

In Re Rohit Arora v. Zomato (P.) Ltd. (CCI Case No. 54 of 2020)

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INTRODUCTION

Competition law which is also known as 'Anti-Trust' law is comparatively a new set of legislation. It enables corporate laws across the globe and endeavour to protect the interest of consumers as well as small business class and traders. The Competition Act, 2002 [hereafter referred as 'the Act'] upholds the spirit of Indian Constitution. The Constitution of India under Part IV, Article 39(c) says that the State has to make such an economic policy and principle that the process of the economic system may not yield into concentration of assets as well as means of production to the handful capitalist or industrialist causing common detriment to nation and its economy.

To ensure the application of such constitutional mandates, the Parliament of India passed a new legislation called The Competition Act, 2002. In the era of globalisation and privatisation of economy, there is high chance of concentration of economic resources in few powerful hands. And, the digital era has digitalised almost every commercial and trading activity. Therefore, there is more exigency of regulating economic behaviour so as to promote competition and to restrain monopoly in every relevant market in India.

This case study is significant from many perspectives of e-commerce, consumer rights protection under Competition Act, 2002 and to analyse whether a personal experience of an individual consumer may or may not be considered against any enterprise as abuse of dominant position.

The Act *inter alia* empowers not only to market stakeholders and competitions rather even to a single individual to file any complaint against anti-competitive agreements, practices or abuse of dominant position in any relevant market.

This case is one of such instances where a consumer has reported to the competition authority namely 'Competition Commission of India' about anti-competitive agreement and abuse of dominating position by imposing restrictive trade practices. The relevancy and significance of this case-comment is to make public aware about their consumer rights against enterprises or corporates and to develop an understanding about anti-competitive agreements, abuse of dominant position and its regulation in India.

The cause of action arised in this case from 3 personal experiences of the complainant/informant in this case.

The 1st incident is reported to take place when the complainant placed an order for food on Zomato, an online food-delivery application based service provider, [the defendant] dated 14.07.2019. After ordering the food the informant immediately called food delivery executive and informed that his mobile network is poor so call me on land line number [which was not registered contact number on the application] so that the executive call may not be avoided when he arrived at delivery location to deliver food. After few minutes, when he tracked the food delivery status, noticed that the delivery executive had reported 'food not delivered because of nonresponses from the consumer'. Then; the complainant called delivery executive, however; his call was not picked up from the other side. Then complainant looked into food tracking option again, then came to know that his order was already cancelled with remarks that delivery executive could not deliver order because the consumer neither receive food nor pick up call.¹

Then complainant reported his grievance on *application's chat option* wherein he was informed that according to the app terms and conditions of services, if an order is cancelled because of consumer's no-response at food delivery time, a certain amount for food cancellation would be charged since the ordered food already dispatched at the registered address by the restaurant.²

So; Complainant checked the terms of food delivery services of the impugned app and found that under service term clause number XIII, 1.E.K., it was written that cancellation of order will be taken as breach of authorization for which *Zomato* would be entitled to charge a certain amount for damage and it may be determined by discretion of the application.³

1. 'Complaints of abuse of dominance and tie-in sales against Zomato dismissed: CCI' published on 6th April, 2022 available at <https://www.taxmann.com/post/blog/complaints-of-abuse-of-dominance-and-tie-in-sales-against-zomato-dismissed-cci/> retrieved dated 28/12/2023.

2. 'Mr. Rohit Arora vs Zomato Private Limited' available at <https://indiankanoon.org/doc/2606253/> retrieved on 28/12/2023.

3. Id.

In response to the above referred service-term clause number, the complainant stated that he was proactive on his part throughout the order placing period, so there is no case of 'unresponsive'. The Complainant countered the reason for cancelation of food by zomato stating that if he had to be unresponsive, why he would have given an alternate contact No. to the food delivery executive prior to the dispatch of the food from the assigned restaurant. And; therefore the Complainant objected to this cancellation policy of defendant and alleged it as arbitrary and a kind of abusive in the context of the Competition law.⁴

Now, the 2nd occurrence is related to leakage of food placed by the Complainant during the month of September, 2020. According to the food delivery terms and condition of the defendant, the Complainant clicked a photo of the leaked food and processed it through chat *App-Support* system to report this occurrence, however; he was refused to be heard. He was not even asked for image as proof of food leakage and the reply he received through chat was that we are sorry to hear about this. And, the delivery executive, Mr. Kapil Kumar, has delivered total 156 orders during last week and for that he got 4.9 out of 5 stars. Therefore; we think the mistake reported and alleged by you is an exception and rare. However; we would share with him feedback given by you'.⁵

The Complainant highlighted that *Zomato* was at fault in fulfilling its accountability because it does not only hold a responsibility of channelization and transaction-facilitator between restaurants and consumers but also plays a key role in food delivery services to consumers. According to Complainant, such a response of the defendant would seem as an 'abuse of dominant position' because it tried to evade responsibility by imposing such clauses in the service-terms enabling itself to skip accountability arising out of its business dealings and transactions as well as service-provisions such as service-deficiency, delivery of wrong order undue extra time in ordered food delivery or order package leakage or tampering, etc.

