



COMPETITION COMMISSION OF INDIA

Case No. 76 of 2017

In Re:

Ramachandran V.

Proprietor, M/s Aarvee Cements & Steels
Irinave – 670301, Kannur, Kerala

Informant

And

JSW Cements Limited

JSW Centre Bandra Kurla Complex,
Near MMRDA Grounds, Bandra East,
Mumbai – 400051, Maharashtra

Opposite Party

CORAM:

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U.C. Nahta
Member

Justice G.P. Mittal
Member

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

1. The present information has been filed by Mr. Ramachandran V. (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against JSW Cements Limited (hereinafter, '**Opposite Party**'/'**OP**'), alleging contravention of the provisions of Section 4 of the Act.



सत्यमेव जयते



Facts, as provided in the information

2. The Informant, proprietor of M/s Aarvee Cements & Steels, is stated to be an authorised dealer of the Opposite Party since 2012 and has been getting supply of cement from it since July, 2012 as per the terms of the agreement between them. In September, 2016, the Informant and the Opposite Party purportedly renewed their Dealership Agreement (hereinafter, the '**Dealership Agreement**'). The primary grievance of the Informant concerns the conduct of the Opposite Party whereby the Informant was denied supply of cement in breach of the Dealership Agreement entered into between them which, as alleged, resulted in abuse of dominant position by the Opposite Party.
3. The Informant has submitted that as per Clause 6 of the Dealership Agreement, which is reproduced below, the Opposite Party was obligated to supply the ordered consignment of cement to the address of the Consignee or the party which has ordered the said consignment of cement from the Informant.

"6. Terms of Delivery

All consignments of Cement and Construction Products shall be dispatched and delivered by JSWCL (except ex-delivery) to the Dealer's consignee location from any of JSWCL's manufacturing units or warehouses. JSWCL shall at its discretion decide as to the manufacturing unit or warehouse from which the Cement and Construction Products shall be delivered"

4. However, the Informant claims that the Opposite Party stopped supplying cement as per the said terms of delivery since 1st November, 2016. It has



सत्यमेव जयते



been alleged that the Opposite Party refused to deliver the cement at the address of the Informant's consignee.

5. Aggrieved by this conduct, the Informant served a legal notice dated 27th December, 2016 upon the Opposite Party stating that since the supply is being made to other dealers in the region, there is manifest collusion with other dealers which has been causing huge and irreparable loss to the Informant. In response to the said legal notice, the Opposite Party stated, *vide* response dated 6th January, 2017, that the procedure to order and receive the cement stock is not followed by the Informant as he never gave any order for supply of stock to be delivered to his registered shop / go-down address. The response of the Opposite Party further stated that if the Informant wants the supplies to be delivered to his consignees, he may direct his clients to place orders for supply of cement, with the concerned company officials and the stock of the cement shall be delivered by the Company to the address of his clients which are registered with the Company. The legal notice further mentioned that *'[i]t is very important to mention over here that the Company shall deliver the stock of Cement only at the registered address of Godown/Shop Premises of your client which is registered with the Company and the diversion of the stock to any other location is not allowed'*.
6. It is asserted by the Informant that the above statement is an admission of the conduct of the Opposite Party and the said conduct is in direct violation of the respective clause of the Dealership Agreement.
7. It is further stated by the Informant that before the said breach of the Dealership Agreement by the Opposite Party, the Informant had received orders from consignees and had placed the same with the Opposite Party along with the addresses of the consignees. The Opposite Party had then



delivered the ordered consignment of cement at the addresses provided. To support his statement, the Informant annexed the Ledger Extract of his dealership and asserted that such ledger extracts show that the cost of transportation was borne by the Opposite Party during that earlier period.

