

COMPETITION COMMISSION OF INDIA

CASE No.7/2010

Date: 10.01.2013

Vijay Gupta

....

Informant

Through

Dr. A.N. Aggarwala (Advocate)

V.

1. M/s. Paper Merchants Association (OP-1)
2. M/s. Shashi Jain (Prop. M/s. Parasnath Associates) OP-2)
3. Ramesh Jaina (Arbitrator) (OP.3)

Through

Mr. V.P. Goel (Member, Paper Merchants Association, Delhi)

Mr. R.P. Mittal (Arbitrator)

....

Opposite Parties

**SUPPLEMENTARY ORDER UNDER SECTION 27 OF THE COMPETITION
ACT, 2002**

This Commission in the above case had considered the following clauses appearing in constitution and regulation of Paper Merchants Association, Delhi to be violative of section 3 of the Competition Act:-

Rule XVI Clause 22:

Dispute & Quida Committee

- (a) In case any member or non-member does not comply with any directions or instructions of the Association and refuses to abide by it, the Executive Committee shall issue a notice to such persons asking him to abide by the same, and on his failure to comply with the said notice within the period specified therein, the General Secretary shall report the case to Quida Committee who may notify all members not to have any dealings with such persons.
- (b) The Quida Committee shall be nominated and its membership fixed by the Executive Committee.

Rule XXX Clause 1 & 2

Rules for Arbitration cases framed by the executive Committee under Rule XVI (15) of the Constitution & Regulation:

- a) In regard the Aims and Objects of the Paper Merchants Association (Regd.) Delhi Rule II Sub Clause (13) the disputes including disputes of non-payment between member to member or member to an outsider shall be decided by the Arbitrator/Arbitrators appointed by the Association. The Award given by the Arbitrator/Arbitrators shall be binding on both the parties. The disputes including disputes of non-payment between member to member and member to an outsider shall be filed in the Association as per above reference.

In case of any dispute including dispute of non-payment of bill the same shall be referred to the "Paper Merchants Association (Regd.) Delhi" for sole arbitration and the judgement given by the Arbitrator/Arbitrators appointed by the Executive Committee shall be final and binding on both the parties.

- b) For an outsider the above term of Arbitration will be printed or stamped on original and duplicate sale invoices and both the parties will be bound to this term.

Even if the term of Arbitration is not printed on the Sale invoices and both the parties appear and participate in the Arbitration proceedings, it will be presumed that the parties have accepted the Arbitration.

2. The Commission vide its aforesaid order dated 24.3.2011 had given following directions to OP-1.

"By the powers vested in under sub-section (a), (d) and (e) of section 27 of the Competition Act, 2002, the opposite party No.1 is hereby directed to take steps to delete/suitably modify clauses 1 and 2 of part XXX relating to "Rules for Arbitration Cases" framed by the Executive Committee and clause 22 of part XVI of the Constitution and Regulation of the Paper Merchants Association, Delhi within 60 days of communication of this order and till then discontinue the observance of the said clauses. The opposite party no.1 is further directed to file the copy of the modified clauses within 90 days communication of this order, failing which appropriate action under the Act shall be taken against the party no.1."

3. The order of the Commission was assailed by OP-1 before Competition Appellate Tribunal (COMPAT) and the COMPAT vide its order dated 29th August, 2011 allowed the appellant to withdraw the appeal and approach the

Commission for its suggestion regarding modification of clause 1 & 2 of Part-XXX and clause 22 of part XVI of constitution and regulation of Paper Merchant Association.

4. The applicant has made this application after the order of the COMPAT for modification of the clauses. Both the parties were heard orally as well the written submissions have been filed. Paper Merchant Association had practically reasserted the same clauses with slight modifications whereas the informant had stated that the arbitration should take place only in accordance with the Arbitration and Conciliation Act, 1996 and Quida Committee should have no power of any sort on non members.

5. Similar arbitration clauses which find mention in the bye-laws of association were considered by Delhi High Court in case Taipack Ltd. and Ors. V. Ram Kishore Nagar Mal {2007 (3) ARBLR 402 (Delhi)} and the High Court observed that existence of an Arbitration agreement can be there only if there exists a consensus ad-idem between the parties on the arbitration clause. Mere printing of the condition on reverse of invoice at the best can be considered an offer by the respondent to the petitioner and unless offer is accepted by the petitioner, it would not result into a binding and enforceable contract. The Arbitration and Conciliation Act, 1996 also provides that there has to be a written agreement between the parties for referring the matter to Arbitration. The above clauses appearing in by-laws & rules of Association may bind the members of the Association since it is presumed that the article of association & by-laws constitute an agreement among the members, but would not bind a non-member as a non-member is not a signatory to the Articles of Association/by-laws nor he binds himself by virtue of purchasing some goods from the member. The impugned clauses be modified as under to bring them in tune with law.

Modified Clause 22 of Part XVI

- (a) "In case any member of the Association does not comply with any directions or instructions of the Association and refuses to abide by it, the Executive Committee shall issue a notice to such person asking him to abide by the same and on his failure to comply with the notice within the period specified therein, the General Secretary shall report the case to Quida Committee who may take action in accordance with bye-laws against the member."
- (b) The Quida Committee shall be nominated and its membership fixed by the Executive Committee"

Modified Clause 1 & 2 of Rule XXX

- (a) "In regard to the aims and objects of the Paper Merchants Association, Delhi, Rule II sub-clause (13), the disputes including the disputes of non-payment between and amongst the members

shall be decided by Arbitrator(s) appointed by the association. The award given by the Arbitrator(s) shall be binding on both the parties. The dispute including dispute of non-payment between the members shall be filed in the association as per above reference.

- (b) In case any dispute including dispute of non-payment of bills arises between the members of the Association, the same shall be referred to Paper Merchant Association, Delhi for arbitration and the award passed by the Arbitrator(s) appointed by the Executive Committee from within the panel maintained by the Association shall be final and binding on both the parties. The Association shall forward three names of the panel arbitrators to the disputed parties and ask them to agree on one name.”

Clause 2 of Rule XXX to be deleted.

6. The above modifications shall not only satisfy the provisions of Arbitration & Conciliation Act, 1996 but also make the by-law Competition Act complaint. However, the dispute between member and non-member can be referred to Arbitration only when there is an express written arbitration agreement between the parties and it cannot be referred to Arbitration without an express written agreement between the parties, as held by the High Court in aforesaid case. The Arbitrator(s) appointed by the Paper Merchant Association will have no jurisdiction to adjudicate any case between the member and non-member.

7. The Secretary is directed to inform all concerned accordingly.

Sd/-
(H.C. Gupta)
Member

Sd/-
(R. Prasad)
Member

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
Member

Sd/-
(Justice S.N. Dhingra) {Retd.}
Member

Sd/-
(Ashok Chawla)
Chairperson