



**COMPETITION COMMISSION OF INDIA**

**Case No. 30 of 2022**

**In Re:**

**Transvahan Technologies India Pvt. Ltd.**

Site-1, 88/1 Basavanahalli  
Kasaba Hobli, Nelamangala  
Bengaluru – 562123  
Karnataka

**Informant No.1**

**S.R. Venkatesan**

202, KT-35, 89/1  
6<sup>th</sup> Main, 16<sup>th</sup> Cross Malleshwaram  
Bangalore

**Informant No.2**

**And**

**Sepson AB and its group entities**

Kyrkbyvagen 1  
786 33 Vansbro, Sweden

**Opposite Party No.1**

**Sepson India Private Limited**

Plot Nos. 21-A1 & 21-A2  
KIADB Veerasandra Industrial Area,  
Electronic City Post Hosur Road  
Bangalore-560100, Karnataka

**Opposite Party No.2**

**CORAM**

**Ms. Ravneet Kaur**

**Chairperson**

**Ms. Sangeeta Verma**

**Member**

**Mr. Bhagwant Singh Bishnoi**

**Member**



## **Order under section 26(2) of the Competition Act, 2002**

1. The present information has been filed by Transvahan Technologies India Pvt. Ltd. (“**Transvahan**”/ “**Informant No. 1**”) and Mr. S.R Venkatesan (“**Informant No. 2**”) (Informant No.1 and Informant No.2 are collectively referred to as “**Informants**”) under section 19(1)(a) of the Competition Act, 2002 (“**Act**”) alleging contravention of the provisions of sections 3(4) and 4 of the Act by Sepson AB, Sweden and its group entities (“**Sepson AB/ Opposite Party No.1**”) and Sepson India Private Limited (“**Sepson India/Opposite Party No.2**”) (Sepson AB and Sepson India are collectively referred to as “**Opposite Parties**”).

### ***Facts and allegations, as per Information***

2. Informant No.1 is a company registered under erstwhile Companies Act, 1956 and is stated to be engaged in manufacturing of recovery winch systems, battery operated electric vehicles, automotive components and operates in defence sector. Informant No. 2, Mr. S.R. Venkatesan is the Promoter and Managing Director of Informant No.1.
3. Sepson AB is stated to be a company incorporated in Sweden and is engaged in manufacturing and marketing of winch systems. Sepson India is wholly owned subsidiary of Sepson AB.
4. In November 2006, Sepson AB reached out to Informant No. 2 to collaborate with the Informants for promoting its winches in Indian market. In September 2007, Sepson AB formed a strategic alliance with Informant No.1 for cooperation in the Indian market for winches system. While the alliance with Informant No.1 commenced in 2007, the approval of Ministry of Defence (MoD) for winches was granted around the year 2013-14. The first major order for vehicles with Sepson AB’s winches was issued by MoD during March, 2015. As per the Informants, until now, Sepson AB is the only approved vendor of winches for military vehicles in India leading to its absolute monopoly in the business. As per the Informants, only approved vendors are allowed to supply such winches for Indian Army.



5. During the period between 2007 to 2013, Informant No.1 was engaged by Sepson AB as its distributor in India. Thereafter, Sepson AB and Informant No.1 entered into a Sub-Contracting and Manufacturing agreement on 25.06.2014 (**SCM-2014**) for deeper cooperation. This agreement, *inter alia*, envisaged that Informant No.1 would manufacture and assemble the winches to be supplied by Sepson AB for use in military vehicles by the Indian Army. Based on this agreement and the obligations contained thereunder, the Informant No.1 stated to have invested a huge sum of money and established a manufacturing plant in Bengaluru in the year 2014-15.
6. Sepson AB incorporated a wholly owned subsidiary, Sepson India in 2014 and Informant No. 2 joined the board of Sepson India as a non-executive Director. Further, at the behest of Sepson AB, the Informant No.2 signed an employment agreement dated 07.09.2015 for being the Managing Director (MD) of Sepson India (**Employment Agreement-2015**). On the same day, a further detailed Sub-Contracting and Manufacturing Agreement was also executed between Sepson India and Informants, whereunder Informant No.1 was designated as the exclusive manufacturing contractor for Sepson India (“**SCM-2015**”). It has been stated that one of the conditions of SCM 2015 was that the relationship of Sepson India with Informant No.1 would be co-terminus with the employment of Informant No.2 as Managing Director of Sepson India. In other words, the agreement between Sepson India and Informants would be terminated if Informant No.2 ceases to be the Managing Director of Sepson India. It has been stated that imposition of this subsequent condition was not made known to the Informants either in 2007 when the strategic alliance between the parties commenced or at least when Informant No.1 made huge investment to set up a manufacturing unit in Bengaluru.
7. In furtherance of the SCM-2015, Informant No.1 manufactured and supplied 433 units of Sepson winches to Tata Motors between June, 2015 and August, 2016. In the meantime, on 17.03.2016, the Informant No.2 resigned from the position of Managing Director of Sepson India due to personal reasons.
8. Since the supply orders for high mobility vehicles with winches were issued, the Informants observed certain conduct on the part of the Opposite Parties. These included



