



COMPETITION COMMISSION OF INDIA

Case No. 43 of 2018

In Re:

Mr. Kalyan Chowdhary
3, Mohishila Colony, Asansol
Post Office: Asansol 3,
Burdwan, West Bengal.

Informant

And

Cipla Limited
Peninsula Business Park,
Ganpatro Kadam Marg,
Lower Parel, Mumbai,
Maharashtra.

Opposite Party No. 1

Bengal Chemist and Druggists Association
1st Floor, 12 Bonfield Lane,
Kolkata, West Bengal.

Opposite Party No. 2

Present:

For Informant:

Informant-in-Person

For OP-1:

Mr. Avinash Amarnath, Advocate

For OP-2:

Mr. Nakul Mohta, Advocate;

Mr. Lalit Mohan, Advocate

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 information was filed under Section 19(1)(a) of the Competition Act, 2002 (the “Act”) by Mr. Kalyan Chowdhary (hereinafter the ‘Informant’), proprietor of M/s Kamala & Sons against: (i) Cipla Limited (hereinafter ‘OP-1’); and (ii) Bengal Chemists and Druggists Association (hereinafter ‘OP-2’), alleging contravention of provisions of Sections 3 and 4 of the Act (hereinafter, OP-1 and OP-2 are jointly referred to as ‘OPs’).
2. As stated, the Informant is involved in wholesale business of medicine for more than two decades and has been a stockist/ wholesaler of OP-1 in Asansol town of Burdwan district in West Bengal since 2012-13. As per website of OP-1, it is a multinational pharmaceutical company having products across various therapeutic categories. OP-2, a non-profit company, is an affiliate of All India Organization of Chemist and Druggist (‘AIOCD’) and an association of wholesale and retail sellers of medicines in West Bengal.
3. It is stated that the Informant had filed a complaint (*C.P. No. 60 of 2015* on 16.02.2015) against OP-2 and others before the National Company Law Tribunal (‘NCLT’), Kolkata Bench regarding mismanagement in elections of Asansol Zonal Committee of OP-2 in 2013. The NCLT passed an order dated 29.09.2016 in favour of the Informant. Thereafter, OP-2 filed an appeal in the National Company Law Appellate Tribunal (‘NCLAT’) against the said order of NCLT, which was dismissed *vide* an order dated 11.04.2017. Aggrieved by the order of NCLAT, OP-2 challenged the same before the Hon’ble Supreme Court in the Civil Appeal No. 684 of 2018, which was also dismissed *vide* order dated 02.02.2018.
4. The Informant has averred that immediately after passing of the abovementioned order by NCLT, OP-1 stopped supplying medicines to him from second half of September, 2015, despite placement of repeated orders for supply of medicines. It is alleged that the same was done at the behest of OP-2 because of the above case filed in NCLT by the Informant. It is submitted that



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such conduct of OP-1 has resulted not only in denial of market access and limiting of supply but also has caused financial hardship to the Informant.

5. It is further stated that when the Informant enquired about reasons for non-supply of medicines from OP-1, he was verbally conveyed that the reason was delay in payments. The Informant, then, placed relevant documents *vide* email dated 28.01.2016 to OP-1 showing that there was no such delay from the Informant's side. Subsequently, the Informant was verbally informed that the reason for not supplying the medicines was Informant's action against OP-2 before the NCLT and that OP-1 was instructed by OP-2 to stop the supply of medicines to the Informant.
6. The Informant submitted that he made representation before OP-1 but did not receive any response. It is alleged by the Informant that he was asked verbally by OP-1, through a third party, to first compromise with OP-2.
7. It is also alleged that in the beginning of their relationship, OP-1 started supplying medicine to the Informant only after OP-2 issued an introduction letter (allegedly a type of no objection certificate or NOC) dated 20.04.2013 to the Informant after receiving Rs. 50,000/- in cash under the guise of a donation on 25.03.2013. The Informant averred that such action of OPs amounts to imposing unfair and discriminatory practice on the Informant.
8. Lastly, it is averred that OPs are not only manipulating price of medicines by controlling demand and supply of medicines in the market, but also are limiting and controlling the production and supply of medicines.
9. The Informant has alleged that aforesaid behaviour of OPs amounted to violation of provisions of Sections 3(3)(a), 3(3)(b), 4(1) and 4(2) of the Act.



