

COMPETITION COMMISSION OF INDIA

Case No. 40 of 2020

In Re:

**Mr. Bhushan Girdhar,
UG-29, West End Mall,
Janakpuri, New Delhi- 110058**

Informant

And

**P.P. Buildwell Private Limited,
Plot No. P-1, PP Trade Centre,
Netaji Subhash Place,
New Delhi - 110034**

Opposite Party No. 1

**Classic Care Utilities Private Limited,
Unit No. 715, 7th Floor, PP Trade Centre,
P-1, Netaji Subhash Place,
New Delhi - 110034**

Opposite Party No. 2

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. The present information has been filed by Mr. Bhushan Girdhar (“**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against P.P. Buildwell Private Limited (“**PP Buildwell**”/ “**OP-1**”), and Classic Care Utilities Private Limited (“**Classic Care Utilities**”/ “**OP-2**”), alleging contravention of provisions of Section 4 of the Act.
2. The information pertains to a commercial complex ‘West End Mall’, constructed by PP Buildwell in the year 2010 located at Janakpuri, New Delhi. The Informant is one of the unit holders out of 492 unit holders in West End Mall which comprises retail space, restaurants, food-court and corporate offices.
3. As per the Informant, from the date of inception, PP Buildwell and its associate company, Classic Care Utilities is maintaining the common area and extorting unreasonable and exorbitant amount in the name of maintenance of common area, fixed cost of electricity, per unit electricity charges, parking charges and sinking fund. PP Buildwell does not allow any other maintenance agency to enter into the service providing contract which has created a situation of monopoly wherein the consumers have no option except to get services from PP Buildwell. It has been alleged that PP Buildwell is recovering exorbitant maintenance charges at the rate of Rs. 23 per square feet (for AC units) without any consultation of 492 unit holders whereas other players are charging approximately Rs. 10.50 for the said services and the quality of their services is much better than PP Buildwell.
4. PP Buildwell has converted recovery of maintenance and electricity charges from post-paid system to prepaid system where consumers have to pay for the services even if there is deficiency in services. Further, it has merged maintenance charges along with electricity supply through a prepaid system in which every unit owner has to make advance payment to use the services. In case of non-payment, the supply of electricity is disconnected and unit holders are left with no option except to pay maintenance in advance to PP Buildwell at one-sided price decided by it.

5. PP Buildwell has a sanctioned load of 1000 KW from Electricity Distribution Company for maintenance of common area and for further distribution to 492 unit holders. The load of common area equipments is 400 KW (approx.) after which the net load attributable for further distribution remains only 600 KW. Against the available load for 600 KW, PP Buildwell is recovering fixed charges for 2000 KW-3800 KW which is unfair and causing financial loss to 492 unit holders.
6. It has been alleged that PP Buildwell enjoys dominant position and does not allow free and fair competition which is causing undue financial hardship to the Informant.
7. In view of above, the Informant has, *inter alia*, sought the following relief from the Commission, (a) PP Buildwell be directed to bring down the maintenance charges at par with other suppliers providing similar services at lower prices; (b) to impose the applicable penalty for the violation of the provisions of the Act; and/ or (c) any other order as it deems fit in the interest of equity, justice and good conscience. The Informant has also, *inter alia*, sought the following interim relief from the Commission under Section 33 of the Act, (a) PP Buildwell be directed to discontinue the current system for collection of electricity and maintenance on prepaid basis; and (b) PP Buildwell be directed to bring down the maintenance charges at par with other suppliers providing similar services at lower prices.
8. The Commission considered the information in its ordinary meeting held on 29.10.2020 and directed the Opposite Parties to file their comments/response thereto. After seeking due extension of time, Opposite Parties filed the same on 22.12.2020.
9. In their response, the Opposite Parties have stated that PP Buildwell and Classic Care Utilities are totally different entities and involved in different categories of trade altogether. Classic Care Utilities neither shares any common director nor is even remotely related to PP Buildwell. It has been further stated that PP Buildwell and Classic Care Utilities cannot operate independently of the competitive forces in the relevant market as there are a number of shop/units inside various shopping malls/ complex in the subject area which have been developed by various developers and there are number of maintenance agencies which cater to the needs of the shopping malls. Moreover, the Informant has not been able to produce any cogent evidence in support

of the allegations of dominant position of PP Buildwell in the relevant market and hence the question of abuse does not arise. Reliance has been placed upon the decision of the Commission in the case of *Mrs. Randhir Kaur Sidhu and Fargo Estates Pvt. Ltd. & Anr* (Case No. 18 of 2011) in support of their submission. It has been stated that the issue raised by the Informant has already been dealt with by a competent Court of law in a matter which was filed by certain unit owners and the Informant cannot be permitted to re-agitate the very same issue before a different forum which is in relation to the same subject matter as the same is barred by the principles of *Res-judicata*. Further, the Informant is deliberately and intentionally trying to mislead the Commission by annexing different invoices of different malls in Delhi which have different standards of charging maintenance and electricity charges depending on the facilities which are availed of by the concerned units owners/occupants.

