(2003) 08 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

REGISTRATION) DIRECTOR GENERAL (INVESTIGATION AND — APPELLANT

Vs

BASF (I) LIMITED — RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Citation : 2003 3 CPJ 2

Hon'ble Judges : R.L.Sudhir , Moksh Mahajan J.

Final Decision : N.O.E. discharged

Judgement

1. A complaint has been filed by the Director General (Investigation and Registration) invoking the provisions of Section 10(a)(iii) read with Section 33(1)(e) of the Monopolies and Restrictive Trade Practices Act, 1969 (for brief the Act) against the respondent company namely BASF (I) Limited, Rhone-Poulenc House, Sadam Kalu Ahire Marg, Mumbai. The respondent which is a public limited company is stated to be engaged in manufacturing and marketing of expandable business of Polystyrene, Tanning Agents, Leather Chemicals and Auxiliaries including specialized metal complex leather dyes, acrylic polymers in primary forms and pesticides. It also deals in marketing of dyestuffs and related textile auxiliaries and renders technical services to various industries. The charge against the respondent company is that it has allowed differential discounts to its stockists/dealers/distributors on regional basis. The said trade practice of providing discounts at different rates to the stockists appointed in different States is contended to be a discriminatory trade practice deemed to be a restrictive trade practice squarely covered under Section 33(1)(e) of the Act.

2. A notice of enquiry under Section 10(a)(iii) and Section 37(1) of the Act read with Regulation 51 of the MRTPC Regulations, 1991 was issued. The respondent substantially accepted the charge (in its reply paragraph 1(c)) justified its trade activity on the ground of maintaining uniform prices of the products in all the States. It is explained that because of varying rates of sales tax in deferent States, the final price to the consumers cannot be the same and as such to off-set the difference in sales-tax, different rates of trade discount is allowed to the

stockists in different States. This in turn helps to prevent the unhealthy practice of migration of goods from one State to another. While fixing the different rates of discount for different States in the pesticide market, the factors like nature of crops as well the number of major players in the market are taken into consideration. As the discount is ultimately passed on to the farmer the ultimate consumer is benefited. Otherwise too, the market share of the respondent in the all-India pesticides market being about 3% would have negligible effect on the competition. Accordingly, both on merits as well on the pleadings of gateways, the charge of restrictive trade practice is not established, contends the respondent. After the pleadings were complete, the following issues were framed : (1) Whether the respondent has been indulging in restrictive trade practices as alleged in the notice of enquiry ? (2) Whether the alleged restrictive trade practices are not prejudicial to the public interest ? Both the parties supported their versions mainly with the help of documents. Shri K.B. Rao, Business Development Manager of the respondent company in his oral deposition the stand taken by the respondent in its reply.

We have carefully considered the submissions made and have perused the documents filed. It may be stated at the outset, that the charge of differential discounts to the stockists on regional basis has been confined to the crop protection chemical division. The stand of the respondent that in case of leather, trade chemical and plastic division, the uniform discount at 14% is allowed to all the distributors/stockists is not disputed. As regards the former, the thrust of the argument of the DG is on the non-availability of the machinery with the respondent to monitor the discount being suitably passed on to the ultimate consumer as intended. On behalf of the respondent, it has been admitted that there is no such machinery by which the uniformity in prices can be ensured by equalising the difference in sales tax prevailing in different States. The intention on the other hand is also not reflected in any express or implied instructions issued by the respondent. At least it has not been shown that the end consumer, is benefited by following the policy of differential discount to the stockists on State basis. Uniformity in basic price to the stockists (Annexure A of the affidavit of Shri K.S. Rao) is not materially relevant to the end consumer. In view of the varying rates of discount offered to the stockists and lack of machinery to monitor that the same has been passed on to the consumer, the claim of the respondent is not acceptable. The contention regarding migration of the goods from the State to another remains a remote possibility. The trade activity of the respondent in giving differential rates of discounts on the basis of stockists based in different States is thus presumed to be against public interest in terms of Section 37 of the Act.

3. ADVERTING to the cases cited on bahelf of the respondent, we find that they are distinguishable on their facts. In case of R.R.T.A. v. Allied Distributors and Bengal Potteries Ltd., RTPE 6 of 1972, it was on the interpretation of the agreement with the stockist that it was held that relationship between the parties was on principal to principal basis, despite stockist having been described as an

agent. There is no such agreement placed before us. Secondly the respondent had not expressly or impliedly argued that the discount allowed is not in connection with the dealings with the stockists/dealers. The benefit resulting to the consumers on the other hand remains unestablished. The respondent, however, succeeds on the plea of the gateways under Section 38(1)(h) of the Act. The market share of the respondent in the All India Pesticides market is stated to be about 3%. This remains uncontroverted by the DG. Thus the miniscule share in the pesticides market is not likely to affect the material competition in the market.

4. IN our view we are supported by the various decisions of the Commission particularly to mention the case of Director General (INvestigation and Registration) v. German Remedies Ltd., R.T.P.E. No. 250/1995, relied upon by the respondent. We may also mention that the contention of the respondent that discount given in different States at different rates is a common practice in the market has also not been rebutted by the DG. Thus on the ground of the gateways pleaded under Section 38(1)(h) of the Act, we direct the notice of enquiry to be discharged. N.O.E. discharged.