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10. Accordingly, the Informant has prayed that the Commission direct OP-1 to continue supply of medicines to him and also direct OPs to pay compensation for the losses suffered by him due to non-supply of medicines.
11. The Commission considered the matter on 22.11.2018 and directed the parties to appear for preliminary conference on 17.12.2018. On 17.12.2018, the Commission heard the arguments of parties and *vide* an order of the same date directed OPs to file written submissions, if any, by 02.01.2019 with an advance copy to the Informant. The Commission also directed the Informant to file his written submissions, if any, by 07.01.2019 with an advance copy to the OPs. Thereafter, written submissions of OP-1, OP-2 and the Informant were received on 03.01.2019, 02.01.2019 and 15.01.2019, respectively.
12. In its submissions, OP-1 has submitted that:
 - a. The Informant has levelled false allegations of refusal to supply by OP-1. To protect its legitimate commercial interests due to repeated delayed payments by the Informant, OP-1 decided to supply medicines to the Informant on advance payment basis. All orders received from the Informant with advance payment, including last three such orders received on 02.11.2015, have been fulfilled.
 - b. The stockistship of the Informant is still subsisting with OP-1. Even after 02.11.2015, business transactions continued between them in the form of credit notes for stocks which the Informant returned to OP-1 on account of inability to sell or expiry of medicines up to March 2017. This showed that dispute between the Informant and OP-2 had no bearing on the arrangement between OP-1 and the Informant.
 - c. OP-2 does not play any role in appointment of stockists or supply of drugs made by OP-1.
 - d. With respect to alleged violation of provisions of Section 4 of the Act, neither any evidence has been adduced by the Informant in support of its contention that OP-1 is in dominant position nor has the relevant market



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been identified. OP-1 appointed the Informant as its stockist on a non-exclusive basis and its medicines are openly and readily available in the market along with medicines manufactured and marketed by numerous other pharmaceutical companies. Further, the Informant himself is a proprietor of a medicine shop and sells products of various pharmaceutical companies. It is standard industry practice that same/ similar formulations/ medicines manufactured by various companies under different brand names are readily available in the market, unless a company has patent rights over a particular formulation/ medicine. It is also not the case of the Informant that certain medicines ordered by him from OP-1 are manufactured and marketed only by OP-1. Thus, it can hardly be argued that OP-1 is in a dominant position either in relation to the market or with respect to the medicines manufactured and marketed by it. Thus, no case of violation of provisions of Section 4 of the Act against OP-1 is made out.

- e. Further, if the Informant wishes to purchase any product of OP-1, the latter undertakes to supply the same provided the Informant makes advance payment along with such orders.

13. OP-2 has contended that:

- a. The Informant has neither submitted any material evidence against OP-2 nor is there any documentary or oral evidence to substantiate allegations against OP-2.
- b. The Informant is a stockist of other pharmaceutical companies also and has not faced any difficulty in dealings with them, which shows OP-2 is not affecting the commercial decisions of the pharmaceutical companies, including OP-1.
- c. On 18.04.2013, AIOCD had issued a circular to pharmaceutical companies and State Chemist & Druggist Associations (CDAs), including OP-2 that:
 - (i) no NOC was to be obtained for appointment of stockists;
 - (ii) no restriction on discount to customers at different levels of sale of medicines;
 - (iii) Payment of PIS (Product Information System) charges by



