

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Competition Appeal (AT) No. 34 of 2017

IN THE MATTER OF:

Ms. Usha Roy

...Appellant

Vs.

Competition Commission of India & Ors.

...Respondents

**Present: For Appellant: - Mr. K.K Sharma, Mr. Bunmeet Singh,
Ms. Anubha Dhulia, Mr. S.P. Roy and Mr. Sanchit,
Advocates.**

ORDER

22.01.2018- The Appellant- Ms. Usha Roy ('Informant') filed present information under Section 19(1)(a) of the Competition Act, 2002 against ANS Developers Pvt. Ltd. (hereinafter referred to as "OP-1") and Shalimar Corp. Ltd. (hereinafter referred to as "OP-2") alleging, *inter alia*, contravention of the provisions of Section 4 of the Competition Act, 2002. The Competition Commission of India (hereinafter referred to as "Commission") taking into consideration the fact that similar application was preferred by the Appellant ('Informant') against the same opposite parties registered as Case No. 48 of 2016, with similar allegations, which was not accepted earlier closed the second application under Section 26(2) of the Competition Act, 2002.

2. Learned counsel appearing on behalf of the Appellant submits

Contd/-.....

that though certain additional information was brought to the notice of the Commission and evidence in support of the same were enclosed including the market research which gave rise to re-filing of the second information alleging contravention of the provisions of Section 4 of the Competition Act, 2002. However, in view of the pleadings made in the petition as noticed by the Commission and as on the record we are of the view that the second information alleging contravention of the provisions of Section 4 of the Competition Act, 2002 against the common opposite parties on the same state of facts is not maintainable merely on the ground that certain other evidence have been enclosed.

3. From the record we find that the 'Informant' alleged the Agreement reached between the parties has following anti-competitive clauses:

- Clause 1 – if the Informant is unable to pay the consideration within time, she will be liable to pay interest @ 1.50% per month or part thereof on the amount outstanding and in case the payment (consideration plus interest) is not made within 90 days of its accrual, then OP-1 shall have the option to cancel the present Agreement entered between the parties.
- Clause 5 –If OP-1 is unable to complete the work within stipulated time, then OP-1 shall be liable to pay the balance of

Rs. 18,15,000/- at the time of completion of the project.

In this regard, the Informant alleged that as per agreement though the Informant is liable to pay interest @ 18% p.a. in case of delay in payment of instalment, there is no such liability faced upon OP-1 to pay any interest in case of delay on its part. It was contended that the buyer does not have any bargaining power or countervailing buying power to negotiate the terms of the Agreement.

4. It was also submitted that the Agreement entered into in the year 2012 was terminated in 2015. However, on 7th October, 2015 and 16th December, 2015, OPs had launched two healthcare companies called 'First Core Tertiary Care Hospital Private Limited' and 'First Core Healthcare Projects Limited', respectively. Thus, OPs had used their dominant position as the developer of the integrated township to enter into the market of providing medical facilities. Therefore, OPs denied market access to the Informant during the duration/subsistence of Agreement, and also took advantage of their dominant position in one market to enter into another market which is in contravention of Section 4(2)(e) of the Act.

5. With regard to the dominant position of the opposite parties in the relevant market, the Informant claimed that OPs hold a minimum of

62.86% and upto almost 83% market share, depending upon the time of grant of licenses. The Informant has also submitted data of integrated townships in Lucknow, as follows:

S. No.	Name of the Project	Builder	Area	Hospital facility	Status
1	Shalimar OneWorld	Shalimar Group	220 acres	Yes	Ongoing
2	Omaxe City	Omaxe	140 acres	No	Completed
3	Eldeco City	Eldeco Group	133 acres	No	Completed
4	Emaar MGF Gomti Greens	Emmar MGF	Over 100 acres	Health Centre	Ongoing
5	DLF Garden City	DLF	30 acres	Medical Facilities	Ongoing

6. Taking into consideration the aforesaid fact, the Commission held as follows:

“In view of above explanation provided in Case No. 48/2016, the Commission opines that due to presence of several significant and major real estate developers, such as, Ansal, Eldeco, Sahara, Omaxe, Unitech, etc. in the market for, “the provision of services for development and sale of plots of land for providing medical facilities in Lucknow District of Uttar Pradesh”, OPs do not appear to be dominant in the relevant market either individually or as a group.”

7. In view of the fact that no new facts and substantial evidences against the opposite parties were brought to the notice of the Commission that could differentiate from the previous case, the Commission rightly held that the earlier order dated 31st August passed in Case No. 48 of 2016 for same sets of allegation is not maintainable against the same opposite parties and rightly closed the application under Section 26(2) of the Act.

For the reasons aforesaid, we find no ground to interfere with the impugned order. The appeal is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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