

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**Competition Appeal (AT) No. 18 of 2020****With****I.A. No. 40 of 2020 & Compensation Application No. 02 of 2020****IN THE MATTER OF:**

**M/s. Venkateswara Agencies,
152/1, V.S.N Towers, Ballipadu Road
Attili, West Godavari District
Andhra Pradesh-534134**

...Appellant**Versus**

**1. Competition Commission of India,
9th Floor, Office Block-1, Kidwai Nagar (East)
New Delhi: 110023**

...Respondent No. 1

**2. Kerala Agro Machinery Corporation Ltd.
Athani, Ernakulam District
Kerala-683885**

...Respondent No. 2.**For Appellant: Ms. Sumit Jain, Advocate.****For Respondent: Mr. Navdeep Singh Suhag, Advocate.****ORDER**
(Virtual Mode)**04.11.2020****I.A. No. 40 of 2020**

1. Heard Learned Counsel for the Appellant. It is claimed that there is delay in filing of the Appeal because of Covid-19 surge. We have gone through the Application. The Application is allowed. The delay is condoned.

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2. Heard the Learned Counsel for the Appellant. This Appeal has been filed under Section 53 B of Competition Act, 2002 against the impugned Order of Competition Commission of India (CCI) dated 05th May, 2020 passed under Section 26 (2) of Competition Act in case No. 38 of 2019.

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3. The case of the Appellant is that the Appellant filed information with CCI against Respondent No. 2/Kerala Agro Machinery Corporation Ltd. (KAMCO/Opposite Party). The Appellant claimed that it is proprietorship dealing with Agricultural Machinery, based in West Godavari District of Andhra Pradesh. It is authorised dealer of KAMCO from the year 2006 for which dealership agreement dated 28th September, 2006 was entered into between the Appellant and KAMCO. The Agreement included supplying of products of KAMCO to the customers in West Godavari, East Godavari, Krishna, Srikakulam and Guntur Districts of the State of Andhra Pradesh. The Appellant claimed that as per the dealership agreement, the Appellant was to sell products such as power tiller, power reapers and power stone cutters and agri-garden tiller manufactured by Respondent No. 2. The Appellant claimed that the agreement was for a period of one year and was to end on 27th September, 2007. This dealership agreement continued till 2018 as per the authorization given by KAMCO in the form of letters issued from time to time. The Appellant established foundation for KAMCO brand in the Market. Appellant further claimed that KAMCO opted to authorize dealership to other dealers for Guntur, Vijayawada and Srikakulam in spite of the fact that the Appellant continued to hold authorized dealership. The Appellant claimed that it had taken orders for supply of KAMCO products from the farmers but KAMCO failed to supply the machinery and it suffered losses and so legal notice was sent. The Appellant filed O.S. (I.A.) No. 1593/2019 before District Judge seeking decree. The Appellant also attempted suicide due to stress. Appellant also filed Criminal Case against representatives of KAMCO based on such information, the Appellant sought intervention of CCI.

4. CCI considered the record produced and heard the Respondent No. 2/KAMCO. In Para 17 of the impugned Order, market share of KAMCO has been put on record in a table format which information was supplied by Respondent No. 2 itself. KAMCO claimed that it had not appointed Appellant as exclusive dealer.

5. The Learned Counsel for the Appellant is arguing that the table itself shows that the Respondent No. 2 is major player with regard to concern products of power tiller and reapers. The Respondent abused dominant position by not supplying the goods to the Appellant who was authorised dealer of Respondent No. 2. The Appellant claims that considering the table which has been put on record by the CCI, the Respondent No. 1/CCI should have called for investigation by Director General and proceeded further against the Respondent No. 2. We have gone through the material on record and it will be appropriate to reproduce Para 25 to 30 of the Order of CCI:

