



COMPETITION COMMISSION OF INDIA

Case No. 34 of 2022

In Re:

**Mr. V. Radhakrishnan
M/s R. K. Medicals,
Madathara Road, Parippally,
District: Kollam, Kerala - 691574**

Informant

And

**M/s Medcina Community Pharmacy
Opposite to K.S.R.T.C. Bus Station,
Karunagapally, Kerala - 690518**

Opposite Party No. 1

**M/s Jeeva Karunya Medicals and Surgical
South Paravur,
District: Kallam, Kerala - 691301**

Opposite Party No. 2

**M/s Kottiyam Sevana Medicals
Kottiyam, District: Kollam,
Kollam Taluk, Kerala – 691571**

Opposite Party No. 3

**M/s Aswas Community Pharmacy
Kannanallur, District: Kollam,
Kerala – 691576**

Opposite Party No. 4

**M/s Deepa Medicals
Main Road, Cutcheri Junction, Attingal,
District: Thiruvananthapuram, Kerala - 695101**

Opposite Party No. 5

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

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

1. The present information has been filed by Mr. V. Radhakrishnan ('Informant') under Section 19(1) (a) of the Competition Act, 2002 ('Act') against M/s Medcina



Community Pharmacy ('OP-1'), M/s Jeeva Karunya Medicals and Surgical ('OP-2'), M/s Kottiyam Sevana Medicals ('OP-3'), M/s Aswas Community Pharmacy ('OP-4') and M/s Deepa Medicals ('OP-5') [Collectively referred to as 'Opposite Parties'/'OPs'], alleging contravention of the provisions of Section 4 of the Act.

2. The Informant is stated to be a self-employed pharmacist operating a retail pharmaceutical business in Kollam district in the State of Kerala.
3. The OPs are stated to be retail licensees engaged in the pharmaceutical business operating in the district of Kollam. The Information states that OP-3 has approximately 55 retail outlets and OP-4 has a chain of 250 shops across the State of Kerala.
4. As per the Information, the National Pharmaceutical Pricing Authority (NPPA) is empowered to regulate drug prices in India, and drugs/medicines are usually sold in the market by the retailers to customers with an average profit margin of 20% from the maximum retail price (MRP) of the drug. However, life-saving medicines/drugs such as insulin are sold to customers with an average profit margin of 19% from the MRP by the retailers. Further, the Informant has submitted that the drugs/medicines reach the retailers through a three-tier system *i.e.*, from Clearing and Forwarding Agent (CFA) to distributors, then finally to retailers.
5. The Informant has proposed the relevant market to be considered in the instant case as the market for '*pharmaceutical retail business in Kollam District of Kerala*' and averred that the OPs are collectively holding a dominant position in the said market on account of their significant market share, size and economic resources.
6. The Informant has alleged that the OPs are engaged in the discriminatory and unfair trade practice of offering deep discounts and selling various drugs/medicines to customers at a price lower than the wholesale price. It is also averred that the OPs are extensively marketing their aforesaid predatory pricing practice through alluring and misleading advertisements on pamphlets, social media and *via* billboards/ hoardings placed in front of their shops. The Informant has stated that he became aware of the alleged predatory pricing practice of the OPs when customers started raising objections



to the Informant's prices.

7. As per the Informant, the OPs tactic of predatory pricing is with the intention to kill the pharmaceutical retail business in Kerala, especially in the district of Kollam, and eliminate the retailers, including the Informant, from this business. The Informant is also apprehensive that the OPs may charge monopoly prices to recoup their losses.
8. The Information states that around 50,000 pharmacists are registered with the Kerala State Pharmacy Council, and most of them are retailers, providing direct employment to 3-7 people on average in their medical shops.
9. The Informant has submitted that the OPs act of unfair and unethical trade practices is making it hard for retailers in Kerala, specifically Kollam district, to run their businesses. It is also averred that many pharmaceutical retailers in Kollam were forced to close down their shops, and some of them are on the verge of closing due to financial loss.
10. The Informant has also provided instances of purchase of six medicines viz. Ecosprine AV 75, Human Mixtard, Novomix 30, Tegrital CR and Lupisuline, by a pharmacist retailer or a patient directly from the OPs, wherein the OPs allegedly indulged in predatory pricing. The Informant has alleged that the OPs are providing deep discount on the medicines with a view to reduce competition and eliminate their competitors, including the Informant, operating in the Kollam district of Kerala.
11. The Informant also has an apprehension that the OPs are obtaining drugs/medicines from hidden sources and selling them to the customers at alarmingly low rates.
12. The Informant has prayed for an interim relief in the form of an *ex-parte* order from the Commission until conclusion of the present inquiry and has requested: (i) temporarily restraining the OPs from issuing discount bills, selling drugs and medicines below the wholesale price, circulating pamphlets of deep discounting *etc.*, and (ii) temporarily restraining the OPs from issuing any advertisements in any visual or print media or social media of offering deep discounts to allure customers.



13. The Commission has considered the averments and allegations made in the information in its meeting dated 06.10.2022. The Commission notes that the Informant is primarily aggrieved by the alleged conduct of the OPs, wherein the OPs are selling certain medicines/drugs at a very high discount which, at times, is lower than their wholesale price, which is in contravention of Section 4 of the Act. In order to substantiate the allegation that the OPs are selling their pharmaceutical products at a very high discounted price, the Informant has submitted copies of invoices issued by the OPs and wholesalers with respect to some medicines/drugs.
14. The Commission is of the view that, for the applicability of Section 4 of the Act and for the examination of contravention thereof, it may be axiomatic to define a relevant market and assess the dominance of the entity alleged to be abusing its dominant position in such market. However, considering the facts and circumstances of the case and having regard to the abuses as alleged, the Commission does not find it imperative to define a precise relevant market in the instant matter.
15. The Commission notes that, as per the averment contained in the Information, there are numerous pharmaceutical retailers in the State of Kerala and in and around Kollam district. In this regard, the Informant has itself stated that around fifty thousand pharmacists are registered with the Kerala State Pharmacy Council. The medicines/drugs on which the OPs are allegedly providing deep discounts are used for curing different diseases and are produced by different pharmaceutical companies, and thus, they seem to be generic medicines/drugs. The Commission also notes that the allegations of the Informant pertain to collective dominance by the OPs, which is not recognised under the scheme of Act. Thus, the facts of the case do not, *prima facie*, disclose any contravention of provisions of Section 4 of the Act by any of the OPs, as has been alleged. Further, there is no evidence to suggest that discounts are being given by the OPs through any concerted action on their part.
16. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case of contravention of any of the provisions of Section 4 of the Act against the OPs and, therefore, the matter be closed forthwith under the provisions of Section



26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises, and the same is also rejected.

17. The Secretary is directed to communicate the order to the Informant accordingly

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Dated: 18.10.2022