8. The Informant has alleged that the conduct of the Opposite Party has greatly affected and prejudiced the business of the Informant in addition to burden of bearing the transportation cost for the supply of cement and hence, driven up the cost of the cement of the Opposite Party being sold by the Informant. As per the Informant, such conduct of the Opposite Party amounts to abuse of dominant position in contravention of the provisions of Section 4 of the Act.
9. Based on the aforesaid facts and allegations, the Informant has prayed that the Opposite Party be directed to accept the Informant's orders whereby cement has to be delivered to the Informant's consignees and that the Opposite Party be made liable to pay penalty as per the provisions of the Act. The Informant has also claimed compensation to the tune of Rs. 1,50,000 per month for a period of 12 months *i.e.* from November, 2016 to November, 2017.
10. The Commission, upon perusal of the information, observes that the allegation in the instant matter pertains to the conduct of the Opposite Party whereby the Informant was denied supply of cement in alleged breach of the Dealership Agreement between them which, as alleged, resulted in abuse of dominant position by the Opposite Party. The main grievance of the Informant is that the Opposite Party has denied supply of cement to the Informant's consignees, though the Agreement between them provides for the same.



सत्यमेव जयते



11. For the purpose of analysis under Section 4 of the Act, the first step is to delineate the relevant market. Section 2(r) of the Act defines the relevant market as “[t]he market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.” Thus, the relevant market needs to be delineated taking into account both the relevant product market as well as the relevant geographic market.
12. In this regard, it may be noted that the Informant and the Opposite Party are sellers of cement and construction material and, as such, they are capable of competing with each other in the market for supplying cement and construction material. However, in view of the business arrangement between them, they are situated at different levels in vertical chain. The Opposite Party is manufacturer and seller of cement and the Informant is procuring the cement from the Opposite Party or other similarly placed manufacturers of cement to provide the same to its clients (consignees). The main allegation in the present case pertains to the conduct of the Opposite Party in the sale/supply of cement and thus, the relevant product market in the instant matter would be ‘*market for manufacture and sale/supply of cement*’. Owing to certain specific product characteristics attributable to the cement industry, such as low value, short shelf life and high transportation cost, the relevant geographic market appears to be the ‘*State of Kerala*’. Thus, the relevant market in the present case would be ‘*market for manufacture and sale/supply of cement in Kerala*’.
13. It has been submitted that the cement market in south India is different from that prevailing in other parts of India. It has been contended that though there is no clear leader of cement in the south Indian cement market, the Opposite Party holds 22% market share in the manufacture



and supply of Portland Slag Cement in which it specialises. Further, the Opposite Party is stated to be a part of a multinational conglomerate valued at \$ 11 billion, and hence, stated to be operating independent of the competitive forces prevailing in the market.

14. The dominance of an entity is ascertained by taking into account various factors enshrined under Section 19(4) of the Act. As per the Informant, the market share of the Opposite Party in the manufacture and supply of Portland Slag Cement in South India is 22%. Portland Slag Cement is one of the sub-segments of cement products and thus, narrower than the relevant market delineated by the Commission in the preceding paragraphs. Given that the Opposite Party specialises only in Portland Slag Cement, it can be inferred that the market share of the Opposite Party in the delineated market would be lesser than 22%. Though market share is not a conclusive criterion to determine dominance, it is an apt first screening tool to negate the possibility of dominance. With a market share lesser than 22%, it seems implausible that by virtue of other factors enshrined under Section 19(4) of the Act, the Opposite Party would possess market power.
15. As per the information available in the public domain, there are other established players in the relevant product market in Kerala, *namely* ACC Cement Ltd., Chettinad Cement, India Cements Ltd., Malabar Cements Ltd., UltraTech *etc.* Further, there do not seem to be any barriers to entry or expansion in the relevant market to constrain new entrant(s) or expansion by existing players.
16. Keeping all the aforesaid factors into consideration, the Commission is of the view that the Opposite Party does not hold a dominant position in the



सत्यमेव जयते



relevant market. In the absence of dominance, the question of abuse of dominant position by the Opposite Party does not arise.

17. Based on the foregoing discussion, the Commission is of the *prima-facie* opinion that no case of contravention of Section 4 of the Act is made out against the Opposite Party.
18. In view thereof, the information is ordered to be closed in terms of the provisions contained in Section 26(2) of the Act.
19. The Secretary is directed to inform all concerned accordingly.

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

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

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

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

**New Delhi
Date: 28/02/2018**