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- pharmaceutical companies to CDAs only voluntary and (iv) there will be no boycott of pharmaceutical companies. Pursuant to the said circular, OP-2's board passed a resolution on 20.04.2013 and issued a similar circular to its District Secretaries on 23.04.2013.
- d. Further, OP-2's Articles of Association (AoA) was amended on 02.07.2016. The new AoA *inter alia* read as "...BCDA's Zonal and/or District/Area Committee cannot obstruct the working of any manufacturing company."
14. In his submission, the Informant has stated that incidents of delayed payments were more frequent in earlier period but business between him and OP-1 continued as OP-1 charged 18 per cent interest on delayed payment, which the Informant paid. That there is no document to show OP-1's policy/ resolution to stop supply in case of delayed payments. Therefore, what prompted OP-1 to stop supply of medicines to Informant without any intimation is not clear. The Informant further submitted that OP-2 is in dominant position and OP-1 stopped supply of medicines to the Informant without any proper reason at the behest of OP-2.
15. Thereafter, the Informant filed an additional written submission ('AWS') on his own, which was received by the Commission on 07.03.2019. In the AWS, the Informant has *inter alia* stated that till date, OP-2 did not provide him a copy of its written submission filed before the Commission. The Informant, therefore, sought leave of the Commission to place on record the AWS. In the AWS, the Informant has provided following documents to show purported undue influence of OP-2 in medicine business in West Bengal:
- a. Photocopy of a receipt dated 16.12.2015 regarding payment of Rs.30,000/- by Fastshine Pharmaceuticals Pvt. Ltd., Ujjain to OP-2 purportedly before launching new product.



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- b. Photocopy of a purported offer letter for stockistship at Asansol dated 09.04.2017 by Labanya Healthcare to the Informant seeking completion of BCDA formalities for stockistship for sending appointment letter.
 - c. Photocopy of money receipt dated 09.03.2016 of Rs. 33,000/-, paid by Labanya Healthcare in the name of Ousadh-O-Prasadhani bearing same address as OP-2 purportedly for launching new product.
16. Having considered the arguments of parties the Commission notes that the Informant, who is a stockist of OP-1, is primarily aggrieved with the alleged conduct of OP-1 of not supplying medicines to him since September 2015, purportedly at the behest of OP-2. In this regard, based on the material available on record, the Commission observes that OP-1 did not stop supplying medicines to the Informant; rather, it insisted for advance payment in view of earlier incidents of delayed payments. Further, it is seen that the stockistship of the Informant is still subsisting with OP-1, who has undertaken to supply medicines on orders placed by the Informant on receipt of advance payment. Accordingly, the Commission is of the view that allegation of non-supply of medicines by OP-1 at the behest of OP-2 is unsubstantiated. Similarly, with regard to the allegation of manipulation of prices of medicines by OPs, the Commission notes that the Informant has neither elaborated on the issue nor corroborated the same.
17. The Commission further observes that the Informant, engaged in selling medicines for around two decades, had been doing business for years without any complaint regarding any cash donation/ NOC. With regard to the allegation of an introduction letter dated 20.04.2013 from OP-2 to the Informant (alleged to be NOC), the Commission notes that neither there is any mention of NOC or any conditional clearance of stockistship of OP-1 nor there is any other cogent evidence. Thus, the allegation of requiring NOC by the Informant from OP-2 to become stockist of OP-1 is also not substantiated.



18. Regarding AWS, the Commission observes that the Informant failed to submit the alleged request for NOC from certain Labanya Healthcare, already available with him pertaining to 2017 either at the time of filing of the information on 20.09.2018 or later, along with the written submission dated 15.01.2019; instead, he took his own time to submit the same. Keeping this in mind coupled with unsubstantiated allegation of stoppage of supply of medicines by OP-1, the Commission is of the view that it appears to be an afterthought on the part of the Informant by which he tried to give a commercial dispute between him and OP-1 a colour of competition issue. Further, the documents submitted along with AWS do not substantiate that OP-2 had indulged in the practice of issuing NOC to the Informant or that it had influenced commercial decisions of OP-1 in dealing with the Informant.
19. In view of foregoing, the Commission is of the view that no case of contravention of the provisions of the Act is made out against OPs. Thus, the matter is ordered to be closed forthwith under the provisions contained in Section 26(2) of the Act.
20. The Secretary is directed to communicate the order to the parties, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U.C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 10/05/2019