Then the 3rd occurrence happened around a month later the 2nd occurrence. The Complainant

4. Id.

5. Supra Note-1, Para-3rd.



ordered food and just within few seconds, he decided to change his order and so tried to cancel previous order. Hoping a full refund of his amount since he, allegedly cancelled impugned order in 30 to 40 seconds; however; he received a refunded only of 50% amount with a remark that the restaurant already initiated preparation of your ordered food. When the Complainant objected that how is it possible that within 30 seconds of food-ordering, any restaurant can start food preparation, the app-chat-responding executive changed its previous version of reply and this time replied that since the restaurant already accepted this order, cannot be cancelled now. And then; chat-box was closed without hearing Complainant grievances anymore.

The Complainant compared cancellation policy of this App with other same service providing App in India such as *Swiggy, Food Panda or Deliveroo or Talabat.com*, etc. to find out whether the cancellation policy of defendant-App is abusive in nature with reference to its dominant position in the relevant market in India or not? According to Complainant, the policy of defendant app is allegedly abusive in the context of competition law adversely affecting the interest of the consumers as well as online food delivery market in India.

Fact-in-Issue

A complaint was reported by Complainant under section 19(1)(a) of the Competition Act, 2002 against defendant. The complainant alleged violation of Sections 3(4) and 4 of the Act that envisages about anti-competitive agreements causing an adverse effect on competition in India and abuse of dominant position by enterprises or any person respectively.⁶

The complainant has been a regular consumer of Zomato food delivery App. The defendant is a company availing platform to order online food from nearby restaurants. The complainant alleged that defendant provides two facilities to its consumers. The one facility is to provide enlisting services to restaurants with a certain rate of commission and the second facility is to provide food search and ordering services to readymade food consumers'.

The Complainant informed to the CCI that

previously *Zomato* was well known as '*Foodiebay.com*' till the year 2008 and it was offering restaurant searching services in Delhi/NCR viz. sharing food prices, food-menu, restaurant-locations, restaurant contact details, user reviews along with other relevant information relating to foods and restaurants. Then during the year 2010 the said '*Foodiebay.com*' was renamed as *Zomato* and it turn to be a well-known and popular '*restaurants and food*' online portals across India. Thereafter; it became an international enterprise expanding its business across almost 22 countries.⁷

To hold defendant liable for abusing its stronger position in the food delivery service sector and affecting adversely to competition in Indian market, the complainant alleged that to enter the online food delivery market, defendant company had a fairly competitive leap because it had access of the millions of consumers' detail data and information from its previous restaurant searching website called '*Foodiebay.com*' and so it had no cost of finding users' data because they were using it for food-ordering via calls.⁸

According to the statement of the complainant, '*online food ordering*' and '*food delivery services*' are two different business markets. And; he further alleged that the defendant has comparatively a bigger position in the '*food ordering market*' especially after acquiring *UberEats* during the year 2020 in India. Further he alleged that *Zomato* holds dominant position in the market of *online food ordering* to control the *food delivery market* as well in India.⁹

The Informant has further projected some information to establish allegations against defendant for entering into anti-competitive agreements and abusing dominant position in the above said relevant market. The complainant stated that with a view to enter into online food ordering services, defendant entered into business dealings with restaurants on a '*principal to principal*' basis for enlisting food-menu and providing a facility to consumers of online food ordering. The complainant further posed that with regard to

7 . <https://indiankanoon.org/doc/2606253/> paragraph-4, retrieved on 09/10/23.

8 . Ibid, para-5.

9 .Ibid, para-6.

food delivery services, prior to acquisition of an app 'Runnr' in the year 2017, food delivery services were either delivered by the restaurants themselves or by defendant-app through 3rd-party independent players such as 'Delhivery' or 'Grab', etc. However; after the acquisition of the above said app 'Runnr', Zomato speedily expanded its services in India and gone at the top of online food delivery service provider across five hundred cities by adopting data based strategies.¹⁰

On the basis of such all related information about defendant's business strategy, pattern, growth and market-stake holding in India, complainant alleged that defendant has been exploiting its superior position and control by constantly increasing food delivery charges above the reasonable competitive level and by charging unfair, discriminatory (by altering algorithm) other service charges. Further; the complainant alleged that defendant has been imposing various unfair conditions upon the consumers by restricting and controlling food delivery services to consumers. And, the allegation was made against Zomato that it usually restrains its enlisted restaurants from delivering food themselves which is under the verticle line of the service providers and thus; it has been misusing its dominant position in the market of *online food ordering* to enter into *market of food delivery services* by imposing its own delivery services upon the restaurants. The informant also alleged against Zomato committing anti-competitive practices like 'tie-in arrangement' under section 3(4)(a) of the Act.¹¹

Order of the Competition Commission of India

This matter was disposed of by the CCI i.e. through the Chairperson thereof with two other members namely *Mr. Ashok Kumar Gupta*, namely *Ms. Sangeeta Verma & Bhagwant Singh Bishnoi* respectively.

