



COMPETITION COMMISSION OF INDIA

Case No. 14 of 2023

In Re:

Sri Balaji Enterprises

Rep. by its Managing Partner
Mr. Tukuntla Vishal
At GRK Industries, 17-5-68/1
Opp. Bharat Petroleum Boyepally
Mahabubnagar, Telangana 509001

Informant

And

Hero Moto Corp. Limited (Head Office)

Rep. by its National Head of Parts & Oil Business,
Accessories and Merchandise, Sri. Akhilesh Vijay
Head Office at The Grand Plaza,
Plot No:2, Nelson Mandela Road,
Vasanth Kunj Phase-II, New
Delhi- 110070

Opposite Party No. 1

Hero Moto Corp. Limited (Zonal Office)

Rep. by its Zonal Parts Service Manager
Sri Sudhakar Jadhav, Zonal Office at SKAV 909,
3rd floor, 9/1, Lavelle Road, Bangalore,
Karnataka-560001

Opposite Party No. 2

Hero Moto Corp. Limited (Regional Office)

Rep. by its Area Parts Sales Manager,
Sri. Jagadeesh Shanbhogue. U,
Office at 3-6-289, 3rd floor, Kareem Manzil,
Hyderguda, Hyderabad,
Telangana – 500001

Opposite Party No. 3

M/s Venkateshwara Associates

Rep. by its CEO, Sri. Tarun Agarwal, R/o. 3-4-27,
A/3, Church Colony Road, Gandhinagar,
Ramanthapur, Hyderabad, Telangana -500039

Opposite Party No. 4



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Maruthi Agencies

30003-01-RC-867, R/o. 3-10-48, Tirumalagiri,
Hyderabad, Telangana – 500015

Opposite Party No. 5

Manish Enterprises

Rep. by its Proprietor, Sri. Manish Khurana,
30003-01-RC-856,
R/o. 4-2-726 & 727, 2nd Floor, Ramkoti, Hyderabad,
Telangana -500095

Opposite Party No. 6

Shyam Auto Mobiles

Rep. by its Proprietor, Sri. Shyam,
30003-02-RC-07,
R/o. 4-2-728, Ramkoti Koti, Hyderabad,
Telangana -500095

Opposite Party No. 7

Hero Moto Corp. Limited

Rep. by its Head-Channel Appointment & Development
Sri. Neeraj Tiwari, R/o The Grand Plaza, Plot No:2,
Nelson Mandela Road, Vasant Kunj Phase-II,
New Delhi-I 10070

Opposite Party No. 8

CORAM

Ms. Ravneet Kaur
Chairperson

Ms. Sangeeta Verma
Member

Order under Section 26(2) of the Competition Act, 2002

1. The present Information has been filed by Sri Balaji Enterprises represented through its managing partner Mr. Tukuntla Vishal (**'Informant'**) under Section 19(1) (a) of the Competition Act, 2002 (**'Act'**) alleging contravention of provisions of Section 3 and Section 4 of the Act by Hero Moto Corp Limited (Head Office) (**'OP-1'**), Hero Moto Corp. Limited (Zonal Office) (**'OP-2'**), Hero Moto Corp. Limited (Regional Office) (**'OP-3'**), M/s Venkateshwara Associates (Hero Spare Parts Stockist) (**'OP-**



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4'), Maruthi Agencies ('OP-5'), Manish Enterprises ('OP-6'), Shyam Auto Mobiles ('OP-7') and Hero Moto Corp. Limited ('OP-8'), collectively referred to as ('OPs').

