

Competition Commission of India

Sainath Autolinks Pvt. Ltd vs State Bank Of India & Other on 11 October, 2019

COMPETITION COMMISSION OF INDIA

Case No. 15 of 2019

In Re:

Sainath Autolinks Pvt. Ltd.

G.T. Road, Faridpur

Durgapur - 713213, West Bengal

Informant

And

1.

State Bank of India Madam Cama Road

2. State Bank of India (through its Branch Manager) Durgapur - 713213 CORAM Mr. Ashok Kumar Gupta Chairperson Ms. Sangeeta Verma Member Mr. Bhagwant Singh Bishnoi Member Order under Section 26(2) of the Competition Act, 2002

1. This order shall dispose of the Information filed by Sainath Autolinks Pvt. Ltd. (the 'Informant') under Section 19(1)(a) of the Competition Act, 2002 (the 'Act'), alleging inter alia contravention of the provisions of Section 4 of the Act by State Bank of India, Mumbai ('Opposite Party No. 1' / 'OP-1') and State Bank of India, Durgapur branch ('Opposite Party No. 2' / 'OP-2') (collectively referred as 'the OPs').

2. The Informant is an authorised dealer of Maruti Suzuki India Limited (Maruti Suzuki) located in Durgapur, West Bengal. OP-1 is a scheduled commercial bank in public sector having its registered office at Mumbai and branches spread across the country, one of them being OP-2. It has been submitted in the Information that OPs are engaged in accepting deposits, grant of loans, remittance of money and rendering other banking services.

3. The Informant has submitted that it opened a Supply Chain Finance Unit ('SCFU') account with OP-2 on 14.10.2011. As per the terms and conditions of the said SCFU account, Maruti Suzuki would dispatch cars to the Informant after receipt of payment from OP-2; thereafter, the Informant would deposit the sales proceeds of cars into the said account.

4. On 23.07.2018, OP-2 is said to have sent an e-mail to the Informant stating that a reconciliation and audit exercise was undertaken with respect to the aforesaid SCFU account for the financial year 2013-14, wherein it was found that one credit entry had been captured twice and one debit entry had been missed. After due reconciliation of the entries, the Informant was liable to pay a sum of Rs. 2.13 Crore to OP-2.

5. It has also been alleged that till 11.09.2018, OPs neither supplied the calculation sheet nor provided any explanation for raising such demand to the Informant, despite repeated communication in this regard. Moreover, the Informant was compelled to pay the aforesaid amount

after OP-2 threatened to transfer said account to Non-Performing Asset (NPA) category.

6. The Informant has also stated that the said demand of Rs. 2.13 Crore is time barred under the provisions of the Limitation Act, 1963 as there had been a delay of more than five years in raising such a demand. The Informant is stated to have filed a complaint on 17.01.2019 before the Banking Ombudsman; however, vide e-mail dated 28.01.2019, the Banking Ombudsman conveyed that complaint was not maintainable under the provisions of Clause 9(2)(a) of Banking Ombudsman Scheme, 2006.

7. The Informant, citing the provision regarding enhanced penal interest, has alleged that terms and conditions of the letter of arrangement dated 24.01.2018 signed between OP- 2 and the Informant are unfair, discriminatory and favours the OPs. The Informant has also averred that OPs are in a dominant position in the banking sector and that they have abused their dominant position.

8. Based on the above averments and allegations, the present Information has been filed by the Informant against the OPs, alleging contravention of the provisions of Section 4 of the Act. The Informant has made the following prayers:

- i. An inquiry be ordered against the OPs on the basis of the present complaint.
- ii. During the pendency of the present complaint, the OPs be directed to reimburse the disputed amount of Rs. 2.13 Crores along with 24% interest per annum.
- iii. To declare the demand of Rs. 2.13 crores vide notice dated 23.07.2018 as illegal.
- iv. To levy a penalty of Rs. 3 crores against the OPs and in favour of the Informant for creating conditions for mental torture and harassment along with 24% interest to be compounded every month.

9. The Commission has perused the Information filed by the Informant, documents annexed therewith and also relevant information available in public domain.

10. The Commission notes that the Informant is primarily aggrieved with the alleged delayed intimation of reconciliation exercise done by OPs, on account of which he was made liable to pay an amount of Rs 2.13 crores.

11. For examining the allegations made in the Information within the framework of Section 4 of the Act, it is necessary to first define the relevant market and then to determine dominance of OPs therein before analyzing the abusive conduct.

12. In this context, the Commission observes that the Informant had been granted working capital loan under SCFU account maintained by it with OP-2. The Commission observes that loans and advances are given in personal segment and business segment. Depending on the size of the business entity, the latter is sub-categorised into credit facilities to large corporate borrowing,

mid-corporate borrowing etc. Further, depending on the nature of finance, banks extend fund and non-fund based credit facility to their customers.

13. While the Informant has not suggested any particular relevant market in which conduct of the OPs is to be analysed, the Commission, in this regard, observes that in terms of Priority Sector Lending requirements, RBI has allowed banks to classify loans to Micro, Small and Medium Enterprises (MSMEs), for both manufacturing and service sectors, as priority sector loans. Further, the Central Government accords special treatment/ incentives to MSMEs as identified under Micro, Small & Medium Enterprises Development (MSMED) Act, 2006. Accordingly, the Commission is of the opinion that, keeping in view the facts projected by the Informant against the OPs and in light of the regulatory classifications adopted by the Government/ RBI, the relevant product market in the present case be delineated as 'market for provision of loans to MSMEs'.

14. In respect of the relevant geographic market, the Commission notes that in an earlier case pertaining to the banking sector i.e. Case No. 02 of 2015, relevant geographic market was limited to the confines of a particular State. In the present case, the Commission notes that the Informant is a business entity based in West Bengal. Although, various banking/ financial services are offered by banks on a national scale, however, from the supply side, especially for loan products, consumers of banking services like the Informant generally prefer banks/ finance institutions with a local presence. Accordingly, the Commission defines the relevant geographic market in the present matter as 'State of West Bengal'.

15. In view of the above discussion, the relevant market in the instant matter is 'market for provision of loans to MSMEs in State of West Bengal'.

16. The Commission notes that the Informant has not provided any evidence to show the dominant position of the OPs except for stating that State Bank of India, being the bank of the Central Government and governed by State Bank of India Act, enjoys dominant position in the commercial market. As against this, from the information available in public domain (i.e. State Level Bankers Committee data pertaining to West Bengal), the Commission notes that market share of OPs in MSME loan category in State of West Bengal for the period 2018-19 is around 11%. Furthermore, banking sector in West Bengal seems to be characterized with presence of several national level banks such as State Bank of India, HDFC Bank, Punjab National Bank, ICICI Bank, Allahabad Bank, Bank of India, Canara Bank, Central Bank of India, Syndicate Bank, UCO Bank, Axis Bank, Yes Bank etc. Thus, considering the large number of players operating in the relevant market, the OPs do not seem to have the ability to operate independently of the competitive forces. In the absence of dominance, the issue of abuse of dominant position against the OPs does not arise.

17. In view of the foregoing, the Commission is of the view that no case of contravention of the provision of Section 4 of the Act is made against OPs and the matter is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.

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

Sd/-

Ashok Kumar Gupta (Chairperson) Sd/-

Sangeeta Verma (Member) Sd/-

Bhagwant Singh Bishnoi (Member) New Delhi Date: 11/10/2019