

(2024) 04 CCI CK 0004

Competition Commission Of India

Case No: Case No. 01 Of 2024

Somnath Banerjee

APPELLANT

Vs

Apex Lab & Others

RESPONDENT

Date of Decision: April 25, 2024

Acts Referred:

- Competition Act, 2002 - Section 3(), 3(4), 26(2), 33

Hon'ble Judges: Ravneet Kaur, Chairperson; Anil Agrawal, Member; Sweta Kakkad, Member, Deepak Anurag, Member

Bench: Full Bench

Judgement

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.