



Case No. 65/2013

M/s. Magnus Graphics

3rd Km. Milestone,
Bhopa Road, Opposite Aggarwal Duplex,
Muzaffar Nagar,
Uttar Pradesh

....Informant

And

M/s Nilpeter India Pvt. Ltd.,

15, Medavakkam Road,
Shollinganallur,
Chennai – 600119

.....Opposite Party 1

Mr. Alan Barretto,

Managing Director,
Nilpeter India Pvt. Ltd.,
15, Medavakkam Road,
Shollinganallur,
Chennai - 600119

.....Opposite Party 2

Mr. Manish Kapoor,

Sales Manager,
Nilpeter India Pvt. Ltd.,
D-56, Sector-12,
Noida – 201301

.....Opposite Party 3

**M/s Sai Com Codes Flexo Print Pvt.
Ltd.**

Plot no. 771, HSIIDC,
Industrial Estate, Rai,
Sonapat,
Haryana

.....Opposite Party 4

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. GeetaGouri
Member



Mr. AnuragGoel
Member

Mr. M. L. Tayal
Member

Mr. Justice S. N. Dhingra (Retd.)
Member

Mr. S. L. Bunker
Member

Present: Mr. Keshav Singh Saini, Advocate and representatives of the Informant

Order under Section 26(1) of The Competition Act, 2002

The informant has filed this information against Opposite Party under section 19(1)(a) of the Competition Act alleging anti-competitive agreement between OP-1 & OP-4 and abuse of dominance by OP-1.

2. The informant, a proprietorship firm, engaged in business of label printing at Muzaffar Nagar, U.P. India had purchased a label printing machine Nilpeter FB-3300 Servo Flexo Printing Press 13 from OP1 in May, 2012 for a sum of Rs.2,41,11,148/-. The machine carried a warranty for a period of one year which was to expire on 15th May, 2013. Upto the warranty period, the machine had suffered operational and engineering problems which were reported by the informant to OP-1 and OP-1 would send its engineers for repairs although with a delay. The informant has placed on record emails exchanged for this purpose. It is also revealed from the information that passwords for operating the machine could be changed by OP-1 remotely and OP-1 did not convey permanent password to the informant till the entire payment was made by the informant.

3. Vide letter dated 4th April, 2013, OP-1 informed the informant that the warranty of the machine was getting over on 15th May, 2013 and an Annual Maintenance Contract for another year was being sent by OP-1 to the informant and the same should be sent and contract money should be sent to OP-1. Under AMC, OP-1 was supposed to maintain the machine for a period of one year on receiving the AMC amount of Rs.1,50,000/- + service tax of



Rs.18,540/-. The terms & conditions of the contract were stated therein. The informant sent the duly signed contract alongwith payment to OP-1 on 14th May, 2013. The payment was made through a pay order, bankers cheque of Rs.1,68,540 drawn on Punjab National Bank. However, despite receiving duly signed AMC for maintenance of the machine, OP-1 refused to honour the AMC on some undisclosed ground. However, by exchanging emails, the informant learnt that his AMC was being refused by OP-1 because of an anti competitive agreement between OP-1 and OP-4 under which in case informant did business with the existing clients of OP-4, then OP-1 shall stop relationship with the informant. As per the informant, OP-4 was earlier doing business for Patanjali Ashram. However, after informant came into the business of printing labels etc. it quoted more competitive prices to Patanjali Ashram and got the contracts for printing of labels etc. for Patanjali Ashram. OP-1 wrote emails to informant that it should resolve issues with OP-4 so that OP-1 could again do business with the informant.

4. Email dated 16th May, 2013 makes it very clear that there was no contract or agreement signed between the informant and OP-1 that there was a restraint on OP-1 in doing business with any client or there was any condition put on the informant at the time of sale of printing machine to the informant. This email also makes it clear that there was an unwritten contract between OP-1 and OP-4 that it will not allow the competition of informant with OP-4.

