

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Competition Appeal (AT) No. 27 of 2018**

**IN THE MATTER OF:**

**Asmi Metal Products Pvt. Ltd.**

**....Appellant**

**Vs.**

**SKF India Limited & Anr.**

**....Respondents**

**Present:**

**For Appellant: Mr. Mustafa Ahmad Khan with Mr. Dhaval Deshpande, Advocates instructed by Mr. Ashit Kanpriya and Mr. Arnav Dangi, Advocates.**

**For Respondents: Mr. V.P. Singh, Mr. Rahul Rai, Mr. Abhishek Singh and Mr. Raghav Seth, Advocates.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

‘Asmi Metal Products Pvt. Ltd.’ (Informant- Appellant herein) filed information under Section 19(1)(a) of the Competition Act, 2002 against ‘SKF India Limited’ (‘Opposite Party’- Respondent herein) alleging contravention of the provisions of Section 4 of the Competition Act, 2002.

2. The Informant- Appellant is stated to be a company engaged in the business of forging and machining of bearing rings and other fabricated metal products and provides metal working services.

'Opposite Party'- Respondent, a multi-national company, is engaged in the activities of production, supply and distribution of mechanical products. The Informant- Appellant has been undertaking the machining work on forged rings for the bearing industry as per the requirement of the 'Opposite Party'- Respondent which is further processed by the Respondent to sell to the automobile and electrical companies in the open market.

3. The Appellant has alleged that the Respondent has abused its dominant position *qua* the Appellant by forcing the Appellant to make irrelevant expenditures on expansion of manufacturing capacity and by imposing unfair and discriminatory conditions at the time of awarding contracts for forging and machining of bearing rings and other fabricated metal products.

4. It is alleged that the Appellant, on the suggestion of the Respondent, established a forging plant near Pune in 2004 with investments to the tune of Rs.1,15,00,000/- to reduce its costs towards procurement, transportation of raw materials and to ensure timely delivery of products to the Respondent. Within a year of establishment of the forging plant, the Appellant also agreed to upgrade its conventional machines to CNC (Computerised Numerical Control) turning machines on assurance by the Respondent to provide financial assistance upto Rupees One Crore. However, the Respondent only

provided Rupees Thirty Lacs to the Appellant, that too at an interest rate of 9%. Even though the said amount was given for a period of 365 days, it was taken back in less than 90 days.

5. It is submitted that between 2004 to 2006, the Respondent made several false assurances to the Appellant, asking it to upgrade its plant to get assured business along with monetary incentives from the Respondent. However, the Respondent, allegedly back-tracked from its commitments which resulted in heavy losses to the Appellant. It is further submitted by the Appellant that on various occasions, it was assured by the Respondent that the Appellant would be given additional work since it was exclusively supplying to the Respondent. However, no monetary incentives were given and orders, if given, were small in nature. It is alleged that the Appellant was forced to manufacture those products which required extra forging strokes which reduced the production considerably and resulted in production losses to the Appellant. Due to this, the financial condition of the Appellant deteriorated and it had no option but to accept such orders against its wishes.

6. It is further alleged that the Respondent unilaterally decided to import raw materials from China instead of allowing the Appellant to procure the same from domestic suppliers in India. As a result of this, the Appellant had to pay import duty and clearing charges of up to

Rs.20,00,000/- per order which were though reimbursed by the Respondent at a later date but led to closure of forging and machining units of the Appellant in October, 2009 due to additional financial burden and liability imposed upon it.

7. It is averred that from 2006 onwards, the Respondent stopped calling the Appellant for rate revision and negotiations and that several protest e-mails with regard to this were sent time and again by the Informant to the Respondent but no favourable response was received. It is also averred that the Respondent failed to pay for VAT on the steel purchased by the Appellant for the period 2005-2009 which was in violation of an express agreement dated 28<sup>th</sup> April, 2005 executed between the Appellant and the Respondent and thus, the Appellant was forced upon the liability to pay an excess amount of Rs.57,56,028/-. It is further stated that the Appellant could not bear the burden of bank loans and that the Respondent gave assurances of supporting the Appellant in submitting a rehabilitation proposal to the Bank for its revival but it failed to act on its promises.

8. Further, from 2014 to 2016, several emails were sent by the Appellant to the Respondent with respect to the alleged non-execution of the promises made by the Respondent and to provide work to the Appellant; however, the Respondent failed to do so. It is alleged that on 28<sup>th</sup> April, 2017, the Appellant and the Respondent entered into an

MOU wherein Clause 12 stated that the Respondent would not be responsible for any kind of losses or damages caused to the Appellant. This, according to the Appellant, is abuse of dominant position by the Respondent and in contravention of the provisions of Section 4 of the Competition Act, 2002.

9. The Competition Commission of India ("Commission" for short) noticed that a majority of the alleged instances of abuse of dominance stated by the Informant have taken place prior to the year 2009 and, therefore, they do not fall within the purview of the Competition Act, 2002, relevant provisions of which came into effect only in May, 2009.

10. Further, the Commission held that as per 'relevant market', the Respondent- 'SKF India Limited' (Opposite Party) cannot be held to be dominant.

