







**COMPETITION APPELLATE TRIBNAL**

**RTPE No. 07/2002**

CORAM

Hon'ble Dr. Justice Arijit Pasayat,  
Chairman

Hon'ble Mr. Rahul Sarin,  
Member

Hon'ble Ms. Pravin Tripathi,  
Member

IN THE MATTER OF

Johnson & Johnson

....Complainant

Vs.

Maharashtra State Chemist  
& Druggist Association

...Respondent

Appearances: Mr. R. D. Makheeja, advocate for the DG ( I & R )  
Ms. Mallika Joshi, advocate for the Informant  
Mr. Anurag Mathur with Mr. Vimal,  
advocates for the respondent

ORAL ORDER

04-11-2009

This application was filed by M/s. Johnson & Johnson Limited (hereinafter referred to as the complainant) before the Monopolies & Restrictive Trade Practices Commission (in short the "Commission") in the year 2002. By order dated 29<sup>th</sup> January, 2002 the Commission directed that the respondents shall not interfere with the sale of surgical products and pharmaceutical drugs of the complainant consequent to the telegram issued by respondent No. 1 on 22<sup>nd</sup> January, 2002. Subsequently, it was noticed that there was, prima facie, violation of the interim order passed by the Commission on 29<sup>th</sup> January, 2002 with reference to the circular dated 26<sup>th</sup> February, 2002 issued by the respondent No. 1 - Association under the signature of the then President. By an order dated 3<sup>rd</sup> May, 2002, the Commission held that there was

prima facie material to show that restrictive trade practice was being adopted by the respondents. With reference to several orders passed by the Commission earlier in different cases it was held that boycott as indulged in by the respondent is prima facie restrictive trade practice and is prejudicial to public interest.

After the pleadings were completed, issues were framed and the matter was listed for recording of evidence. When the matter was taken up for cross-examination of the DG's witness, it was stated by the parties that there was a possibility of arriving at an out of Court settlement for which some time was needed. The matter was adjourned from time to time to explore the possibility of out of Court settlement. This state of affairs continued for about three years. On 1<sup>st</sup> February, 2006 the Commission noticed that there was no possibility of an out of Court settlement and as stated by the parties the matter should proceed on merits.

It is noted in the order dated 20<sup>th</sup> April, 2009 that the counsel for the informant stated that they have no grievance against the respondent. But the DG wanted to continue with the proceedings as public interest was involved.

By order dated 20<sup>th</sup> April, 2009 the Commission directed filing of an undertaking in terms of Section 37D(2) of the Monopolies & Restrictive Trade Practices Act, 1969 (in short the "Act"). Thereafter, the matter was again adjourned to 22<sup>nd</sup> July, 2009 as the undertaking had not been filed.

It is stated by the learned counsel for the respondents that there is no need for filing an undertaking as it would indirectly mean admission of restrictive trade practices. It was, however, submitted that in view of the interim order dated 3<sup>rd</sup> May, 2002 and

the subsequent statement of the complainant that it has no grievance against the respondents, the matter need not proceed further.

We find that while dealing with the interim matter, the Commission referred to several earlier judgments to hold that boycott as indulged by the respondents prima facie amounted to restrictive trade practices.

This matter was placed before the Competition Appellate Tribunal (in short the "COMPAT") in view of the Ordinance amending Section 66 of the Competition Act, 2002 (in short the Act"). The interim order dated 3<sup>rd</sup> May, 2002 is made absolute. As the factual scenario indicated above goes to show practically nothing survives in the present petition. The same is accordingly disposed of. If there is any occasion for any of the parties to make any grievance regarding any further cause of action, the same shall be appropriately dealt with, if the occasion so arises.

The petition is disposed of.

[Dr. Justice Arijit Pasayat]  
Chairman

[Rahul Sarin]  
Member

[Pravin Tripathi]  
Member



**COMPETITION APPELLATE TRIBNAL**

**UTPE No. 75/1998**

CORAM

Hon'ble Dr. Justice Arijit Pasayat,  
Chairman

Hon'ble Mr. Rahul Sarin,  
Member

Hon'ble Ms. Pravin Tripathi,  
Member

IN THE MATTER OF

D. G. ( I & R )

....Complainant

Vs.

Perfetti (I) Ltd.

...Respondent

Appearances: Mr. R. D. Makheeja, advocate for the DG (I&R)  
Mr. Dinesh Agnani, advocate for the respondent

ORAL ORDER

04-11-2009

On the basis of an application purported to be under Section 10(a)(iv)/36(B)(d) read with Sections 2(o), 2(o)(i), 2(o)(ii), 33(1)(j), 33(1)(e), 33(1)(c), 36A, 36(1)(iv)(vi)(x), 36A (3)(b) of the Monopolies and Restrictive Trade Practices Act, 1969 (in short the 'Act') the proceedings were initiated. It was alleged that the normal trade discount offered in the trade by and large ranges between particular percentages; but in the instant case the respondent offered some more incentives for dealing with its products. Notice in this case was issued to the respondent and the DG (I&R) was also required to enquire. The reply has been filed by the respondent indicating that actually the complaint does not reveal any restrictive trade practice. On the contrary, what has been done is the normal trade practice. With regard to the



advertisement which was issued allegedly disparaging the product Freedom, it was stated that the same has been withdrawn.

None appears for the applicant.

We have heard learned counsel for the DG (I&R) and the respondent.

It is the submission of the learned counsel for the respondent that reading of the complaint does not reveal any restrictive trade practices. Reference made to certain incentives which were being given shows that they were in the normal course of business and was also a normal trade practice. So far as the alleged disparaging statement in the advertisement is concerned, it has been stated that the same has been withdrawn.

Above being the position according to the learned counsel for the respondent nothing survives in the matter.

Learned counsel appearing for the DG (I &R) submitted that the restrictive trade practices as alleged has not been established by the informant by any cogent and credible material. He, however, stated that disparaging statements in the advertisement would constitute unfair trade practices and/or restrictive trade practice. But in view of the affidavits filed stating that the same has been withdrawn, nothing survives in the matter. This case was posted before the Competition Appellate Tribunal (in short the 'COMPAT') as it relates to Section 36(a) (1)(x) of the Competition Act, 2002 (in short the Act) in view of the Ordinance amending the Competition Act, 2002.

The materials on record do not show any unfair trade practices/restrictive trade practices as alleged by the complainant.

As rightly submitted by learned counsel for the DG(I&R) whatever may have constituted an infraction in terms of Section 36 (a)(1)(x) of the Act, has lost its force in view of the admitted position that the disparaging statement in the advertisement has been withdrawn.

There is also no evidence of any charging of predatory prices. That also is a factor against the applicant.

Above being the position the proceedings are closed and the matter is disposed of. In view of the above order, the notice of the enquiry issued stand discharged.

[Dr. Justice Arijit Pasayat]  
Chairman

[Rahul Sarin]  
Member

[Pravin Tripathi]  
Member