that ABFI plays a decisive role in the governance of this sport discipline in the country. Accordingly, the Commission was of *prima facie* opinion that ABFI is in a dominant position in the '*market for organization of baseball leagues/events/ tournaments in India*'.
24. As regards the alleged abusive conduct, the Commission noted that ABFI by issuing communication dated 07.01.2021 to its affiliated State Baseball Associations requesting them not to entertain the unrecognised bodies and further by requesting them not to allow their respective State players to participate in any





of the tournaments organised by such unrecognised bodies, has violated the provisions of Section 4(2)(c) of the Act as it results in denial of market access to other federations. Also, such conduct was found to result in limiting and restricting the provision of services and market therefor, in contravention of the provisions of Section 4(2)(b)(i) of the Act. It is pertinent to mention that ABFI has acknowledged in its response that it has sent the communication dated 07.02.2021 to its affiliated State Associations.

25. The Commission also noted that the communication dated 07.02.2021 has further warned of strict action against the players who participate in the tournaments organised by bodies which are not 'recognised' by ABFI. Such conduct imposes an unfair condition upon the players and thereby falls foul of the provisions of Section 4(2)(a)(i) of the Act besides stultifying the very objective of promoting the cause of baseball in India, which a National Sports Federation is obligated to discharge.
26. In view of the foregoing, the Commission was of the *prima facie* opinion that ABFI has violated the provisions of Section 4 of the Act through its impugned conduct and the matter warrants investigation. Further, though the Informant has alleged contravention of the provisions of Section 4 of the Act only, yet looking at the decisions taken and communicated by ABFI, the Commission was of the opinion that the impugned conduct may also be examined by the DG within the framework of Section 3 of the Act, as highlighted previously in this order, as the impugned acts of ABFI in communicating its decision *vide* letter dated 07.01.2021 *prima facie* seem to limit or control provision of services, and thereby stand captured within the framework of Section 3(1) read with Section 3(3) of the Act.
27. Resultantly, the Commission directed the DG to cause an investigation to be made into the matter, as stated previously.
28. As regards the prayer made by the Informant seeking interim relief by way of a direction to ABFI to withdraw steps taken in restraining players, officials, clubs



and State Baseball Associations from participating in private leagues; seeking issuance of No Objection Certificates to players/ officials/ clubs and State Baseball Associations who are interested in participating in any capacity in the Club Nationals 2021, the Commission, for the reasons detailed hereinabove and to be further detailed hereinafter, is of the considered opinion that the present case is fit to issue some interim measures.

29. In this regard, it is observed that in appropriate cases, the Commission is empowered to temporarily restrain any party from carrying on acts prohibited by the Act until the conclusion of inquiry or until further orders, *without even giving notice to such party*. A plain reading of Section 33 of the Act makes the legal position plain when it provides that where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of Section 3 or sub-section (1) of Section 4 or Section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.
30. Further, the principles for grant of interim relief as laid down by the Hon'ble Supreme Court in the case of *Competition Commission of India v. Steel Authority of India Ltd.*, Civil Appeal No. 7779 of 2010 decided on 09.09.2010, may be noticed. It was noted by the Hon'ble Court that where during an inquiry the Commission is satisfied that the impugned act is in contravention of the provisions of the Act, it may issue an order temporarily restraining the party from carrying on such act, until the conclusion of such inquiry or until further orders without giving notice to such party, where it deems it necessary. As noted by the Hon'ble Court, this power has to be exercised by the Commission sparingly and under compelling and exceptional circumstances. Further, the Commission, while recording a reasoned order *inter alia* should: (a) record its satisfaction which has to be of much higher degree than formation of a *prima facie* view under section 26(1) of the Act in clear terms that an act in contravention of the stated provisions has been



committed and continues to be committed or is about to be committed; (b) it is necessary to issue order of restraint and (c) from the record before the Commission, it is apparent that there is every likelihood of the party to the *lis*, suffering irreparable and irretrievable damage or there is definite apprehension that it would have adverse effect on competition in the market.

31. Applying the statutory mandate and the judicial dicta laid down by the Hon'ble Supreme Court, it is evident that all the ingredients for grant of interim injunction are overwhelmingly present in the instant case. As noted earlier, the Commission has already recorded its satisfaction as to the existence of a *prima facie* case, as reflected in the order directing investigation. Looking at the nature of communication dated 07.01.2021 sent by ABFI to its affiliated State Baseball Associations and the diktat issued thereunder, the Commission has no hesitation in holding that ABFI is brazenly indulging in anti-competitive behavior in a manner which frustrates the very cause of promoting baseball sport, which it is otherwise obligated to ensure by virtue of being a recognized as National Sports Federation by Government of India. The Commission has also noted that the Informant originally scheduled its event Club Nationals 2021 during 16.02.2021 to 21.02.2021, which had to be re-scheduled to 30.03.2021 to 04.04.2021, as per the Informant, due to the communications sent by ABFI to its affiliated State Associations. Further, it appears that even this schedule had to be further postponed by the Informant due to the announcement of 34<sup>th</sup> Senior National Baseball Championship by ABFI to be conducted during 29.03.2021-03.04.2021, virtually coinciding with the event of the Informant. Such brazen and predatory conduct of ABFI, if allowed to continue and perpetuate, it may hamper the objectives of the Act and it has become imperative to issue an appropriate interim measure. Any delay in issuing the interim arrangement would irretrievably and irreparably damage the interests of other federations and the players.
32. In the result, the Commission is of the considered opinion that the present case is fit for grant of interim injunction and accordingly ABFI is hereby restrained to issue any communication to its affiliated State Associations dissuading them, in



any manner whatsoever, from allowing their players from participation in tournaments organised by the Associations/ Federations/ Confederations which are not purportedely 'recognised' by ABFI. ABFI is further directed not to threaten the players who want to participate in such events. This arrangement shall continue till further orders or passing of final order in the matter, whichever is earlier. ABFI is directed to ensure strict compliance with these directions.

33. It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
34. The Secretary is directed to communicate to the Parties and the Office of the DG, accordingly.

**Sd/-**

**Ashok Kumar Gupta  
(Chairperson)**

**Sd/-**

**Sangeeta Verma  
(Member)**

**Sd/-**

**Bhagwant Singh Bishnoi  
(Member)**

**New Delhi**

**Date: 03/06/2021**