“25. The Commission at the outset observed that though the dealership agreement between Informant and KAMCO was first signed on 28.09.2006 (prior to commencement of the Act), such agreement appears to be continuing till 31.03.2018. The allegations made by the Informant are two fold. Firstly, that KAMCO opted to give authorized dealerships to other dealers for Guntur, Vijayawada and Srikakulam, in-spite of the fact that Informant continues to hold the authorised dealership. In regard to this allegation, upon perusal of the information and additional submissions made by KAMCO, the Commission is of the view that no competition concern is involved in the appointing of new dealers in the areas where the Informant has dealership. This has also been made explicit by KAMCO in its dealership agreement under clause 7(a)(ii) that new

dealers may be appointed as and when it deems necessary in the interest of the sales of the products. Clause 7(a)(ii) of the dealership agreement is reproduced below:

“An adequate and properly trained staff and workshop facilities for satisfactory sale and after-sale-services of the product as required by the Manufacturer and to the Manufacturer’s sole and entire satisfaction as advised from time to time. The Manufacturer reserves the right to appoint its dealers for the Product in the Territory as and when it deems necessary in the interest of the sales of the Products”.

26. In fact appointment of more dealers in an area would tend to improve intra-brand competition and ensure wider choice to consumers unless it is shown that an exclusive agreement has certain pro-competitive effects.

27. Secondly, it has been alleged that KAMCO stopped issuing new stock of products to the Informant in an arbitrary manner as a result of which the Informant incurred debt in order to buy new stock from other unauthorised dealers in the market at high rate. However, after examining the information and additional information, the Commission notes that KAMCO had made supply of machineries and spare parts in the month of November & December, 2016 and KAMCO has denied that the Informant had suffered huge loss due to non-supply of new stock.

28. The Commission, based on information in Table 1, notes that as per the response filed by KAMCO, it deals primarily in power tiller and power reapers of which it has a sizeable market share in Andhra Pradesh as well as in the whole of India. The Commission also notes that though KAMCO is based in Kerala, its products are supplied throughout India and there is no evidence that it supplies exclusively in Andhra Pradesh, so as to confine the assessment of relevant market

within the territory of the said state. Moreover, in the facts that no abusive conduct has been established against KAMCO, in any manner, a precise definition of relevant market and assessment of dominance may not be required in the present case.

29. The Commission observes that in the instant matter there is neither any exclusionary abuse nor it prima facie appears to be a case of such conduct as the agreement between the Informant and KAMCO expressly mentions that new dealers may be appointed in the interest of sales of products. Further, the Commission observes that the impugned agreement, is for a short period of one year and that too could be terminated by either party by giving 90 days' notice, and therefore, could not be said to have resulted in denial of market access to the competitors. Therefore, the said clause of the agreement cannot be said to raise any anti-competitive concern in the present case. Further, based on facts and evidence on record, it does not appear that KAMCO has indulged in any abusive conduct, so as to warrant any investigation into the same.

30. In view of the foregoing, the Commission is of the opinion that there exists no prima facie case and the information filed is closed herewith under Section 26(2) of the Act.”

6. The Respondent No. 1 has considered the material and recorded reason as above for declining to take further action on the information placed on record by the Appellant.

7. Having heard Learned Counsel for the Appellant and going through the record, we also do not find any reason to interfere. Reasoning of CCI appears to be well founded. It appears to be a dispute between manufacturer and authorised dealer which is tried to be converted into a competition case. The CCI has already considered the table which is being relied on by the Learned Counsel for the

Appellant and has come to the conclusion that there is no abusive conduct established. No dominance as such has been found. The Ld. CCI has rightly referred to the agreement which is at Page 49 of this Appeal, which includes termination clause.

8. It appears to be a contractual dispute between the parties which is being tried to be converted into a competition case. We do not find that it is a case made out for interference under the Competition Act, 2002.

9. We pass the following Order:-

(i) There is no substance in the Appeal. The Appeal is dismissed at the stage of admission.

(ii) In view of the above, the Compensation Application No. 02 of 2020 is disposed of as not surviving.

[Justice A.I.S. Cheema]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

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