



**COMPETITION COMMISSION OF INDIA**

**Case No. 49 of 2016**

**In Re:**

**Mahendra Kumar Rathore  
S/o Nand Kishore Rathore,  
R/o Baran, Shahabad Gate,  
Tehsil & District Baran,  
Rajasthan-325205**

**....Informant**

**And**

**M/s Super Cassettes Industries Pvt. Ltd.  
E-2/16, White House,  
Ansari Road, Daryaganj,  
New Delhi-110002**

**....Opposite Party**

**CORAM**

**Mr. Devender Kumar Sikri  
Chairperson**

**Mr. S. L. Bunker  
Member**

**Mr. Sudhir Mital  
Member**



**Mr. Augustine Peter**

**Member**

**Mr. U. C. Nahta**

**Member**

**Mr. Justice G. P. Mittal**

**Member**

**Present: For Informant:**

Mr. Anjani Kumar Mishta, Advocate

*For Opposite Party:*

Mr. Balbir Sing, Senior Advocate,

Mr. Akshay Nanda, Advocate,

Mr. Abhishek Singh Baghel, Advocate

Ms. Khyati Dhupar, Advocate

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

1. The present information has been filed by Mahendra Kumar Rathore (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Super Cassettes Industries Pvt. Ltd. (hereinafter, the “**Opposite Party**”/ “**OP**”) alleging, *inter-alia*, contravention of the provisions of Section 4 of the Act.
2. The Informant is a registered cable operator under the name and style of “Baran Cable Network”, which he owns as a sole proprietor and is authorised to run cable signals in the town of Baran, Rajasthan. He has been granted provisional registration to operate as a Multi System Operator (hereinafter, the “**MSO**”) under the Cable Television Networks (Amendment) Rules, 2012 *vide* letter dated 4<sup>th</sup> November, 2015 issued by the Ministry of Information and Broadcasting, Government of India. The Informant has submitted that he is operating in Baran since last more than 10 years and is a subscriber of signals from all major System Operators such as Star India, MSM Discovery, Zee Turner Ltd, Taj TV, India Cast, Sahara Network *etc.*



3. OP, a company incorporated under the Companies Act, 1956, is one of the leading music companies in India and is the exclusive owner of the trade mark and music label 'T-Series'.
4. The Informant has alleged that OP, *vide* letter dated 29<sup>th</sup> December, 2015 addressed to BCN Cable Network, requested it to obtain a T-Series Public Performance License (hereinafter, "TPPL") for broadcasting the contents owned by OP. Further, it is claimed that the Informant did not reply to the said letter but avoided the same as it was addressed to some BCN Cable Network and not to the Informant, and that the letter was wrongly delivered at the Informant's address.
5. Subsequently, on 30<sup>th</sup> January, 2016, OP issued a copyright infringement notice by registered AD/Courier on the same address to M/s BCN Cable Network. In the said notice, OP alleged that the Informant has been broadcasting its copyrighted contents without the permission of OP and demanded a payment of Rs. 25,00,000/- (Twenty Five Lakhs only) as damages. Further, OP called upon the Informant to cease and desist from broadcasting any of its copyrighted contents.
6. In response to the copyright infringement notice served by OP, the Informant sent a reply dated 06<sup>th</sup> February, 2016 denying all the allegations and contentions of OP and refused to buy the TPPL license for broadcasting/communicating the contents of OP (M/s Super Cassettes Industries Private Limited). It is further claimed that the said act of OP is monopolistic and is an attempt to terrorise small operators to enter into a license agreement with OP for broadcasting music, songs and films of OP, which is not at all required for the Informant's network, and the Informant had requested OP to withdraw the said infringement notice.
7. The Informant has stated that OP has forwarded a draft/sample Memorandum of Understanding (hereinafter, "MOU") bearing the month of July, 2014, to be signed by the Informant for grant of a non-exclusive license for broadcasting the copyrighted content of OP on payment of a monthly fee. The draft MOU also contained clauses pertaining to Intellectual Property Rights. The Informant has alleged that the said MOU is unilateral and one-sided.



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8. The Informant has stated that he is neither interested in signing the MOU nor interested in seeking a license from OP to broadcast its music contents. The OP has imposed the MOU as a pressure tactic on the Informant to enter into an understanding with it, which the Informant does not require.
9. Based on the facts narrated in the preceding paragraphs, the Informant has prayed, *inter-alia*, to inquire and investigate into the anti-competitive act indulged into by OP in trying to impose one-sided terms of MOU upon the Informant. It has been further prayed that heavy penalty be imposed on OP for its wilful and voluntary act of misusing its dominant position in the market. The Informant has also prayed the Commission to restrain OP from taking any action against the Informant in the nature of anti-competitive behaviour/steps causing loss to the business activity of the Informant and to pass any other order as it deems fit and proper in the interest of justice.
10. The Commission has considered the information and the materials available on record. The Commission has also heard the Informant and OP during the preliminary conference held on 1<sup>st</sup> September, 2016.
11. The Commission notes that the Informant is mainly aggrieved with the notices and MOU served at his address by OP, though addressed to 'BCN Cable Network'. According to the Informant, his address was used by OP in order to harass and pressurise him to take TPPL and enter into MOU. The Informant has alleged that the aforesaid actions of OP amount to abuse of dominant position and violate the provisions of Section 4 of the Act.
12. The Commission further notes that the Informant is a licensed MSO which transmits signals/programmes through Digital Addressable Cable TV System (hereinafter, "DAS") in Baran, Rajasthan. In the cable industry, MSO is a term used to describe a company which owns and operates two or more cable TV systems. DAS is a cable TV service in which, TV channels are transmitted through cable TV network in digital and encrypted form. It appears from the above that the Informant is operating two or more



cable TV systems and is transmitting/distributing channels to its subscribers in digital and encrypted form in Baran, Rajasthan.

13. The Informant has denied the allegations made by OP that he has committed copyright infringement by broadcasting Bollywood/non-Bollywood music produced by OP without seeking due approval, through his own cable TV network system in Baran. The Informant has further stated that he does not require the copyrighted content of OP and has also committed not to use the same in future as well. Therefore, he has refused to sign the MOU with OP. Further, the Informant has submitted that the notices and MOU issued are not meant for him as OP has addressed them to some BCN Cable Network, wrongly containing his postal address.
14. The Commission has perused the MOU served by OP to the address of the Informant and has found that, it is primarily a copyright infringement notice, which is issued against violation of copyright and for protecting the Intellectual Property Rights of the copyright holder.
15. Further, the Informant has not submitted any cogent material that shows existence of any agreement/arrangement between OP and the Informant for availing the copyrighted content provided by OP. It appears to be simply a case where OP has sent the alleged notices and MOU addressed to some 'BCN Cable Network' and not to the Informant, to the address of the Informant. Hence, the allegations raised in the instant case and the submissions made by the parties and the issue of identification of the correct addressee do not raise any competition concerns and thus, do not warrant the invocation of the provisions of the Act.
16. The Commission observes that therefore, there is no competition issue culled out in the matter warranting investigation under the Act. The Informant can approach appropriate fora against the alleged pressure tactics of OP. The Informant, if desirous, can also seek clarification from OP about the alleged wrong delivery of posts, *i.e.*, notices/MOU at his address which according to him were meant for some 'BCN Cable Network' as pointed out in the information.



17. The Commission has not found any violation of the provisions of either Section 3 or 4 of the Act. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.

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

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(S .L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**  
**Dated: 10.11.2016**