(2001) 08 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

Daewoo Motors India Limited RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:

Citation : 2002 3 CPJ 98

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

Final Decision : Complaint disposed of

Judgement

1. THIS inquiry was initiated by the Director General of Investigation and Registration under Sections 10(a)(iii) and 36B(c) of the MRTP Act, 1969 pursuant to the order passed by this Commission on 9th January, 1998. The main issue which arose for consideration was with regard to the gift and financing schemes launched by respondent No. 1 which may be referred to in paragraph 12 of the D.G. (I&R)''s amended application as below : "That on overall perusal and examination of the information/documents received from the respondents during the course of investigation reveals- (a) That the respondent No. 1, who is, inter alia, engaged in the business of manufacturing and marketing passenger vehicles under the brand name Cielo has launched a special finance scheme on 21.2.1997 which was closed on 30.4.1997. During the impugned scheme the respondent No. 1 has made arrangements with respondent Nos. 2 to 7 by issuing an identical circular dated 28.2.1997 wherein the respondent No. 1 has agreed to widely publish through Press and media the impugned scheme by indicating the edge of Cielo over the competitors model by mentioning a lower rate of interest of 15%. Further, with regard to projected expenditure of Rs. 2.5 crores in respect of the advertisements the respondent Nos 2 to 7 have agreed to share a sum of Rs. 5 lakhs per company. It is, therefore, evident that the impugned advertisement was issued by respondent No. 1 in agreement with respondent Nos. 2 to 7 for financing the Cielo car during the special finance scheme at the low interest rate of 15%.

(b) That during the aforesaid special finance scheme, the respondents in the impugned advertisement have represented that the Cielo car is available at a low interest rate of less than 15% though the fact was that the respondent No. 1 has agreed to provide an incentive of Rs. 60,000/- for per Cielo car financed by respondent Nos. 2 to 7 in addition to an executive incentive of Rs. 2,000/- per case of financing. It is, therefore, evident that during the impugned scheme, the respondents have adopted deceptive trade practice within the meaning of Section 36A of the Act by making a statement that in case of Cielo car the interest rate has been dropped from 24% to less than 15% because of the fact that the respondent No. 1 has discounted the price of the vehicle to tune of Rs. 62,000/- per car by making the said payments through the finance companies to the buyers of Cielo car and, in fact, actual rate of interest charged from the customers remained the same. The aforesaid unfair trade practice indulged in by the respondents has definitely caused loss and injury to the buyers who have purchased the Cielo car by getting it financed from companies or persons other than respondent Nos. 2 to 7.

(c) That in the impugned advertisement, the respondents have made comparative statement with regard to the rate of interest being charged on other cars namely, Opel Astra, Ford, Esteem by stating categorically that the rate of interest charged on Cielo car was less than 15% though in case of other cars the rate of interest charged was 24%. However, as stated hereinabove, there was no decrease in the rate of interest by the respondent Nos. 2 to 7 but in fact, it was a case of passing on the incentive of Rs. 60,000/- provided by respondent No. 1 to Respondent Nos. 2 to 7 to the customers who have opted to get the Cielo car financed from the said respondents. Therefore, the aforesaid trade practice of making a statement that Cielo car was available at lower rate of interest in comparison to other vehicles is a case of disparaging the products of other companies which is an unfair trade practice within the meaning of Section 36A(1)(x) of the Act and it has an inherent effect of causing loss or injury to the other manufacturers of vehicles mentioned in the impugned advertisement.

(d) That during the course of investigation the respondent No. 1 has inter alia, submitted that it has pro-vided gift coupons worth Rs. 20,000/- to such buyer who have purchased the said vehicles against 100% cash down payment during the impugned scheme of finance. The respondent No. 1 has sold 3187 cars out of which 1461 cars were sold through the finance companies wherein the Company has provided an incentive of Rs. 62,000/- per car. It is, therefore, evident that by not providing the similar benefits to 1726 customers, who have purchased the car against 100% cash down payment, the respondent No. 1 has indulged in restrictive trade practice of discriminatory dealings within the meaning of Section 33(1)(e) of the Act which has certainly caused prejudice to the customers who have purchased the Cielo vehicle against cash down payment.

