(2001) 07 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

ACQUA MINERALS LIMITED-/ APPELLANT

Vs

HINDUSTAN COCA-COLA BEVERAGES PVT. LTD. RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Citation : 2002 1 CPJ 30

Hon'ble Judges : C.M.Nayar , Moksh Mahajan J.

Final Decision : Complaint dismissed

Judgement

1. THIS matter arises out of a complaint filed under Section 2(i), (ii), (iv) and Section 2(o), 10(a)(iv) read with Sections 31, 36A and 36B(d) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act). The complainant is a deemed public Company under the provisions of the Companies Act, 1956 having its registered office at Western Express Highway, Andheri (East), Mumbai 400 099. It is engaged in the business inter alia of preparing, bottling, marketing, distributing and selling its product "Bisleri" by itself and through various franchisees spread all over India. The complainant owns the trade mark ''Bisleri''. Respondent No. 1 is a Private Limited Company having its registered office at 13, Abul Fazal Road, Bengah Market, New Delhi and is a subsidiary Company of multi-national. The Coca-Cola Company (hereinafter referred to as respondent No. 2) having its corporate office at Coca-Cola Plaza, Atlanta, Gorgia, USA and organised under the Laws of Delaware in the United States of America. Respondent No. 2 engaged in the business of the manufacture, bottling, distributing and selling soft drink beverage i.e. Coca-Cola, Fanta, Sprite, etc. worldwide including India either by itself or through Licensees, as well as its Indian subsidiaries. Respondent No. 3 is a Company set up by respondent No. 2, The Coca-Cola Company, U.S.A. having its registered office at Enkay Towers, Gurgaon.

2. THE complainant in the present complaint has alleged as follows : A. THE respondent No. 2, the Coca-Cola Company came to India and set up its shop to manufacture, distribute and sell is products Coca-Cola, Fanta, Sprite etc. and

carried out its business till 1977 when it had to wind up its business in India as it refused to follow the guidelines laid down by the Government. B. Respondent No. 2 whose monopolistic leanings are a bye word, in order to achieve its objectives after entering India as a first step it purchased the Trade Marks rights of M/s. Parle Exports Ltd. which was being operated through 61 franchisees spread all over India, of their brands. Thumps Up, Limca, Gold Spot, Citra and Maaza in 1993. C. Respondent No. 2 within a period of five years took over the establishment of nearly 20 bottlers while the other 20 bottlers had to close down because of the oppressive policies/non- extension of their licences by respondent No. 2. D. Respondent No. 2 decided to enter the market of manufacturing, packing and selling drinking water under the trade name "Kinley". E. THE product "Bisleri" of the complainant Company was set up in 1965 by an Italian Company which was taken over by the complainant Company. THE complainant ventured into the field of manufacturing, packing, distributing mineral water "Bisleri" as the supply of pure drinking water was deteriorating and by vigorous efforts and perfecting the quality of water for consumption and gained enviable position. F. THE complainant Company entered into franchise agreement with M/s. Crystal Springs Pvt. Ltd. dated 21.10.1998 for a period of three years to be renewed at the option of the complainant Company and as such the said franchisee started producing, marketing and selling the product "Bisleri" of the complainant Company in the area of West Bengal. G. THE respondents in order to eliminate the competition in the area of West Bengal started seducing M/s. Crystal Springs Pvt. Ltd. the franchisee of the complainant Company to stop manufacturing the complainant Company''s product and start production, distribution and sale of the product of respondent No. 2. THE respondents have a plant in North Calcutta for producing their product "Kinley" and another in Siliguri to serve the State of West Bengal. THE action of the respondents clearly comes under the mischief of the provisions of MRTP Act, 1996 inasmuch as it results into preventing the competition in production, supply and distribution of the product of the complainant "Bislery" by driving it out of the market. THErefore, it amounts to unfair trade practices and are adopted by the respondents to create monopoly. THE methods adopted by Coca-Cola in eliminating its competitors from the market results in creation of monopoly and, therefore, are liable to be interfered in exercise and jurisdiction under the provisions of MRTP Act.