2. As stated in the Information, the Informant is a partnership firm and was appointed as a Hero Genuine Part Distributor ('HGPS') on non-exclusive basis, in the district of Mahabubnagar, Telangana. To this effect, OP-1 issued a letter of intent dated 08.11.2019 in favour of the Informant. The said letter stated that the said appointment would be under OP-1's super stockist M/s Venkateshwara Associates (OP-4) in the district of Mahabubnagar, Telangana.
3. OP-1 to OP-3 and OP-8 are Hero Moto Corp Ltd. and its regional and zonal offices. OP-4 is the super stockist for supply of genuine parts of OP-1. OP-5 to OP-7 appear to be wholesalers engaged in after-sale distribution of spare parts and services.
4. The Informant has alleged that the trade discount policy for the year 2019-20 issued by OP-1 is unfair. It is stated that according to the policy, HGPSs must operate on advance payments with super stockist *i.e.*, the amount payable to the super stockist on the first day of every quarter has to be cleared within 7 days. The policy further mentioned that in case of expiry of credit limit, the super stockist (OP-4) may withhold the billing of HGPSs and also in case of delay in payment, HGPS shall pay interest at 15% per annum for the outstanding amount beyond 15 days of the delay period. The policy also laid down that OP-1 shall monitor discounts and share the eligibility of the HGPS with OP-4 and in turn OP-4 would claim discounts from OP-1 as reimbursement.
5. The Informant has alleged that a cap on purchase of stock was imposed on HGPSs. OP-1 had put a cap on purchase of stock beyond 150% of the assigned target to the HGPSs and in the event of purchase of more than the said 150% of the assigned target, the discounts and schemes to the HGPSs were made inapplicable. Further, it is stated that such restriction on purchasing of stock was not applicable to the wholesalers.



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6. The Informant has alleged that OP-1 to OP-4 provided discounts to the tune of 21% to OP-5 to OP-7 whereas the Informant was provided 18% discount on the billing amount. Further, TDS and GST charges were charged from the Informant, whereas the same was absent with regard to OP-5 to OP-7. The incentives made in favour of OP-5 to OP-7, as stated, have helped OP-5 to OP-7 to enjoy a dominant position over the Informant by offering goods at lower prices in the market to the retailers resulting in the downfall of the Informant's business. The Informant further alleges that the practise of OP-1 to OP-4 supporting OP-5 to OP-7, instead of supporting the Informant is a clear violation of the trade policy of OP-1 to OP-4. Also, it is the duty of OP-1 to OP-4 to protect the Informant from being suppressed by OP-5 to OP-7 in the market.
7. The Informant alleged that it intimated the OPs of circulation of its counterfeit products but the same was never addressed. Instead, the counterfeit products increased in circulation. The Informant alleged that the said counterfeit products were offered at lower prices, which caused a huge loss and piling of dead stock with the Informant.
8. As alleged, OP-1 to OP-4 assigned huge targets to the Informant for every month for purchase and sale of the goods which were not preferred by the consumers and retailers in the markets. In case of failure to achieve the targets, the Informant was threatened with cancellation of its distributorship. The forced purchase and sale of goods caused piling up of huge dead stock with the Informant and also resulted in financial losses to it. The Informant alleges that the said forceful sale and purchase of goods does not apply to the OPs, thereby, allowing them to maintain a dominant position over the Informant in the market.
9. As alleged in the Information, the Operational Guidelines issued by OP-1 are against the interests of the HGPDs including the Informant and the same are lenient against the OPs, thereby, allowing them to maintain a dominant position over the Informant in the market. The Informant has alleged that alongwith the other players in the market it also got suppressed owing to collaboration between OP-4 and OP-