The CCI ruled while dealing with allegation of under section 4 of the Act i.e. against 'abuse of dominant position by defendant that it is noticeable with reference to the three particular incidents experienced personally by informant

who is the complainant in this matter that when the defendant party rebut allegations lamented to it with substances on record, the complainant could not deny substantively. And therefore; the Commission finds no case of abuse of dominant position in this matter against defendant.

The Commission observed that complainant had mixed up two different applicable requests as online food ordering services handed by food aggregator apps in India and food delivery services in India which is the allegation against defendant in this case. Relying on the detail data produced in this the case, the Commission finds that there exists no case of violation of the provision of this Act by the defendant and the complaint reported is directed to be closed under Section 26(2) of the Competition Act.¹²

Defendant and other online application based platform for food ordering and delivery i.e. *Swiggy*, are competitors with each other in the same field of business. Therefore; superfluously does not seem that Zomato holds any dominant position to the effect to affect this market adversely either in India or any part thereof. Hence; allegation of abuse of dominance under section 4 of the Act and speeding tying of food ordering services with food delivery services under section 3(3) is also to be dismissed.¹³

Regarding the claim of the tie-in arrangement, the informant reported that Zomato had utilized its dominance in the online food ordering sector to coerce eateries into using its meal delivery services as well. Although being described as a tie-in arrangement, this claim on this specific claim, the Commission did not determine that *Zomato* and *Swiggy* had violated the law *prima facie*.¹⁴

The complaint reported is ordered to be immediately closed under section 26(2) of the Act because the Commission finds on face no logical argument and concrete evidence of violation of any of the alleged provisions of the Competition Act in either of the alleged occurrences.

Case-Analysis

A keen observation of the order delivered by the Competition Commission of India in this matter

12 . Supra Note-2

13 .Id.

14 .Id.

10 .Ibid, para-7.

11 .Supra Note-1, para-8.



reflects certain key points such as with regard to first incident wherein the Informant claimed to be aggrieved as a consumer for not being delivered the ordered food in the opinion of Commission the incident does not as appear to qualify to be an abusive act adversely affecting the online food delivery service market in India.

The CCI opines that the grievance of the Informant primarily stems from the three incidents cited in the complaints based on his personal experiences. The said three incidents occurred with informant have been termed as 'abuse of dominant position' which is prohibited under Section 4 of the Act. Second allegation is made of 'tie-in arrangement' in reference to online food order delivery. The alleged 'tie-in arrangement' is a form of vertical 'anti-competitive agreement' given under Section 3(4)(a) of the Competition Act.

With regard to second incident, opposite party i.e. the defendant stated that while the customer care executive asking from Informant to choose specific item with which he had issue, he did not respond. If Informant would have selected specific item/s he had grievance with, the executive would have asked for an image of spoiled food. When this was tried to be corroborate before the Commission, the informant expressly chose not to comment anymore on this point. Again, it shows that there was nothing concrete to counter the version of the opposite party i.e. the *Zomato*.

The Commission found with reference to third incident wherein allegation of 50% refund was made that defendant had made full refund and during the

exhibition of the proof for the same, informant did not rebut this fact. Therefore; the third allegation of refund was outrightly liable to be discarded as an admitted fact by both of the parties, though at later stage.

Therefore, the Commission rightly observed that complainant had outlined and confused with two different and heterogeneous markets i.e. '*online food ordering services provided by food aggregator app*' in India and '*food delivery services*' in India. Online food service market is quite dynamic and explorative in India. Therefore; such allocations do not actually reflect competition law related any grievance in such type of issues.

CONCLUSION

The complaint in this case is based on 3 different personal experiences of the informant to the Competition Commission of India who is the authority at first level to register any complaint relating to anti-competitive agreements as well as practices hampering competition in any relevant market and exploiting dominant position. The CCI has power to investigate as well as to adjudicate such complaints. Therefore, CCI has found in this matter that the allegations made by informant against the defendant i.e. the *Zomato*, a food delivery Application-based service provider does not have anti-competitive components and any potential to abuse dominant position in the application-based food delivery service market. Hence; there is no case of adversely affecting consumer interests anyhow.