The facts as emerged from reading of the complaint in question is that the respondent Nos. 1, 2 and 3 are pressurising respondent No. 4 to sell its plant which will result in great hardship and loss to the complainant and will create monopoly in violation of the provisions of the Act. Admittedly, the complainant has entered into a franchisee agreement dated 21.10.1998 with M/s. Crystal Springs Pvt. Ltd. i.e. respondent No. 4. This agreement lays down the terms and conditions inter se between the complainant and respondent No. 3 who have willingly entered into the same. This agreement is part of the record of the present proceedings. The clauses relating to expiry and termination are 13 and 14 which may be reproduced as below : "13. This agreement shall expire without notice, on the expiry of three years from the date hereof unless it has been terminated as provided herein. However, this agreement can be renewed for a further period of three years on mutually agreed terms and conditions at the option of The Company. 14. This agreement can be terminated by giving six months'' notice on either side. The Company is entitled to terminate this agreement forthwith in event of any breach of terms and conditions on part of The Franchise or as provided hereinabove."

The jurisdiction with regard to any action arising out of the agreement is referred in Clause 15 which is also reproduced as below : "15. The competent Courts in Mumbai shall have exclusive jurisdiction to try any action or litigation arising out of this agreement."

3. THE learned Counsel for the complainant vehemently argued that respondent No. 4 is being forced to terminate the agreement with the complainant by respondent Nos. 1, 2 and 3 and this is in violation of statutory provisions and will create monopoly in favour of the respondents which is not permissible in law. THE respondent No. 4 wants to scuttle the business of the complainant Company by forcing the bottlers to sell the plant and this amount to eliminating the distorting competition. THE complainant in sub paragraph 4 of his complaint has cited the American Law which may be reproduced as below : "THEre is authority that it is per se violation of USC Section 1, to conspire to destroy a competition by means that are not within the area of fair and honest competition. A complainant has been held to sufficiently allege such a conspiracy in averring a conspiracy to destroy the plaintiff as a competitor in its inter State and foreign Commerce, where in furtherance of such purpose, the defendant allegedly enticed award the plaintiff''s key employees, attempted to steal its valuable and confidential trade secrets...''''

12L ed 2nd page 775 wherein the Supreme Court of America observed- "THE effect of the acquisition is the test of Section 7 of the Clayton Act which forbids the acquisition of one competitor engaged in Commerce of any part of the stock or assets of another Corporation also engaged in Commerce where the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly."

We have heard the learned Counsel at length. THE complainant is asking this Forum to restrain respondent Nos. 1, 2 and 3 to enter into an arrangement with respondent No. 4. THEre is no privity of contract between the complainant and respondent Nos. 1, 2 and 3. It has only entered into a contract with respondent No. 4 which will govern the termination of the contract between the complainant and the said respondent. In this connection the complainant filed a suit in the Bombay High Court against respondent No. 4 wherein the following order was passed on 12.6.2001 : "P.C : THE learned Counsel. appearing for the defendant No. 1 states that till the agreement between the plaintiff and the defendant No. 1 dated 21st October, 1998 at Exh. ''A'' is current and in force, the defendant No. 1 will not do any act contrary to the terms of that agreement. Statement accepted.

In view of this statement, on a motion made by the learned Counsel for the plaintiff, the suit is allowed to be withdrawn."

We fail to understand how any relief can be granted to the complainant against the respondents consequent to the alleged threat or termination of their agreement with respondent No. 4. The complainant itself at an earlier stage entered into an agreement with respondent Nos. 2 and 3 and sold trade mark rights of M/s. Parle Exports Ltd. for the products Thums Up, Limca, Gold Spot, Citra and Maaza is 1993 for undisclosed sums of money. The complainant has already availed of a remedy for violation of terms of agreement executed between the complainant and respondent No. 4 in the High Court of Judicature at Bombay.

4. THE main contention that attempt to eliminate M/s. Crystal Spings Pvt. Ltd. one of the units manufacturing the complainant''s product, namely Bisleri has a potentiality of impairing/distorting the competition in the market, imposing unjustified cost on the consumer as envisaged under Section 2(o)(ii) of the Act has not been shown. THE complainant has also failed to show that elimination of one of the units of the complainant Company in Calcutta would lead to the monopolistic trade practice within the meaning of Section 2(1), (ii) and (vi) of the Act. The complaint is also silent as to how the act of respondent No. 4 can be condemned as unfair trade practice within the meaning of Section 36A of the Act. The complainant on the other hand is not a consumer as held by Delhi High Court in case of Ballarpur Industries Limited v. Director General (Investigation and Registration), MRTP Commission reported in (1988) 64 Company Cases 884, and as such the complaint is not maintainable.

5. IN absence of any public interest shown, the complaint cannot be treated as an information for institution of an enquiry into the matter. Accordingly the same is dismissed. IN view of the above, interim injunction sought under Section 12A of the Act does not survive and hence the application stands dismissed. Complaint dismissed.

