



**COMPETITION COMMISSION OF INDIA**

**Case No. 27 of 2021**

**In Re:**

**Mr. Anand Moudgil**

**Informant**

**And**

**Orbit Aviation Private Limited**

**Opposite Party**

**CORAM**

**Mr. Ashok Kumar Gupta  
Chairperson**

**Ms. Sangeeta Verma  
Member**

**Mr. Bhagwant Singh Bishnoi  
Member**

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

1. The present Information has been filed under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') by Mr. Anand Moudgil ('Informant') against Orbit Aviation Private Limited ('OP') alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. The Informant, as the proprietor of M/s Hermes International, was stated to be engaged in the business of running buses between the IGI Airport, Delhi and certain cities of Punjab. The operation of buses was commenced from 30.11.2016. Subsequently, the Informant started receiving alleged threats from one of its competitors namely, M/s Indo-



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Canadian Transport Company ('ICTC') which is also stated to be a sister concern of OP.

3. According to Information, a complaint was made by OP before the State Transport Commissioner, Punjab ('STC') and Delhi Airport Parking Services ('DAPS') stating that the permits were obtained by the Informant on false premises. Taking cognizance of complaint, STC issued Show Cause Notice and suspended the permits temporarily *ex-parte vide* its order dated 08.12.2016. Due to temporary suspension of permits, Informant was forced to halt the operations. Thereafter, Informant filed a writ petition before the Hon'ble High Court of Punjab and Haryana to set aside the temporary suspension of the permits. ICTC also filed writ petition before the Hon'ble High Court of Punjab and Haryana to set aside the permits issued by STC to the Informant. The Hon'ble High Court *vide* its order dated 15.12.2016 directed the STC to decide the issue expeditiously and the order, whereby the authorizations/ permits were suspended by STC, were directed to remain in abeyance and not to be enforced.
4. Thereafter, the Informant filed LPA before the Hon'ble High Court of Punjab and Haryana. The Hon'ble Court *vide* its order dated 21.12.2016 disposed of the appeal stating that if any adverse order is passed against the Informant by the STC, the same shall be kept in abeyance for a period of 30 days to enable him to file an appeal. On 26.12.2016, the Office of the STC, cancelled the permits of the Informant for breach of certain conditions contained in the permits to run the operations. Subsequently, the Informant filed the writ petition before the Hon'ble High Court of Punjab and Haryana and *vide* order dated 25.01.2017 obtained the stay on the suspension.



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5. The Informant has stated that even after getting a stay order from the Hon'ble High Court, he continued to receive threats. Consequently, on 02.02.2017, the Informant sold the buses to OP by entering into the sale of buses (Assets) agreement ('Agreement') with the OP. It has also been stated that a clause on Non-Compete was forcefully inserted at the time of signing of Agreement by the OP (Clause 10 of Agreement). Clause (10) of the agreement reads as under:

*“10. It has also been admitted and agreed by the party of the First Part that it will not undertake the similar business, running of luxurious travel coach, AC/Non AC buses, etc. from any town/city of Punjab to Delhi Airport and back. Party of the First Part will not in any way compete with the existing business and business transferred by it to party of the second part. In case, of any breach of this term party of the first part will have to compensate the party of second part through adequate damages...”*

6. On 24.09.2019, Informant took a loan to the tune of INR 4 Crores to buy four (4) new buses and got permits for All India Tourist vehicles by the Transport Department of Punjab.
7. As per Information, before the commencement of the operation of the buses on Punjab to Delhi IGI Airport route, the OP filed an application for grant of *ad interim* injunction restraining the Informant from undertaking similar business of running buses between Punjab and Delhi and from competing with the said existing business of OP invoking the Clause 10 of the Agreement dated 02.02.2017. The Ld. Trial Court at Ludhiana granted relief by restraining the Informant to operate the similar business.



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8. As per the Information, OP is not engaged in carrying out any business of plying buses from Punjab to Delhi Airport, rather its sister concern ICTC is running the same business. Therefore, OP is not allowing the Informant to compete by plying buses with ICTC.
  
