

(1999) 04 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION)

APPELLANT

Vs

Kelvinator of India Ltd.

RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Citation : 2000 3 CPJ 28

Hon'ble Judges : A.N.Divecha , R.K.Anand J.

Final Decision : Application allowed

Judgement

1. THE respondent has moved this application for discharge of the Notice of Enquiry (NOE for convenience). No reply to this application has come to be filed either by or on behalf of the DG or by or on behalf of the applicant/informant.

2. IT would be quite proper to look at the facts giving rise to this petition. The respondent was formerly engaged in manufacturing and marketing refrigerators by the brand name of Kelvinator presumably through its subsidiary Expo Machinery Ltd. (EML for convenience). IT appears that sometime in 1995 EML issued certain newspaper advertisements comparing two different models of refrigerators, one of the applicant/informant and the other of Kelvinator brand. The applicant/informant approached this Commission charging the respondent with adoption of and indulgence in unfair trade practices by disparaging the applicant's refrigerators by means of such advertisements. The applicant/informant also took out an interim relief application for some interim relief against issue of such advertisement. IT appears that the desired interim relief came to be granted in favour of the applicant/informant. In the meantime, the management of the respondent underwent change and it gave up manufacturing and marketing refrigerators by the brand name of Kelvinator. IT is the case of the respondent that various officers of EML who might have been responsible for the advertisements in question have also left the services of the present respondent. In that view of the matter, it is the case of the respondent that no useful purpose will be served by continuing the present proceeding against the respondent. Learned Advocate Mr. Pithawalla for the applicant/informant has no objection to

acceptance of the present application moved by and on behalf of the respondent in view of the circumstances set out therein. Learned Advocate Ms. Gosain for the DG has, however, submitted that the respondent ought to have moved an application under Section 36D(2) of the MRTP Act rather than moving the present application for discharge of the NOE.

We think that it is not necessary for the respondent to move an application under Section 36D(2) of the MRTP Act for the simple reason that it no longer manufactures and markets its refrigerator by the brand name of Kelvinator. The advertisements in question made some objectionable comparison between a model of refrigerators manufactured and marketed by the applicant informant and the one bearing the brand name of Kelvinator. Besides, it is not in dispute that the officers of EML who might have been responsible for the advertisements in question are no longer in the services of the respondent. In that view of the matter, we need not insist upon the respondent to move an application under Section 36D(2) of the MRTP Act. We are inclined to agree with the respondent that, in view of the new development and the change of circumstances with respect to the management of the respondent and suspension of marketing its refrigerators by the brand name of Kelvinator, no useful purpose will be served by continuing the enquiry proceeding.

3. IN view of our aforesaid discussion, we are of the opinion that this application deserves to be accepted and the NOE deserves to be discharged. In the result, this application is accepted. The enquiry proceeding is treated as closed. The NOE is discharged, however, with no order as to costs on the facts and in the circumstances of the case. Application allowed.