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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 16 of 2020

In Re:

**Nishant P. Bhutada
M/s Kanchan Motors
Opposite Tractor House
Mumbai Agra Road
Tigrania Corner, Dwarka
Nashik- 422001**

Informant

And

**Tata Motors Ltd.
Bombay House
24, Homi Mody Street Fort
Mumbai- 400001**

Opposite Party No. 1

**Tata Capital Financial Services Limited
11th Floor, Tower A
Peninsula Business Park
Ganpatrao Kadam Marg
Lower Parel
Mumbai- 400013**

Opposite Party No. 2

**Tata Motors Finance Ltd.
Think Techno Campus (Lodha)
2nd Floor, Building 'A'
Off Pokhram Road 2
Adjacent to TCS Yantra Park
Thane (West)- 400601**

Opposite Party No. 3

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**



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Order under Section 33 of the Competition Act, 2002

1. The present order shall govern the disposal of an application dated 10.11.2021 moved by the Informant seeking interim relief under Section 33 of the Competition Act, 2002 (“**the Act**”) against OP-1. Earlier, the Commission *vide* its common order dated 04.05.2021 passed under Section 26(1) in the instant case as also in Case No. 21 of 2019 *prima facie* noted a case of contravention of the provisions of Section 3(4) and Section 4 of the Act, as detailed therein, and ordered the Director General (“**DG**”) to cause an investigation to be made into the matter.
2. In this backdrop, during pendency of the investigation, the Informant has now preferred an application dated 10.11.2021 seeking various interim reliefs under Section 33 of the Act against OP-1 alleging essentially that OP-1 has illegally and unlawfully blocked the access code in September, 2020, which was required by the Informant to conduct business with OP-1, in terms of the dealership agreement dated 10.02.2017. The Informant itself has stated the said agreement to be subsisting and binding upon the parties till 31.03.2021. For felicity of reference, the prayers made by the Informant in the instant application are excerpted below:
 - a) *That this Hon’ble Commission be pleased to direct the OP-1 to forthwith renew the Agreement dated 10.02.2017 for a period of five year as promised and/or assured by the OP-1*
 - b) *to direct the OP-1 to forthwith unblocked the access code of the Informant*
 - c) *In alternative to prayer clauses (a) and (b), to direct the OP-1 to take possession of the entire stock of spare parts supplied by the OP-1 and reimburse the Informant for the monies as was paid by the Informant*
 - d) *to direct the OP-1 to compensate the Informant for the losses and damages suffered by the Informant owing to the illegal action of the OP-1 to block the access code*
 - e) *to direct the OP-1 to release the monies to the tune of Rs.30,19,477.30/- (Rupees Thirty Lakhs Nineteen Thousand Four Hundred and Seventy-Seven and Thirty Paise only) of the Informant, illegally withheld by the OP-1 in Account No. 1D01500*



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- f) *Pending the hearing and final disposal of the present Interim Application, that this Hon'ble Commission be pleased to direct the OP-1 to forthwith renew the Agreement dated 10.02.2017 for a period of one year as promised and/or assured by the OP-1*
- g) *Pending the hearing and final disposal of the present Interim Application, that this Hon'ble Commission be pleased to direct the OP-1 to forthwith unblocked the access code of the Informant in terms of the Agreement dated 10.02.2017*
- h) *Pending the hearing and final disposal of the present Interim Application, that this Hon'ble Commission be pleased to direct the OP-1 to take possession of the entire stock of spare parts supplied by the OP-1 and reimburse the Informant for the monies as was paid by the Informant to the OP-1 at the time of purchase of the said spare parts*
- i) *Pending the hearing and final disposal of the present Interim Application, that this Hon'ble Commission be pleased to direct the OP-1 to release the monies to the tune of Rs.30,19,477.30/- (Rupees Thirty Lakhs Nineteen Thousand Four Hundred and Seventy-Seven and Thirty Paise only) of the Informant, illegally withheld by the OP-1 in Account No. 1D01500*
- j) *Pending the hearing and final disposal of the present Interim Application, that this Hon'ble Commission be pleased to direct the OP-1 to compensate the Informant for the losses and damages suffered by the Informant owing to the illegal action of the OP-1 to block the access code*
- k) *Ad-interim relief in terms of prayer clauses (f), (g), (h) and (i)*
- l) *For costs of this Application*
- m) *Any order(s) this Hon'ble Commission may deem fit*
3. At the outset, it would be apposite to note the parameters and perimeter for grant of interim relief as laid down in Section 33 of the Act. 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



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it necessary. Elucidating the statutory scheme, the Hon'ble Supreme Court of India 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 held that this power has to be exercised by the Commission sparingly and under compelling and exceptional circumstances. Further, it was held that 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.

4. Coming to the present case, it is unnecessary to examine the instant application in any great detail and suffice to observe that as per the Informant's own averments, the dealership agreement was to remain valid till 31.03.2021. In these circumstances, the belated attempt by the Informant to impugn the purported denial of access code in September, 2020 *i.e.* after a delay of over one year and that to after lapse of dealership agreement, is thoroughly misconceived. When the agreement itself is no longer in currency, the plea to get access to the code for conducting the business under the dealership agreement is wholly untenable besides being infructuous in nature. The grant of overarching prayers sought by the Informant, as adumbrated *supra*, would virtually revive a lapsed agreement. The Informant has failed to meet any of the parameters laid down by the Hon'ble Supreme Court.
5. Viewed in the aforesaid backdrop, the Commission is of the considered opinion that no case whatsoever has been made out by the Informant which warrants grant of interim relief. Resultantly, the application stands dismissed.



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6. It is 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.

7. 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: 21/12/2021