- 5, in violation of the trade discount policy and operational guidelines issued by OP-1. The Informant has averred that the said conduct strengthened the monopoly of OP-5 to OP-7 and if the said practice continues, it would lead to the exit of the Informant from the market.
10. The Informant, despite unfair conditions imposed by OP-1 to OP-4 and dominance of OP-5 to OP-7, continued the business by promoting, advertising and marketing the brand image of OP-1 to OP-4 in the market with his own income. In the year 2019-20, the sales and purchase turnover of the Informant were Rs. 1,38,74,502.23 which increased to around Rs. 2,89,01,953 in 2020-21. The Informant has alleged that he was forced to spend from his own income to promote, advertise or market the products in the market whereas OP-5 to OP-7 enjoyed the fruits of hard work of the Informant leading OP-5 to OP-7 to maintain a dominant position over the Informant. As alleged, OP-1 to OP-4, instead of supporting the Informant, promoted OP-5 to OP-7. Thus, establishing unfair conditions in the market which caused appreciable adverse effects on competition. As alleged by the Informant, its downfall was because of the abuse of dominant position by OP-5 to OP-7 over the Informant and failure of OP-1 to OP-4 to rectify the same.
11. As stated in the Information, the Informant *vide* an email dated 31.07.2022 (Damage notice) *inter alia* stated about the grievance regarding the uncontrolled infringement and uncontrolled discounts, capping procedure, inappropriate calculations, manpower problems, damage and warranty, target and scheme payouts and delayed payouts by OP-1 to OP-4. The Informant has stated that the same remains unresolved and the said practices prevail even today in the market.
12. As stated in the Information, OP-3, *vide* reply dated 09.09.2022 to the Damage notice informed the Informant to meet personally. Subsequently, in the meeting held on 15.09.2022, OP-2 and OP-3 assured the Informant orally to provide compensation for the loss incurred to the Informant due to the unfair practice by the Opposite Parties. Later, OP-3 contacted the Informant separately and demanded a share in the above said compensation and also conveyed that in case the Informant



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failed to share the same, the said compensation would not be allowed to it. As stated in the Information, OP-8 issued a pre-termination Notice dated 03.02.2023 to the Informant, which, as alleged by the Informant was to support OP-5 to OP-7 to help them maintain a dominant position over the Informant in the market. Further, a criminal complaint was also filed against the Informant in Naryanaguda Police station, Hyderabad, Telangana. As stated by the Informant, the same was filed when the Informant started to raise grievance through a Damage notice dated 31.07.2022 and when the Informant denied the demand made by OP-3 to part with a share in the compensation to be provided to the Informant.

13. Based on the above allegations, the Informant prayed for an investigation by the Director General ('DG') under Section 26 of the Competition Act 2002 into the abuse of dominant position and unfair conditions imposed on the Informant by the OPs causing adverse effect on competition and direct them to cease the anticompetitive conduct and impose monetary penalties against the OPs. The Informant has prayed for interim relief under Section 33 of the Act seeking investigation by the DG into the matter.
14. In its meeting held on 06.09.2023, after perusing the Information available on record, the Commission decided to pass an appropriate order in due course.
15. The Commission notes that the sum and substance of the allegations pertain to the alleged conduct of the OPs and the dominance of OP-5 to OP-7. The Commission notes that the appointment of the Informant was on a non-exclusive basis by OP-1 in the district of Mahabubnagar, Telangana and the OPs appear to be in the vertical chain of business. Further, the Commission notes that as per the operational guidelines available on record, discounts suggested by OP-1 are in the nature of minimum discounts for entities in the vertical chain of business. Thus, as far as the alleged agreement between some of the OPs is concerned, no case seems to have been made out under the provisions of Section 3 of the Act. Further, the allegations appear to have been made by the Informant pertaining to the dominance of more than one entity *i.e.* OP-5 to OP-7 (as a result of action of other OPs) which does not



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merit consideration under Section 4 of the Act. Therefore, the Commission is of the view that no competition concerns seem to arise in the present matter given the nature of allegations and the alleged conduct of the parties so arrayed by the Informant.

16. The Commission is thus, of the opinion that there exists no *prima facie* case of contravention of the provisions of Section 3 and Section 4 of the Act against the OPs in the present case and therefore, the matter be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant for relief as sought under Section 33 of the Act arises and the same is also rejected.

17. The Secretary is directed to communicate the decision of the Commission to the Informant, accordingly.

Sd/-

(Ravneet Kaur)
Chairperson

Sd/-

(Sangeeta Verma)
Member

New Delhi
Date: 14/09/2023