10. The Commission considered the information and reply of Opposite Parties dated 22.12.2020, in its ordinary meeting held on 04.01.2021, and decided to pass an appropriate order in due course.
11. The Commission notes that the Informant is primarily aggrieved by the conduct of PP Buildwell which is allegedly charging an exorbitant amount in the name of maintenance of common area, fixed cost of electricity, per unit electricity charges, parking charges, etc. It has also been alleged that PP Buildwell does not allow any other maintenance agency to enter into the service providing contract which has created a situation of monopoly wherein the consumers have no option except to get services from PP Buildwell. Further, the unit owners have no option to take individual electricity supply since PP Buildwell has made the electrification design in such a way that no electricity company agrees to provide separate connection to the unit owners directly. PP Buildwell is also charging exorbitant maintenance charges at the rate of Rs. 23 per square feet (for AC units) without consultation of 492 unit holders. It has also been alleged that PP Buildwell has got a sanction load of 1000 KW from Electricity Distribution Company for maintenance of common area and for further distribution to 492 unit holders. The load of common area equipment is 400 KW (approx) after which the net load attributable for further distribution remains only 600 KW. Against the available load for 600 KW, PP Buildwell is recovering fixed charges for 2000 KW-3800 KW which is unfair and causing financial loss to 492 unit holders. In view of

above, the Informant has alleged that PP Buildwell is abusing its dominant position in contravention of provisions of Section 4 of the Act.

12. The Commission observes that the matter relates to sale of commercial units in a project developed by PP Buildwell which was purchased by the Informant. The Commission also notes that a maintenance agreement was also entered into between PP Buildwell, Classic Care Utilities and the Informant, *inter alia*, laying down the terms and conditions of operation/maintenance services, computation of maintenance charges, *etc.* The Commission notes that the first step in the assessment of a case for alleged violation of Section 4 is to define the relevant market. The Commission observes that the transaction between the Informant and PP Buildwell was with regard to sale of a commercial space. The Commission further notes that the requirement, scope and prospect of a commercial space would be different from that of a residential space since the motive of buying and other factors considered are different in both the cases. Accordingly, the Commission is of the *prima-facie* view that the relevant product market for the purpose of competition assessment in the present case is '*the market for provision of services for development and sale of commercial/ office space*'. With regard to the relevant geographic market, the Commission is of the *prima facie* view that the relevant geographic market for the purpose of competition assessment in the present case would be considered as 'Delhi' as the conditions of competition in Delhi are distinct and cannot be regarded as interchangeable or substitutable with the neighbouring areas of Gurgaon, Noida, and Faridabad. In view of the foregoing, the Commission is of the *prima facie* view that the relevant market would be '*the market for provision of services for development and sale of commercial/ office space in Delhi*'.

13. As regards the allegation of dominant position enjoyed by PP Buildwell, the Commission notes that in Delhi, PP Buildwell is just one of the real estate developers and that there are many other real estate developers in Delhi offering similar services for development and sale of commercial/ office space. For instance, DLF Limited, Delhi Development Authority, Omaxe Limited, Parsvnath Developers Limited, Ansal API, TDI Infrastructure Ltd., *etc.* offer similar services and pose competitive constraints to PP Buildwell. Owing to the presence of other real estate developers offering commercial office space, the buyers are not dependent upon PP Buildwell for provisioning of commercial/office space. Further, none of the factors stated under

Section 19(4) of the Act seem to support Informant's claim of dominant position enjoyed by PP Buildwell. Accordingly, the Commission is of the *prima facie* view that PP Buildwell does not enjoy dominant position in the market for provision of services for development and sale of commercial/ office space in Delhi.

14. In view of the above finding that PP Buildwell does not enjoy dominant position in the delineated relevant market, no case to examine the alleged abuse of dominance by PP Buildwell in the matter, under the provisions of Section 4 of the Act, remains for determination by the Commission.
15. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case and the information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act. Consequently, no case for grant of reliefs as sought under Section 33 of the Act arises and the same is also rejected.
16. The Secretary is directed to communicate to the parties accordingly.



Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 01.02.2021