

(2001) 08 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL

APPELLANT

Vs

GODREJ-GE APLIANCES LTD.

RESPONDENT

Date of Decision : 08-08-2001

Acts Referred:

Citation : 2002 1 CPJ 48

Hon'ble Judges : C.M.Nayar , R.L.Sudhir J.

Final Decision : NOE discharged

Judgement

1. THIS enquiry has been initiated on the basis of an application filed by the Director General (Investigation and Registration) [the DG in brief] under Section 10(a)(iii) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as "the MRTP Act").

2. M/s. Godrej - GE Appliances Ltd., respondent No. 1, is a public limited company engaged in the business of manufacturing, selling and distributing refrigerators and washing machines. The respondent No. 2, M/s. Roshin Enterprises is one of the distributors appointed by respondent No. 1 in terms of the Distributorship Agreement dated 15.3.1995. DG's allegation is that the following clauses in the aforesaid Agreement form restrictive trade practices under various clauses of Section 33(1) of the MRTP Act. "Clause (h) : As far as distribution of the said products to retailers are concerned, it is agreed that you will devote your full time and attention to the promotion of the said products, and instruct and educate the retailers, for the ultimate benefit to the consumers of such products. As you will also be required to provide substantial financial sales and service resources and infra structural support in order to adequately distribute the said products, it is agreed that you will not directly or indirectly by yourself or through any other person distribute any product competing with the said products from your location. Clause (i) : It is agreed that in consideration of your covenant not to deal in competitive products, we will train personnel and provide them with our specialised know how (which has been evolved from several years of experience for effective promotion and distribution of the said

products. As the company is most anxious that this specialised know-how should not be passed on to its competitors or that such know how should not be used by you to promote the competitor's products, you have agreed not to distribute any competitive product from the said location. The know-how referred to above shall include, but will not be limited to, special training programmes for your personnel, specialised training in the matter of selections and appointment of retailers artful display of the said production of the retailers outlets, sales techniques specially evolved by us to promote the same products, the company proprietary system for sales and service of appliances etc. Clause (j) : It is further agreed that in order to provide the best possible service for consumers who purchase the said products from your retailers, your sales to retailers shall be restricted to the following area viz. Mallapally Town except Bus Stand Junction."

A Notice of Enquiry (NOE) was issued to the respondents under Section 10(a)(iii) and Section 37 of the MRTP Act on 5.3.1997. The respondent No. 1 filed a reply to the NOE in which the allegations made by the DG have been denied and justification has been given for incorporating the impugned clauses in the Agreement. DG filed a rejoinder to the reply of the respondents. After the completion of the pleadings, the following issues were framed : (1) Whether the respondents have indulged or are indulging the restrictive trade practices as mentioned in the NOE ? (ii) Whether the said restrictive trade practices are not prejudicial to the public interest ?

Affidavits of evidence along with supporting documents have been filed on behalf of both the parties.

3. WE have heard the learned Counsel for the parties and have also carefully gone through the pleadings on record. The three clauses of the impugned Agreement assailed by the DG are Clauses (h), (i) and (j). It has been alleged that Clauses (h) and (i) of the Agreement together, constitute a restrictive trade practice within the meaning of Section 33(1)(c) of the MRTP Act. Clause (h) which has already been reproduced before inter alia states that "you will not directly or indirectly by yourself or through any other person distribute any product competing with the said product from your location". In clause (i) of the impugned Agreement, it is further stated that "in consideration of your covenant not to deal in competitive product, we will train your personnel and provide with specialised know-how for effective promotion and distribution of samples as the Company is most anxious that this specialised know-how should not be passed on to its competitors or that such know-how should not be used by you to promote the competitive products. You have agreed not to distribute any competitive products from the said location." In DG's view, these two clauses are tantamount to exclusive dealings and thereby they attract the provisions of Section 33(1)(c) of the MRTP Act. Section 33(1)(c) reads as follows : "Sec. 33(1)xxx.xxx..xxx. (c) any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person."

4. LEARNED Counsel for the respondents refuted DG's allegations and also contended that the Clauses (h) and (i) of the impugned Agreement do not attract the provisions of Section 33(1)(c) of the MRTP Act. To prove his point, he explained that these clauses have been included in the Agreement only to ensure free and orderly availability of goods to the consumers without any distortion. It has been added that these clauses are intended to ensure proper availability of genuine service to the users of the products. It is further submitted that there are several unauthorised dealers and retailers in the country who would not be in a position to give proper guidance regarding installation and commissioning of the appliances and to fulfil sales warranty, service obligations and other genuine requirements of the purchasers of the products. He also emphasized that the dealer/ distributor is responsible for providing after sale service to all the customers for the products sold by him and, therefore, in the absence of such clauses, ultimately, it is the consumers or the end-users who would suffer. He contended that the alleged restriction is confined only to the particular location from which, the distributor operates and that the dealer is free to deal in competitive products from any other location. There is enough merit in the submissions made by the learned Counsel for the respondents and we are inclined to accept the view expressed by him. The impugned clauses are, in no way, prejudicial to public interest, rather they are in the paramount interest of the consumers of the products in question. Dg has also assailed Clause (j) of the impugned Agreement which inter alia states that "the sales to the retailers shall be restricted to the Mallapally town execept Bus Stand Junction". Dg has alleged that this clause attracts the provisions of Section 33(1)(g) of the MRTP Act as it imposes territorial restrictions on the distributors. The respondents' explanation is that this clause was incorporated in the Agreement because the distributor himself had agreed to sell the product to the retailers only in the area in which he is operating and in which he has his infrastructure. The purpose of this clause is to render prompt after sales service to the end users located in the same area. It has been submitted that if the distributor is located at a distant place, it, will be to the disadvantage of the customers as it will not be possible to render prompt after-sale-.service from the distantly located distribution centres. In view of the explanations given by the respondents, we are of the view that this clause is also more in the interest of the consumers rather than prejudicial to their interests. In the result. Clause (j) of the Agreement also does not meet the requirement of a restrictive trade practices as laid down in Section 33(1)(g) of the MRTP Act.

5. IN the light of the above discussion, we are of the view that the aforesaid three clauses of the impugned Agreement do not amount to restrictive trade practices as contemplated in Section 33(1)(c) and (g) of the MRTP Act. DG's application, therefore, fails. The NOE is discharged with no order as to costs. NOE discharged.