5. An agreement is defined under section 2(b) of the Competition Act to include any arrangement or understanding or action in concert whether or not such arrangement/understanding/action is formal or in writing. Obviously, the arrangement or understanding between OP-1 and OP-4 about clients amounts to agreement under the act. Section 3 provides that any agreement in respect of production, supply, distribution, storage, acquisition, control of goods or provisions of service which causes or is likely to cause an appreciable adverse effect on competition within India was a void agreement. Entering into such an agreement was prohibited by section 3(1) and section 3(2) of the Act. The correspondence between informant and OP-1 makes it prima facie clear that OP-1 had an agreement/understanding with OP-4 that in case the informant competes with OP-4 for its existing clients, then OP-1 shall not provide



service of maintenance of the machine to informant. Such an agreement directly affects competition in the market of printing labels etc. within India and is in violation of section 3 of the Act. Section 3(4) provides that an agreement among enterprises at different stages or levels of production chain in different markets in respect of provisions of service including refusal to deal shall be an agreement in contravention of sub section (1) if it causes appreciable adverse effect on competition in India. Explanation (d) to section 3(4) provides that a refusal to deal includes any agreement which restricts or is likely to restrict, by any method, the person or classes of persons to whom goods are sold or from whom goods are bought (goods here includes services). In this case, the agreement between OP-1 and OP-4 prima facie was an agreement of refusal to deal with informant in case informant entered into competition with OP-4. Obviously this agreement is prima facie anti competitive and on the face of it has adverse effect on the competition in the market.

6. It is alleged by the informant that non execution of the AMC by OP-1 also amounted to abuse of dominant position. It is submitted that in the service of Nilpeter FB-3300 Servo Flexo Printing Press 13, OP-1 was the only service provider. These machines were a specialized printing equipment not being manufactured by any other person. The machine had patented technology, patent held only by OP-1 and, therefore, no one else could either manufacture the machine or repair and service it. Service of this machine can be done only by OP-1 and its engineers and it cannot be done by any other person. The relevant market in this case, therefore, would be the 'servicing of Machine Nilpeter FB-3300 servo Flexo Printing Press 13' and there is no doubt that OP-1 was a sole player in this market. Prima facie since OP-1 had monopoly over servicing market of this machine, OP-1 was a dominant player in this market. Refusal of OP-1 to execute the AMC despite first making an offer to informant for executing AMC on the ground that informant was doing business of Patanjali Ashram was on the face of it a glaring abuse of dominant position. Section 4 (2)(a) (i) categorically provides that if an enterprise puts unfair or discriminatory conditions for provisions of service it amounts to an abuse of dominant position. In the present case, the condition put by OP-1 on



informant that it should not compete with OP-4 was on the face of it an unfair and discriminatory condition. This was prima facie a violation of section 4(2)(a) (i) of the Act.

7. In view of the above discussion, the Commission considers it a case in which thorough investigation should be done into the violation of Competition Act by Opposite Parties. The matter is referred to DG for investigation into violations of provisions of the Competition Act.

8. The opinion expressed hereinabove is based on facts available to the Commission at this stage. The DG has to investigate the matter for violation of any/all provisions of the Act, and not only in respect of the provisions stated above. The DG has to investigate the matter thoroughly for violation of any/all provisions of the Act, and not only in respect of the parties named by the Informant, but also in respect of those entities/enterprises not named but are found involved in violation of provisions of the Act, including the role of other group companies of an enterprise as envisaged in the proviso to section 27(g).

9. The Secretary is, therefore, directed to send a copy of this direction to the office of the DG. The DG shall investigate the above matter as stated above. In case the DG finds any company in violation of the provision of the Act, it shall also investigate the role of the persons who at the time of such contravention were in charge of and responsible for the conduct of the business of the company involved so as to fix responsibility of such persons under section 48 of the Act. DG shall give opportunity of hearing to such persons in terms of section 48 of the Act. The report of DG be submitted within 60 days from receipt of the order.

10. Nothing stated in this order shall tantamount to a final expression of opinion on merit of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

11. The Secretary is directed to inform the DG accordingly.

New Delhi
Date: 12.12.2013

Sd/-
(Ashok Chawla)
Chairperson



Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
Member

Sd/-
(Justice (Retd.) S.N. Dhingra)
Member

Sd/-
(S.L. Bunker)
Member