9. Thereafter, Informant filed appeal before First Appellate Court of Additional District Judge, Ludhiana which came to be dismissed *vide* its order dated 18.01.2021 with the following observations:

*“15. ...As appellant has already obtained INR 60 Lakhs from respondent not to carry on similar business to compete respondent, therefore, certainly prima facie case exist in favour of the respondent. Respondent has paid relatively huge amount towards profit and hence, the balance of convenience also lies in its favour and in the considered opinion of this court that if appellant is not restrained from carrying on similar business, it will result into irreparable loss to the respondent. It is necessary to mention here with the agreement in question is not for total restraint upon appellant to carry on business because only reasonable restraint has been agreed. As appellant agreed not to run his buses on a specific route i.e. Delhi Airport to various towns/cities of Punjab, thus, he is at liberty to carry on business of transport on any other route.”*

*“16....Once appellant has admitted execution of agreement; received consideration thereof and acted upon it, therefore he cannot now claim that he was forced to enter into agreement due to pressure of political party which was in power in Punjab at that time.”*



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10. Aggrieved thereby and dissatisfied therewith, the Informant is stated to have preferred an appeal before the Hon'ble High Court of the Punjab and Haryana for setting aside the order dated 18.01.2021.
11. Now, the Informant has approached the Commission alleging that Clause (10) of the Agreement dated 02.02.2017, to be anti-competitive and violative of Sections 3 and 4 of the Act, with the following reliefs:
- (i) *The Non-compete Clause 10 of the agreement dated 02.02.2017 be set aside with its operation retrospectively, if permissible under law.*
  - (ii) *Appropriate compensation be awarded to the Appellant due to applicability of Clause 10 of the alleged agreement.*
  - (iii) *To pass appropriate order/inquiry under relevant provisions of the Competition Act, earlier judgments passed by the Commission, along with in light of any relevant judgments rendered by the NCLAT, OR Hon'ble Supreme Court of India, to declare the impugned clause nullity/illegal to set aside in the present appeal.*
12. The Informant has also sought interim relief during the pendency of the matter as envisaged under Section 33 of the Act by seeking restrained upon the execution/operation of Clause 10 of the Agreement.
13. The Commission considered the present Information in its ordinary meeting held on 28.09.2021 and decided to pass an appropriate order in due course.



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14. Having considered the averments and allegations made in the Information, the Commission notes that the primary grievance of Informant is that he is restricted by the OP from re-entering into business of running of buses between IGI Airport Delhi and certain cities of State of Punjab, by invoking Clause 10 *i.e.* Non-compete clause of the Agreement which was entered between the Informant and the OP, as detailed *supra*. The Informant has alleged that Clause 10 of the Agreement is in violation of Sections 3 and 4 of the Act.
15. On perusal of the Information and the documents filed therewith, it appears that the Informant has not been able to place any material before the Commission wherefrom any entry barrier, much less any insurmountable entry barrier, can be deciphered. It is an admitted position on record that the Informant himself has re-entered into the same business without any difficulty. Admittedly, the Informant obtained the registrations and permissions from the STC twice within a short span of time. No other entry barrier has been pleaded much less established. As regards the purported non-compete clause, it is evident that it is the Informant only, who appears to have been restricted to enter the said market and this clause does not create entry barrier for any other person or enterprise to enter the similar business.
16. In view of the above, the Commission is of the considered opinion that in the absence of any foreclosure or entry barrier in the market due to the purported non-compete clause entered into by and between the Informant and the OP, as also considering the nature of the clause and the consideration paid therefor and the attendant litigations and observations made therein, the Informant has failed to make out any case of contravention of the provisions of Sections 3 or 4 of the Act against the OP.



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17. Resultantly, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out and the matter is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
18. It is made clear that nothing stated in the present order shall preclude the Informant from taking/ availing any other remedy(s) available to him in accordance with law.
19. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-**

**(Ashok Kumar Gupta)**

**Chairperson**

**Sd/-**

**(Sangeeta Verma)**

**Member**

**Sd/-**

**(Bhagwant Singh Bishnoi)**

**Member**

**New Delhi**

**Date: 12/10/2021**