

24.08.2010

F.No: DGIR/2009/IP/35

MTPE Case No. 15/2009

Filed by: Post Graduate Institute of Medical Education & Research,
Chandigarh

Against: Baliwalla & Homi Pvt. Ltd, Mumbai

ORDER UNDER SECTION 26 (2) OF THE COMPETITION ACT, 2002

The case has been received by transfer on 04.03.2010 from the office of DGIR, MRTP Commission under Section 66 (6) of the Competition Act, 2002.

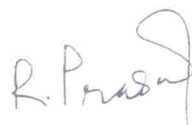
2. Factual background –

- 2.1 The subject information was filed by the Ophthalmology Department of Post Graduate Institute of Medical Education & Research, Chandigarh against the respondent who is the sole Indian distributor of Japanese Company M/s. Kowa Company Ltd, Japan which is engaged in the business activity of trading in Laser Flare Meter.
- 2.2 The complainant has alleged unfair/ restrictive trade practice against the respondent who had first expressed its inability to participate in a tender enquiry due to cumbersome formalities, but when a complaint was filed with MRTPC, the respondent submitted quotation along with technical and price bid but with certain reservations about Clause 15 pertaining to AMC and Manufacturers Authorization Certificate which was a standard term in conformity with the General Financial Rules, 2005. The respondent agreed to the terms and conditions of the tender subject to the condition that clause 15 should be deleted. However, the informant could not do so as it was a Government Organization.
- 2.3 MRTP Commission directed the DGIR to conduct a preliminary investigation into the alleged RTP by the respondent and submit a PIR. The PIR concluded that the applicant did not have a contract with the respondent and the respondent did not participate in the tender process because the conditions of tender were not commercially viable to it. It was also observed that non-participation in the tender is not an unfair and restrictive trade practice as alleged by the complainant.
- 2.4 Since the complainant did not agree with the DG's PIR, a fresh complaint was filed under section 10 of MRTP Act and the MRTPC by its order dated 22.7.2009 ordered DG to inquire and submit the report with reference to his earlier findings. Meanwhile, the complaint has been transferred under Section 66(6) of the Competition Act, 2002.

On the basis of the foregoing discussion and taking into consideration the facts and circumstances of the case, the Commission in its meeting held on 18.06.2010 directed the Complainant to explain the matter either by giving written submission within 3 weeks or if he so desires to appear before the Commission in person or through his authorized representative on 21.07.2010.

- 3.1 In compliance to the above directions of the Commission, Shri. Rakesh Garg, counsel for the Complainant appeared before the Commission on 21.07.2010. The Commission after considering the submissions made by the counsel, directed the Complainant to furnish written submissions with specific reference to contravention of competition issues, if any, within 4 weeks and place the matter before it on 24.08.2010. Accordingly, the complainant was informed about the decision of the Commission through speed post on 05.08.2010.
- 3.2 As per directions of the Commission, the counsel for the Complainant submitted his written submissions in the above matter vide his letter dated 09.08.2010 alleging violation of Section 4 of the Competition Act by the respondent for limiting and restricting the production of services in the market to the prejudice of the consumers, hampering the scientific and technical development relating to medical service which further amounts to denial of market access to the consumers and to the services to which they are rightly entitled.
- 3.3 The Commission had considered the entire relevant material including the report of DGIR as per which the respondent did not participate in the tender of the applicant and there were no contract between PGIMER, Chandigarh i.e., the informant and the respondent. The DG has further observed that there was no unfair/ restrictive trade practice undertaken by the respondent by not participating in the tender. From the submissions of the respondent before the Commission, neither any infringement of the provisions of the MRTP Act nor contravention of the provisions of Competition Act is made out.
- 3.4 The Commission, therefore, is of the opinion that in the absence of any cogent and convincing material the matter cannot stand scrutiny for determining any violation of the provisions of the MRTP Act or that of Competition Act.
4. The matter is hereby closed. The Secretary is directed to inform the informant accordingly.


Member (G)


Member (R)


Member (P)


Member (AG)


(Chairperson)