
(2001) 08 NCDRC CK 0074

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION)	APPELLANT
Vs	
TRIVENI ENGINEERING INDUSTRIES LTD.	RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Citation : 2001 3 CPJ 76

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

Final Decision : N.O.E. discharged

Judgement

1. THIS applica-tion has been filed by the Director General (Investigation and Registration) [the DG] under Section 10(a)(iii) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as "the MRTP Act"). M/s. Triveni Engineering Industries Ltd., respondent No. 1, has entered into a Collaboration Agreement dated 22nd October, 1994 with M/s. Zond Systems Inc., respondent No. 2, by which, respondent Nos. 1 and 2 have agreed to establish a joint venture organisation called "Triveni Zond Pvt. Ltd." by subscribing 50% each of the issued equity shares for the purpose of developing commercial wind farms for itself or for third parties and to develop capabilities for all types of wind power related services etc. Clause 10(j) and Clause 12(a), (b), (c) and (d) of the aforesaid agreement have been cited by the DG to state that these clauses form restrictive trade practices under the various restrictive clauses of Sub-section (1) of Section 33 of the MRTP Act. Clause 10(j) and Clause 12(a), (b), (c) and (d) of the Collaboration Agreement may be reproduced below : "Clause 10(j) : "So long as Triveni is considered by the Board of TZL to possess the technical capability to perform the work contemplated by Clause 10(g), TZL shall not establish any manufacturing and/or assembly facilities in India which duplicate the existing facilities of Triveni." 12. Non-competition : (a) Parties not to compete with "Zond and Triveni hereby respectively agree, for themselves and on behalf of the Zond Group and the Triveni Group respectively, that as long as a party holds shares in TZL representing more than twenty five percent (25%) of the issued share capital of TZL, and for a period of three years following any reduction of a party's shareholding to twenty five per cent (25%) or less or the termination of

this agreement, such party shall not, and shall procure that none of its affiliated Companies shall, be concerned directly or indirectly, in the Territory in the manufacture, assembly, sale or provision of the products and/or the services manufactured or applied by TZL provided that if Triveni shall be in material breach of this agreement, the restrictions contained in this Clause 12 shall not apply to Zond or any of its affiliated Companies. (b) Parties to operate exclusively through TZL Neither Zond nor Triveni shall engage or be concerned directly or indirectly in the manufacture, assembly, sale or provision of products and/or the services in the Territory during the validity of the Licence Agreement and for a period of one year after its termination except through TZL or as otherwise agreed provided that if either party shall be in material breach of this agreement, the restrictions contained in this Clause 12 shall not apply to the other party or any of its affiliated Companies. (c) Effect of disposal of Zond's shareholding (i) Notwithstanding anything to the contrary in this agreement or the License Agreement, Triveni hereby covenants and agrees with Zond that during the continuance of the Licence Agreement Triveni shall not engage or be concerned directly or indirectly nor shall Triveni so long as it is entitled to elect at least 50% of the Directors of TZL, permit TZL to engage or be concerned directly or indirectly in the manufacture, assembly, sale or provision of products and/or services in any country outside the Territory at any time after Zond voluntarily ceases to be a shareholder of TZL. (d) The covenant and undertaking given by Triveni in the preceding Sub-clause 12(d)(i) shall survive the termination of this agreement or the withdrawal of Zond as a shareholder of TZL".

2. THE respondents have filed their respective replies. We may refer to the reply filed by respondent No. 1 wherein the following pleas are taken in paragraphs 1 and 3 of the preliminary objections : "1. THE respondents entered into a Collaboration Agreement for setting up a Joint Venture Company (JVC) namely Triveni Zond Private Ltd. (TZL) which came into existence on 19th January, 1995 when it was registered under the Companies Act, 1956. However, it has not transacted any business since the date of its incorporation till date. THE Balance Sheets of this Company which are being filed every year with the concerned Registrar of Companies clearly show that there is no business transaction of any kind by this Company and its income is "NIL". Copies of its Balance Sheets (together with copies of Profit and Loss Account) as on 31st March, 1999 and 31st March, 2000 are annexed as Annexured "C" and "D" respectively. THE figures shown therein are of Authorised Share Capital out of which only 20 shares worth Rs. 200/- have been subscribed by the individual Directors of TZL in their personal capacity. However, shares have not at all been subscribed by any of the replying respondents herein. It is stated and certified therein by the Auditors of this Company that no manufacturing operations have been carried on as the Company has not yet acquired assets to manufacture goods. It is, therefore, clear that the joint venture Company created by the respondents has not transacted any business transaction or carried on any trade to which the impugned clauses of the Collaboration Agreement could possibly apply.

As submitted in para 3 above, the purpose of the Collaboration Agreement was to pool the resources of the respondents for the joint venture. The technology for the purpose of developing commercial wind farms and all types of wind power related services was to come from respondent No. 2. As per Clause 7 of the Agreement, a Licence Agreement was to be executed between the respondents for the use and employment of the technology of respondent No. 2 by the said joint venture Company for the manufacture/assembly of products mentioned in Schedule I, to the agreement and provisions of related service. As, however, respondent No. 2 did not sign the Licence Agreement, the joint venture Company could not be and is, therefore, not operational. In this situation, the agreement as a whole could not be implemented and the impugned clauses thereof all of which relate to manufacture, assembly, sale or provision of the products and services relating thereto could not possibly apply or be enforced in any manner whatsoever. The impugned trade practices, not being or having been in existence at all, the Enquiry is not maintainable or called for"

3. Further it is submitted in paragraph 4 of the preliminary objections that the application of the DG does not contain any facts which go to constitute any restrictive trade practice as defined in the MRTP Act and is only based on presumptions, conjectures and inference and is not, therefore, maintainable. We need not go into all these questions. Suffice it will be to say that the respondents have not entered into any Licence Agreement and the Joint Venture Company is, therefore, not operational as no production has yet commenced. The Balance Sheets of the Company which are also placed on record and which have been filed before the concerned Registrar of Companies will also show that there is no business transaction of any kind and it is shown as "Nil".

In view of the above, we do not find any ground to continue the present proceedings. The same are accordingly disposed of. The Notice of Enquiry stands discharged. There shall be no order as to costs. N.O.E. discharged.