(e) That it is evident from the terms and conditions of the impugned Special Finance Scheme launched by respondent No. 1 in agreement with respondent Nos. 2 to 7 that the respondent No. 1 had paid an amount of Rs. 60,000/- per

Cielo car financed by respondent Nos. 2 to 7 while no such benefit was provided to the customers who had purchased the said vehicle against 100% cash payments except that a gift coupon worth Rs. 20,000/-. As per the terms and conditions stipulated for availing the gift offer, the customers were required to buy goods/articles from certain specified establishments/departmental stores without even getting the gift voucher splitted. In fact, the said trade practice is case of tie-up of sales and it is a deemed restrictive practice within the meaning of Section 33(1)(b) of the Act.

(f) That it is important to submit that during the impugned finance scheme i.e. from 21.2.1997 to 31.4.1997, in fact, the respondent No. 1 has indirectly discounted/reduced the price of Cielo vehicle to the tune of Rs. 62,000/- as the said benefits have been passed on to the customers who have purchased the said vehicle by getting it financed from respondent Nos. 2 to 7. However, the respondent by manipulating the price and conditions of delivery of the said vehicle has not discounted the price of the vehicle to the tune of Rs. 62,000/- per vehicle while marketing the said vehicle to the customers who have purchased it against 100% cash down payment or who have got it financed from persons other than respondent No. 2 to respondent No. 7. The said trade practice is a restrictive trade practice within the meaning of Section 2(o)(ii) of the Act which has definitely caused injury to the tune of Rs. 107.012 lakhs to 1726 customers who have purchased the said vehicle against cash down payment during the impugned scheme.

(g) That the respondents in the impugned advertisement have not disclosed the material fact that the dropped interest rates on the Cielo from 24% to less than 15% are on account of the fact that the respondent No. 1 has agreed to subvent Rs. 62,000/- per Cielo car financed by respondent Nos. 2 to 7. The suppression of the above material fact is covered by the doctrine of suppressioveri i.e. suppression of material facts to the public, with whom the person deals and which would materially affect their decision. In fact, the non-disclosure of the above mentioned material fact has definitely affected the decision of the customers who had purchased the Cielo car during the impugned scheme of finance and particularly the decision of customers who have opted to buy the said vehicle against 100% cash payment who otherwise had bargained for a discount of Rs. 62,000/- instead of getting gift coupon of worth Rs. 20,000/-. Therefore, the non-disclosure of above mentioned material fact is a deceptive and unfair trade practice within the meaning of Section 36A of the Act which has certainly caused injury to 1726 buyers who have purchased the vehicle against 100% cash down payments.

(h) That it is important to point out that the benefit of buying the Cielo car at reduced rate of interest were made available by the respondent No. 1 only in case the customers had purchased the said vehicle from respondent Nos. 2 to 7 and it is obvious that the said benefit of reduced rate of interest during the impugned scheme were made to be available in case customers had got it financed from sources/companies other than respondent Nos. 2 to 7. Thus the respondent No. 1 has discriminated among the finance companies i.e. respondent Nos. 2 to 7 and finance companies other than respondent Nos. 2 to 7 which is a deemed restrictive practice within the meaning of Sub-section (e) of Section 33(1) of the Act. The said trade practice has an inherent effect of distorting competition among the finance companies, ultimately causing loss/ injury not only to finance companies other than the respondent Nos. 2 to 7 but also to their customers."

2. WE have heard learned Counsels for the parties. The learned Counsel for the D.G. (I&R) states that the promotional avenue with incentives to the customers is now a universally accepted practice in the trade. In this view of the matter we need not pursue this complaint any further. The same, accordingly, stands disposed of. Notice of Enquiry also stands discharged with no order as to costs. Complaint disposed of.

