



COMPETITION COMMISSION OF INDIA

Case No. 01 of 2024

In Re:

Somnath Banerjee

133/B, Kankulia Road, Kolkata - 700029

Informant

And

Apex Lab

3rd Floor, Guindy, Chennai – 600032

Opposite Party No. 1

Neotia Hospital (Unit of Park Hospital)

Rawdon Street, Mullick Bazar,
Park Street area, Kolkata – 700017

Opposite Party No. 2

Anandolok Hospital

D.K 73, Salt Lake City, Kolkata – 700009

Opposite Party No. 3

AMRI Hospital

P-4 & 5, Block – A,
Gariahat Road, Kolkata-700032

Opposite Party No. 4

Angel Nursing Home

68, A/1/1,
Raja S.C. Mallick Road, Kolkata – 700092

Opposite Party No. 5

Medicine World

Ranbo Behala

Opposite Party No. 6

Flipkart Health Plus

Opposite Party No. 7

PharmEasy

Opposite Party No. 8

Netmeds Pharmacy

Opposite Party No. 9

Sanjivani Pharmacy

NB Marketing Pvt. Ltd., 576 Second Floor
Mehrauli Badarpur Road, New Delhi – 110080

Opposite Party No. 10

Metro Pharma

128/1, Bidhan Sarani, Kolkata – 700004

Opposite Party No. 11

Garia Medical

400 C/ NSC Bose Road, Kolkata – 700047

Opposite Party No. 12

Matris Caram

Opposite Party No. 13



**Federation of Medical and Sales Representatives'
Associations of India (FMRAI)**
60A, Charu Avenue, Kolkata – 33

Opposite Party No. 14

Casca Remedies Pvt. Ltd.
Kuldeep Nagar, Ambala

Opposite Party No. 15

United Laboratories India Pvt. Ltd
Aspiration Vintage Building,
Petoria Street, Kolkata – 700071

Opposite Party No. 16

Dev Marketing Agency
P-34, India Exchange, 1st Floor

Opposite Party No. 17

Burnet Pharmaceuticals (S.S. Twari)/IDMA
28/5, C.N. Road, 3rd floor, Kolkata – 700039

Opposite Party No. 18

North City Hospital
73 & 81/B, Bagmari Road,
Ultadanga Hudco Stop, Kolkata – 700054

Opposite Party No. 19

R.G. Hospitals
33, Gariahat Road,
Opposite – Jodhpur Park, Kolkata – 700031

Opposite Party No. 20

Medica Super Speciality Hospital
127, Eastern Metropolitan Bypass,
Netai Nagar, Mukundapur, Kolkata – 700099

Opposite Party No. 21

**Food Safety & Standards Authority, Eastern
Regional Office (FSSAI) – Kolkata**
D.N.53, Block – Salt Lake, Sector – 5,
Kolkata – 700091, Near TCS,
Shri Sujoy Kumar – Director

Opposite Party No. 22

Mr. Tapan Kanti Rudra (IAS, West Bengal)
Commissioner Food Safety & Additional Secretary
Health & Family Welfare Department,
Swasthya Bhawan, 6th Floor,
G.N.-29, Sector – 5, Salt Lake, Kolkata – 700091

Opposite Party No. 23

**West Bengal Health & Family welfare
Department**
Principal Secretary, Swasthya Bhawan,
G.N.-29, Sector-5, Salt Lake, Kolkata – 700091

Opposite Party No. 24

CORAM



Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

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

1. The present Information has been filed by Mr. Somnath Banerjee (**‘Informant’**), alleging contravention of Section 3(4) read with Section 3(1) of the Competition Act, 2002 (**‘Act’**), by several entities including hospitals, pharmaceutical companies, e-pharmacies, associations and certain government departments/authorities (collectively referred herein as **‘Opposite Parties’**).
2. The Informant is stated to be a pharmacist and holder of Patent No 395566 granted on 27.04.2022 by the Patent Office, Govt. of India. As per the Patent Certificate, the invention *i.e.* *‘An Oral Rehydration Powder Composition Comprising Papain’* is stated to be a dietary supplement/ modified ORS, which improves digestion, reduces pain and inflammation *etc.* The said product, marketed under the brand name *‘Protestin’*, is sold in sachets by Reserca Health Care Pvt. Ltd.
3. The Informant has alleged that *‘Protestin’* is not being marketed and promoted because of non-cooperation by private hospitals, Federation of Medical and Sales Representatives, online pharmacies, MNCs, distributors, doctors, exporters, Indian Drug Manufacturers’ Association, medicines shops *etc.* The Informant has also stated that while the product is reasonably priced, yet the same is not being promoted due to various reasons like the Food Safety and Standards Authority of India permission, presence of other brands *etc.* Further, the Informant lost Rs. 2-3 Lakhs because his product was not promoted by the



companies/pharmacies/shops *etc.* The Informant has also alleged that marketing proposal have been sent to different organizations/companies but most of them did not reply back.

4. The Informant has submitted data with regards to Reserca Health's sales from 01.03.2023 to 30.06.2023, which indicates that it sold 5,040 units in March, 6,320 units in April, 11,920 units in May and 7,200 units in June of 2023.
5. Based on the above, the Informant has alleged contravention of Section 3(4) read with Section 3(1) of the Act and prayed for the following reliefs:
 - i. Allowing free and fair marketing from all premises including specified areas (MNCs, private hospitals, West Bengal Fair Price Shop *etc.*) and others (non-specified premises).
 - ii. Disallowing contravention under the provisions of the Act.
 - iii. Providing Rs. 3 lakh compensation considering the damages caused to the Informant on account of unfair marketing practices under the Act and allowing digital marketing, virtual communication *etc.* for promotional purposes.
6. The Informant has also sought the above-mentioned reliefs under Section 33 of the Act.
7. The Commission considered the matter in its ordinary meeting held on 13.03.2024 and decided to pass an appropriate order in due course. The Commission has perused the Information and it appears that the Informant is primarily aggrieved by non-marketing of its patented dietary supplement sold under the brand name 'Protestin' due to the alleged non-cooperation of the Opposite Parties. The Informant has stated that the alleged conduct of Opposite Parties is in contravention of Section 3(4) read with Section 3(1) of the Act.
8. The Commission observes that Section 3(4) of the Act requires existence of an agreement between vertically related players and that the said agreement has caused or is likely to cause appreciable adverse effect on competition in markets in India.
9. The Commission has perused certain emails sent by the Informant to several entities including some Opposite Parties and is of the view that these emails appear to have been sent for the purpose of soliciting business for his product and do not reveal existence of any agreement or arrangement as envisaged under the provisions of Section 3(4) of the Act.



The Commission is of the considered view that in absence of any apparent anti-competitive conduct, the decision of purchase or sale of a product and quantity thereof is driven by the commercial considerations of the market players. Therefore, it may not be desirable for the Commission to intervene in such cases where anti-competitive behaviour is not discernible.

10. Based on facts and circumstances of the present matter, the Commission observes that no such agreement has been shown to exist between the Opposite Parties that may be held to be anti-competitive in terms of the provisions of Section 3(4) of the Act. Accordingly, the Commission is of the view that there does not appear to be contravention of Section 3(4) read with Section 3(1) of the Act and the matter be closed under Section 26(2) of the Act forthwith. Consequently, no case for grant of reliefs as sought under Section 33 of the Act arises.
11. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

Place: Delhi
Date: 25/04/2024