

(2024) 06 CCI CK 0001

Competition Commission Of India

Case No: Case No. 20 Of 2023

Mr. Uday B. Bhatt

APPELLANT

Vs

Mr. Sarfarazbhai Rafique Bhai
Ravani & Others

RESPONDENT

Date of Decision: June 5, 2024

Acts Referred:

- Competition Act, 2002 - Section 3, 4, 19(1)(a), 26(2), 33

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

Bench: Full Bench

Final Decision: Dismissed

Judgement

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

1. The present Information has been filed by Mr. Uday B. Bhatt ("**Informant**") under Section 19(1)(a) of the Competition Act, 2002 ("**Act**") on behalf of Ship Recycling Industries Association ("**SRIA**") alleging contravention of the provisions of Sections 3 and 4 of the Act by Mr. Sarfarazbhai Rafique Bhai Ravani ("**Opposite Party No. 1**"), Mr. Ratan Chand Premchand ("**Opposite Party No. 2**"), Ms. Mina Ajay Kumar Rani ("**Opposite Party No. 3**"), Mr. Surjinandar Singh Mamraj ("**Opposite Party No. 4**") and Mr. Chander Shekhar Yashpal ("**Opposite Party No. 5**") (hereinafter OP-1 to OP-5 are collectively referred to as the "**Opposite Parties/OPs**").

2. The Informant is Senior Executive Secretary of the SRIA, incorporated under the Bombay Non-Trading Corporation Act, 1959. SRIA represents micro, small and medium enterprises engaged in ship recycling activities primarily based in Gujarat.

3. As per the Informant, members of SRIA are involved in supplying Alang based scrap iron as well as other materials obtained through the recycling of ship remnants. These members primarily deal in commodities such as Alang-based scrap iron, Alang rolling, melting scrap, rolling plate and other similar goods. It has been stated that the pricing of such commodities is decided by the primary sellers based on various factors. Further, the customers would directly approach the sellers, who would directly communicate the price of commodities and thus there was no need of intermediaries in the system.

4. As per the Information, the OPs (based out of Gujarat and Punjab) are acting as intermediaries between the sellers and customers for the past few months identifying themselves as 'Steel Service Providers' and are trying to manipulate the pricing system by spreading false rumours in the market about the changes in prices through WhatsApp groups, which results in adverse effect on the sellers and customers. It has been alleged that for a duration of two years, the pricing of the commodities has been subjected to day-to-day speculation by the OPs, leading to frequent adjustments.

5. It has been stated that the dissemination of lower prices of the commodities in the market by the OPs compel the members of the Informant to sell these at lower prices. As per Informant, the speculation in prices might seem helpful to the customers in the present scenario, but in the long run, the OPs would take complete control of prices which would lead to abuse of dominant position. It has been further stated that the WhatsApp groups created by OPs clearly indicate an agreement between them to abuse their position in the market.

6. It has been stated that the Informant filed an FIR dated 23.06.2023, against unknown persons with the Bhavnagar Police Station. In the said FIR, it has been stated that certain unknown persons are operating a WhatsApp group and website who are not related/ involved in the business of plates or scrap and have dishonestly created false identity through electronic mediums and are spreading false prices of plates and scrap. The Informant has also enclosed two newspaper articles stating that a complaint has been filed by the Informant against certain unknown persons with the cyber police for spreading of false prices, which has caused loss to the members of association.

7. Based on the above, the Informant has alleged contravention of Sections 3 and 4 of the Act by the OPs. The Informant has prayed for an interim relief under Section 33 of the Act to temporarily restrain the OPs from carrying on such activities until the conclusion of such inquiry or until further orders.

8. The Informant has sought the following relief from the Commission:

a. direct any enterprise or association of enterprises or person or association of persons, involved in such agreement, or abuse of dominant position, to discontinue

and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

- b. impose a penalty, as it may deem fit which shall be not more than ten percent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse;
- c. direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any; and/or
- d. pass any such other order or direction as it may deem fit.

