

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Competition Appeal (AT) No. 52 of 2018

[Arising out of Order dated 30th May, 2018 passed by the Competition Commission of India in Case No. 11 of 2018]

IN THE MATTER OF:

Parsoli Motors Works Pvt. Ltd.

Having its office at
Shalimar complex,
4th Floor, B Wing
Malaxmi 5 Roads Junction,
Paldi, Ahmedabad – 380007.

...Appellant

Vs

1. BMW India Private Limited,

Having its office at
Tower B, 7th Floor, Building No. 8
DLF Cyber City, Phase II,
Gurgaon HR 122002 IN.

2. BMW India Financial Services Private Limited,

Having its office at
Tower C, 14th Floor, Building No. 10
DLF Cyber City, Phase II,
Gurgaon HR 122002 IN.

3. Competition Commission of India.

The Secretary,
Competition Commission of India
The Hindustan Times House
18-20 Kasturba Gandhi Marg,
New Delhi – 110001 IN.

...Respondents

Present:

For Appellant: Mr. Rajshekhar Rao, Mr. Arjun Sheth, Ms. Adya,
Mr. Anandh Venkataramani and Mr. Raghav Kacker,
Advocates.

For Respondents: Mr. Diwakar Maheshwari, Mr. Karun Mehta and Mr.
Shreyas E., Advocates for Respondent No. 1.

Ms. Pratisha Vij, Advocate for Respondent No. 2.

J U D G M E N T

BANSI LAL BHAT, J.

This appeal arises out of order dated 30th May, 2018 passed by the Competition Commission of India (hereinafter referred to as 'CCI') under Section 26(2) of the Competition Act, 2002 (the 'Act') in Case No. 11 of 2018 whereby the information relating to allegations of contravention of provisions of Section 4 of the Act filed by the Appellant (Informant before CCI) was ordered to be closed on the ground that the existing Dealership Agreement between the Appellant and Respondent No. 1 stood expired by efflux of time on 31st December, 2017 due to non-renewal thereof and the Informant had not challenged any term of the aforesaid Dealership Agreement which has since expired.

2. For better appreciation of the grievance projected by the Informant a peep into the factual aspects and sequence of events is inevitable. The Informant - 'Parsoli Motor Works Pvt. Ltd.' filed an information with CCI under Section 19 (1)(a) of the Act against 'BMW India Pvt. Ltd.' and 'BMW India Financial Services Pvt. Ltd.' respectively figuring as OP-1 and OP-2 in the Information alleging abuse of dominant position at their hands. Informant – a Private Limited Company, was a dealer for selling BMW cars in the state of Gujarat since 2007 and the dealership subsisted till 31st December, 2017. OP-1 is the manufacturer and seller of BMW cars in India

and sells the product in India through dealers while OP-2 is a group company of OP-1 financially supporting the sales effected by OP-1. The Informant alleged that OP-1 was allowing dealers outside Gujarat to sell BMW vehicles to customers based in Gujarat which amounted to abuse of the dominant position resulting in financial loss to the Informant. Allegedly, OP-1 not only violated its own policy but also cheated the State Exchequer.

3. Abuse of dominant position by an enterprise, forbidden under Section 4 of the Act, essentially arises out of a position of strength enjoyed by an enterprise in the relevant market enabling it to operate independent of the competitive forces or affects its competitors or consumers or the relevant market in a manner that tilts the balance in its favour. While holding and enjoyment of a dominant position in itself is not prohibited, its abuse is proscribed. It is therefore relevant to ascertain whether OP-1 did enjoy a position of strength and was dominant in passenger car segment in India and if so, whether termination of the dealership of Informant ensued the consequence of abuse of such dominant position.

4. Based on information available in public domain, the CCI found that BMW India has negligible share in passenger car segment in India which is dominated by its formidable competitors like 'Maruti', 'Hyundai', 'TATA', etc. who hold a significant market share. Thus, it concluded that BMW India cannot be said to be a dominant player, therefore, question of abuse of dominant position did not at all arise.

5. Heard learned counsel for the parties. It is not in dispute that the Informant was a dealer for BMW vehicles for the Gujarat State under a Dealership Agreement and it enjoyed such position since 2001 in terms of an agreement executed inter-se the relevant parties. The dealership was to last till 31st December, 2017. However, OP-1 shot letter dated 7th December, 2017 intimating the Informant that the existing dealership would not be renewed and would expire on 31st December, 2017. The contention put forward on behalf of the Informant that while it was not given sufficient time to exit from the business and the effect of termination of its dealership had the effect of allowing dealers outside Gujarat to sell BMW cars to customers in Gujarat resulting in loss to the Gujarat Exchequer besides causing financial loss to the Informant, would amount to abuse of dominant position is without substance and the competition concern raised is unfounded. Even if it is assumed for the sake of argument that the termination of the dealership of the Informant or refusal on the part of OP-1 to further renew dealership in favour of the Informant is in derogation of the policy framed in this regard and the Informant had altered its position by raising infrastructure and making investment for running such dealership, breach thereof may give rise to civil liability but not have the consequence of abuse of dominant position. Nothing has been placed on record to establish that in the relevant market i.e. the segment of passenger cars, BMW India enjoyed a dominant position. The material available in public domain which has been considered by the CCI unmistakably demonstrates that BMW India

had insignificant presence in the relevant market and BMW passenger cars did not occupy a significant market share. Merely because, the act of refusal on the part of OP-1 to renew dealership of Informant beyond 31st December, 2017 may have caused pecuniary loss to the Informant does not raise any competition concern, even if, the consequence of such termination of dealership has proved advantageous to the dealers of OP-1 in neighbouring states of Gujarat to sell BMW cars to customers hailing from Gujarat. As regards, fiscal loss to the State of Gujarat in the form of Taxes leviable on sale of cars suffice it to say that apart from the Informant having no locus to raise such issue the revenue resources available to the State would depend on the profitability of business and it lies within the domain of the manufacturer, whether setting up of dealership in a particular State would promote its business and generate profit. It is inconceivable that an Automobile Company would setup a dealership solely for the benefit of the dealer or for generating the revenue for the State where such dealership is located. Argument raised on this score being highly illogical and repugnant to reason is rejected.

6. While we find no ground to interfere with the well reasoned order impugned in this appeal, we take note of the fact that the Informant is said to have obtained financing facilities from OP-2 for running its business and default of debt advanced by OP-2 to the Informant is stated to be staggering amount exceeding Rs.54 Crores, in respect whereof OP-2 is stated to have filed application under Section 7 of the Insolvency and Bankruptcy Code,

2016 being C.P.(IB)No.161/2017 pending consideration before the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench. In the context of this factual background, the allegation emanating from the Respondents that the information filed by the Informant with CCI raising competition concern was merely as a counterblast cannot be dismissed offhand.

7. In view of the foregoing discussion, we find no merit in this appeal. The appeal is accordingly dismissed. However, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

25th November, 2019

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