



COMPETITION COMMISSION OF INDIA

Case No. 44 of 2018

In Re:

Mr. Kuntal Chowdhary
3, Mohishila Colony, Asansol
PO: Asansol 3, Distt: Burdwan,
West Bengal, India – 713 303.

Informant

And

Macleods Pharmaceuticals Limited
Atlanta Arcade, Near Leela Hotel, Andheri,
Kurla Road, Andheri (East), Mumbai
Maharashtra, India – 400 059.

Opposite Party No. 1

Bengal Chemist and Druggists Association
1st Floor, 12 Bonfield Lane,
Kolkata, West Bengal, India – 700 001.

Opposite Party No. 2

Present:

For Informant:

Informant-in-Person

For OP-1:

Mr. Rajeev Mishra, President

Mr. Himanshu Ranvah, GM-Legal

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



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

1. The information in the present case has been filed under Section 19(1)(a) of the Competition Act, 2002 (the “Act”) by Mr. Kuntal Chowdhary (hereinafter the ‘Informant’), proprietor of M/s Kamala Agency against Macleods Pharmaceuticals Limited (hereinafter ‘OP-1’) and Bengal Chemists and Druggists Association (hereinafter ‘OP-2’), alleging contravention of the provisions of Sections 3 and 4 of the Act (hereinafter, OP-1 and OP-2 are collectively referred to as ‘OPs’).
2. The Informant is involved in wholesale business of medicines and has been a stockist of OP-1 in Asansol town of Burdwan district in West Bengal since 2012-13. OP-1 is a multinational pharmaceutical company incorporated in India 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 has been stated that the Informant’s brother Mr. Kalyan Chowdhary 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 complainant. 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 he started facing serious problems from OP-1 as it has stopped supplying medicines to him since 26.11.2017 at the behest of OP-2. The Informant placed orders for supplies on 26.11.2017 and 29.11.2017,



सत्यमेव जयते



but has not received any supplies since then from OP-1 without any explanation or cogent reasons, even though the Informant is still a stockist of OP-1 and its stockistship has not been terminated. It has been further submitted that the Informant made representations before OP-1, *vide* emails dated 20.12.2017 and 03.01.2018 and finally *vide* a letter dated 04.02.2018 to the Managing Director of OP-2, but did not receive any response. Rather, the Informant was asked indirectly by OP-1 through a third party to settle the dispute with OP-2. It has been alleged that 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 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 05.04.2013. The Informant has averred that such action of OPs amounts to imposing unfair and discriminatory practice on the Informant.
6. 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.
7. Accordingly, the Informant has prayed the Commission to direct OP-1 to continue supply of medicines to him and direct OPs to pay compensation for the loss suffered by him due to non-supply of medicines.
8. The Commission considered the matter on 22.11.2018 and directed the parties to appear for preliminary conference on 17.12.2018. After hearing the arguments of parties on 17.12.2018 *vide* an order of the same date, the Commission 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 OPs and the Informant were received on 02.01.2019 and on 22.01.2019, respectively.

9. In its submissions, OP-1 has, *inter-alia*, submitted that:
- a. The Informant is a habitual defaulter and defaulted multiple times in last around two years of business in making timely payment. When the Informant's last cheque returned unpaid on 29.11.2017, OP-1 told the Informant that he will not get credit facility any more and asked him to make advance payment along with orders for further supply of medicines to protect its legitimate commercial interests. Therefore, the Informant has untruthfully portrayed absolute stoppage of supply by OP-1 by not disclosing complete facts.
 - b. Further, OP-1 has stopped credit dealing with 1291 parties all over India including 69 in West Bengal alone due to their failure in timely payment claiming that the Informant has not been singled out or victimised as alleged and the stockistship of the Informant is still subsisting with OP-1.
 - c. If there was a collusion between OPs as alleged by the Informant then OP-1 would have stopped supply of medicines to the Informant immediately after occurrence of dispute between the Informant's brother and OP-2 in the year 2013-14 and would not have waited for years to allegedly stop supply since end-November 2017. OP-2 does not play any role in commercial decision making of OP-1 including appointment of stockists or supply of medicines. The Informant has also not furnished any evidence in support of these allegations.
 - 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 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. It has four other stockists in Asansol. 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 over a particular formulation/ medicine. Accordingly, no case of violation of provisions of Section 4 of the Act against OP-1 is made out.

- e. Further, OP-1 would supply its products to the Informant provided he makes advance payment along with such orders.

10. OP-2 in its submission, *inter-alia*, 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 for many years 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 mentioning : (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 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.”



सत्यमेव जयते



11. In his submission, the Informant has stated that incidents of delayed payments were relatively few in view of overall business between him and OP-1 and were caused at times due to technical reasons out of his control. Further, OP-1 charged 18 per cent interest on delayed payment, which the Informant paid. Therefore, what prompted OP-1 to stop supply of medicines to the Informant without any intimation or response to subsequent representations is not clear. The Informant further submitted that OPs are in dominant position and OP-1 stopped supply of medicines to the Informant without any proper reason at the instigation of OP-2.
12. Having considered the arguments of parties, the Commission notes that the Informant, who is a stockist of multiple pharmaceutical companies including OP-1, is primarily aggrieved with the alleged conduct of OP-1 of not supplying medicines to him since 26.11.2017, purportedly at the instigation 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 as alleged. Rather it insisted for advance payment in view of earlier incidents of delayed payments. Further, 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 allegation of non-supply of medicines by OP-1 at the instigation of OP-2 stands unsubstantiated.
13. The Commission further observes that the Informant is a stockist of many pharmaceutical companies and had been doing business for years without any complaint regarding any cash donation/ NOC. With regard to the allegation of a 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 on record. Thus, the allegation of requiring NOC by the Informant from OP-2 to become stockist of OP-1 is also not substantiated.



सत्यमेव जयते



14. 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 of Section 26(2) of the Act.
15. 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: 23/05/2019