9. The Commission considered the Information on 17.01.2024 and decided to seek certain additional information from the Informant. In compliance with the order dated 17.01.2024, the Informant filed its response on 04.03.2024. A brief of the additional information submitted by the Informant is as follows:

- a. The OPs are acting as illegal intermediaries in the market and trying to manipulate the buyers and current pricing system of the sellers by spreading rumours and false rates of the scrap material. The Informant has also stated that some of the OPs are also acting as buyers to remain in sync with the intermediaries to influence other real buyers. Further, these intermediaries have created a dominant position and may cause adverse effect in the market.
- b. The price of the commodities is decided solely based on demand and supply chain in the market. There is a drastic change in the price of the scrap material after involvement of these intermediaries as they try to manipulate the pricing system by spreading false rumours in the market about the changes in prices.
- c. The Informant has submitted invoices for the year of 2021-22, 2022-23, and 2023-24 to showcase the change in the pricing structure due to the entry of these intermediaries.
- d. The Informant has submitted that SRIA does not play any role in determination of prices and that the prices are determined solely based on the quality, perishability and quantity of the commodities.
- e. The Informant has also stated that before these intermediaries entered the market, there was a direct contact between buyers and sellers. These intermediaries misrepresent the buyers as authorised agents of the sellers, whereas, the sellers have no connection with these intermediaries.
- f. The scrap material is sold nation-wide and therefore, the estimation of number of buyers is not possible. In response to the query that whether these buyers are members of alleged WhatsApp groups, Informants have stated that a lot of buyers are

part of these groups while the members of the Informant are not part of these groups. The Informant has stated that OPs are part of these groups and play pivotal role in these groups.

g. The Informant has stated that they have no information about monetary consideration charged by the OPs for providing the alleged service of dissemination of price information. However, through hearsay from various sources, they came to know that OPs are charging a fee to the tune of Rs. 5,000/- per buyer.

h. As regards any evidence of an agreement between OPs, the Informant has submitted that there exists an indirect agreement between these intermediaries in the form of a cartel. It has been alleged by the Informant that OPs would abuse their dominant position in times to come to control the whole market and create monopoly in the market, which would cause significant impact on the market dynamics. Therefore, practices of OPs would amount to abuse of dominant position as envisaged under Section 4 of the Act.

10. The Commission considered the material available on record in its ordinary meeting held on 01.05.2024 and decided to pass an appropriate order in due course.

11. Having considered the Information and subsequent submissions of the Informant and other material available on record, the Commission notes that Informant is primarily aggrieved by the OPs who are spreading false rumours in the market about the changes in prices by issuing rate cards with lower rates than those of suppliers which ultimately is having an adverse effect on the sellers and customers. Further, the Opposite Parties have formed certain WhatsApp groups comprising more than 15,000 buyers, which has resulted in lowering the prices of the said products in the market. The Informant has alleged this conduct of the OPs to be in contravention of provisions of Sections 3 and 4 of the Act.

12. At the outset, the Commission notes that the Informant has levelled allegations against 5 OPs with the apprehension that they would collectively abuse their dominant position in future. The Commission observes that it is a settled position that the provisions of the Act do not provide for inquiry into the cases of joint/collective dominance. In view thereof, no case of contravention under Section 4 of the Act is made out.

13. As regards alleged violation of provisions of Section 3 of the Act, the Commission, having considered the evidence submitted by the Informant viz FIR dated 23.06.2023 and two newspaper articles, notes that, **prima-facie**, the said evidence does not point towards alleged cartelization by the OPs. The Commission further notes that in the facts and circumstances of the present case, it is not getting established that spreading alleged false rumours/ misinformation is the result of cartelisation or are resulting into

cartelisation as there are multiple buyers and sellers in the market and the price of the commodity is determined by way of negotiation on a day-to-day basis.

14. In view of the foregoing, the Commission is of the opinion that there exists no **prima facie** case and the Information filed is directed to be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant of relief as sought under Section 33 of the Act arises and the same is also rejected.

15. The Secretary is directed to communicate to the Informant, accordingly.