Kush Kalra v. Reserve Bank of India and Ors. (Case No. 23 of 2017)

Decision Date: 23.08.2017

Keywords: *cartel; anti-competitive agreement; bailment; collusion*

Issue: Whether the banks have cartelized to limit and control the safe deposit locker services, thereby acting in contravention of Section 3 of the Competition Act?

Rule: Sec. 3 the Competition Act, 2002; Indian Contract Act, 1872

Mr. Kush Kalra (Informant), while applying for bank locker services came to know that the banks charge rent for the service. He also came to know that the banks get the consumers to sign an agreement absolving the banks of liability in case of loss or damage to the consumers' property. The informant claims that banks in India have no mechanism of compensation in such cases, and have in fact cartelized. It is also alleged that the cartelization is emanating from disregard towards the bailment principle as in the Indian Contract Act, by the banks. This allegation is made with regard to the RBI guidelines (vide its Circular DBOD No. Leg. BC. 78/09.07.2002/2006-07) that requires banks to act in accordance with the Indian Contract Act and certain other legislations while providing the safety locker services.

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The informant contended that the agreement that the banks make consumers sign which absolves the banks of any liability in case of damage or loss of consumers' property in bank lockers is anti-competitive. It is also admitted by the informant that there is no documentary evidence of cartelization amongst the opposite parties. The allegation however, is that the banks have formed an association so as to limit the improvement of services, which is directly affecting competition in the market and interests of consumers. It is for these reasons that the informant believes that the banks have been acting in contravention to Section 3 of the Competition Act.In support of the allegations made by him, the informant has enclosed various replies/responses obtained by him under the RTI Act to suggest that the Opposite Parties are not undertaking any responsibility for loss of valuables kept in their safety lockers.

The Commission has prescribed that contravention of Section 3(3) of the Act by competitors requires establishment of the following elements:

(i) the competitors have entered into an agreement as defined under Section 2(b) of the Act inclusively as any arrangement or understanding or action in concert, whether or not, such arrangement, understanding or action is formal or in writing; or whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings; and

(ii) the object of such agreement is covered under Section 3(3) of the Act i.e.,

(a) to directly or indirectly determine purchase or sale prices;

(b) to limit or control the production, supply, markets, technical development, investment or provision of services;

(c) to share the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; or (d) to directly or indirectly result in bid rigging or collusive bidding.

It was held by the commission that there was no such material to suggest any understanding/consensus/arrangement amongst the Opposite Parties to have pursued any of the aforesaid prohibited activities. The RTI replies of some of the Opposite Parties suggest that they are not completely absolved for loss of valuables kept in their locker. For instance, the reply dated 7th October, 2015 of Bank of Baroda inter alia states that in case of loss suffered by the lessee due to theft or burglary etc. of safe custody locker, the liability of the bank will depend upon the facts and circumstances surrounding the burglary. There were similarly other banks whose replies did not indicate an absolute refusal to compensate in case of damage or loss to the consumers' property lying in their lockers.

The commission also noted thatmere common practice by all the market players emanating from their independent decision making at most indicates an industry practice and not collusion amongst them.

The commission opined that there was no prima facie case of contravention of the provisions of the Act. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.