11. Learned counsel for the Appellant submitted that the Commission has incorrectly placed reliance on its earlier judgement in "**M/s. Shah Associates v. Timken India Limited, Case No. 72 of 2016**" holding that the conditions of competition for supply of bearings are homogenous and as such the relevant market is 'India'. The said judgment in 'Shah Associates' is not applicable to the present case as in that case, the Informant was the 'distributor' of the Opposite Party, whereas, in the present case, the Appellant is 'supplier' of the Respondent.

12. Learned counsel for the Appellant submitted that it may be open for a distributor of a particular company to supply a product throughout India, however, in case of a supplier, like in the present case, where the Appellant is supplying bearing rings to the Respondent No.1 and the Respondent No.1 is manufacturing its products using the bearing rings supplied by the Appellant, the transportation cost will play a vital role. The Respondent No.1, or as a matter of fact, no company will procure material from suppliers who are not located in the vicinity as it will result in increased transportation cost, therefore, 'relevant market' in the present case will be based in 'Western India'.

13. However, such submission cannot be accepted as there is nothing on the record to suggest that Respondent- 'SKF India Limited' is purchasing 'bearing rings' from the Appellant and no transportation cost is being made from one or other part of India, such as Eastern India, Southern India and Northern India.

14. Next, it was contended that the Commission has wrongly held that the Respondent No.1 is not 'market leader' as following reports suggest 'market leader':

- (i) Report of ICICI Direct.com, dated 24<sup>th</sup> September 2014, wherein the Respondent No.1 has been termed as "market leader" with market share of 28%.

(ii) Report of ICRA Online, dated 18<sup>th</sup> June, 2010, wherein the Respondent No.1 has been termed as “market leader” with market share of 41%.

(iii) Report of Nirmal Bang Institutional Equities, dated 4<sup>th</sup> January, 2016, wherein it has been stated that Respondent No.1 “is the most diversified player, retaining its top position with largest share of 28% in domestic organized bearing market.”

(iv) Research report of AFS Action on India Bearing Industry dated 26<sup>th</sup> February 2015, where the market share of the Respondent No.1 has been calculated to be 25-30%.

(v) Research report of Value Research, dated 23<sup>rd</sup> April, 2015, wherein it has been categorically stated that SKF Group is a global leader in bearing industry and SKF, India, is largest player in the bearing industry with market share of 28%. As such, the findings of the Commission with respect to the market share are absolutely erroneous and the Respondent No.1 enjoyed a position of dominance in the relevant market.

15. The Commission noticed that the Informant is aggrieved by the conditions imposed on it by the Respondent as detailed out in the minutes of meeting, emails and Memorandum of Understanding. For instance, in 2004, the Informant opened a forging unit allegedly at the Respondent’s behest but later, in December, 2005, the Respondent asked the Informant to change its machine type. Further, in July, 2006,

the Respondent launched a project viz “Small Taper Roller Bearing/ STRB” and the Informant was shortlisted for supply of 50% of the entire volume and therefore, it had to double its capacity. However, subsequently on 6<sup>th</sup> December, 2006, ‘SKF Germany’ conducted an audit of the Informant’s plant and concluded that the product “STRB” being forged by the Informant would not be accepted as the same was required to be forged on fully automated machines viz. “Hatebur” and the Informant was required to get the same.

16. As noticed above, majority of the aforesaid allegations and abuse relates to the period prior to May, 2009, when Competition Act, 2002 came into force, therefore, the Commission rightly held that those allegations cannot take into consideration to hold that the Respondent No.1 abused its dominant position and contravened Section 4 of the Competition Act, 2002.

17. Regarding the position of the Respondent- ‘Opposite Party’ in the relevant market, the Commission noticed the data compiled by Centre for Monitoring Indian Economy Pvt. Ltd. (CMIE) Industrial Outlook, there are several players operating in the market for industrial bearings in India. As per the said data base, the top three players (on the basis of market shares) in the market for industrial bearings in India are National Engineering Inds. Ltd., Schaeffler India Ltd., and the Respondent- ‘Opposite Party’. In 2013-14, 2014-15 and 2015-16, the



market share of National Engineering Inds. Ltd. was 10.13%, 11% and 12.19% respectively whereas the share of Respondent- 'Opposite Party' was 17.1%, 16.26% and 10.41% respectively. The share of Schaeffler India Ltd. in the years 2013-14, 2014-15 and 2015-16 was 10.76%, 11.27% and 8.48% respectively. It is also noted that in 2015-16, the Opposite Party enjoyed 10.41% market share though its competitor National Engineering Inds. Ltd. enjoyed a higher market share of 12.19%. From the aforesaid discussion on the market shares of various entities, the Commission observed that in the aforesaid period, none of the players in the relevant market enjoyed a position of strength for a long duration. Further, it is observed that as per the said data, for the year 2015-16, domestic production of bearings accounted for 51.26% and imports accounted for around 44.8% indicating that imports also offer a competitive constraint on the domestic manufacturers and the market for industrial bearings is fragmented in nature. Accordingly, the Respondent- 'Opposite Party' does not appear to enjoy a position of strength required to operate independently of the market forces in the relevant market. Since, the Respondent- 'Opposite Party' does not appear to be in a dominant position in the relevant market, the question of abuse of dominant position of the Respondent- 'Opposite Party' does not arise.

18. In the aforesaid background, we find that no case has been made out by the Appellant- Informant to interfere with the impugned order

dated 24<sup>th</sup> January, 2018. The appeal is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

NEW DELHI  
12<sup>th</sup> March, 2020

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