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delay in providing orders to Informant No.1, providing wrong drawings of winches to be manufactured, delay in taking delivery and arbitrarily fixing higher import costs for Swedish components of kit. The Informants eventually understood that Sepson AB was not interested in manufacturing winches through Informant No.1 and it was gearing up to start its own arm in India for manufacturing and supply of winches used in military vehicles.

9. Thereafter, in June 2016, Sepson AB imposed onerous conditions in the revised sub-contracting and manufacturing agreement which included the requirement that Informant No.2 need to sign certain documents of Sepson India as a prerequisite for awarding work to Informant No.1 for continuance of its relationship with Informants. Since August 2016, Sepson AB stopped dealing with Informant No.1 and started direct supplies to Original Equipment Manufacturers (OEMs). Further, the non-compete duration was increased from two years to five years. The said agreement also proposed that Sepson AB would procure components for winches and thus, Informant No.1 need not deal with the vendor base which it had created. With no option left, Informant No.2 resigned from the directorship of Sepson India. As a result, Sepson AB terminated its relationship with Informant No.1 and allegedly wiped it out from the business of manufacturing winches for defence vehicles.

10. As per the Informants, the relevant market is 'market for supply of self-recovery winches for high mobility vehicles used by Indian Army'. As per the Informant, only the vendors approved by the MoD could supply winches for military vehicles and the approval entails a very long gestation period on account of extensive field evaluation. Until now, Sepson AB is the only entity operating in this relevant market as it is the only vendor approved by the MoD for supply of winches for military vehicles. Thus, Sepson AB enjoys monopoly in the said relevant market and no entry is expected in the relevant market in any foreseeable future.

11. It has been alleged that the condition of employment imposed upon Informant No.2 is an unfair imposition in contravention of the provision of section 4(2)(a)(i) of the Act. It has been also stated that the employment condition of Informant No. 2 is an unfair



conclusion of contract subject to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the sub-contracting and manufacturing contracts between the parties. This is also in contravention of section 4(2)(d) of the Act. The impugned conduct of Opposite Parties tantamount to denial of market access to Informants in the market for supply of self-recovery winches for high mobility vehicles used by Indian Army. This has been alleged to be in contravention of section 4(2)(c) of the Act. The anti-competitive practices of Opposite Parties are also in contravention of section 4(2)(b) of the Act. It has been stated that the refusal to deal with Informants is alleged to be anti-competitive strategy to use its dominance in the supply of winches market to monopolise the market for manufacturing of winches. This is alleged to be a vertical restraint as well as abuse, in contravention of the provisions of sections 3(4) and 4(2)(e) of the Act.

12. The Informant has, *inter-alia*, prayed for the following relief before the Commission to:

- a. direct the Director General to conduct investigation into the matter, in terms of section 26(1) of the Act;
- b. declare the conduct of the Opposite Party as being a contravention under Section 4 of the Act;
- c. impose penalty on Sepson group in terms of section 27 of the Act;
- d. Sepson and its group entities be restrained and be ordered to cease and desist from the impugned conduct;
- e. pass such order as the Commission may deem fit proper in the circumstances of the case.

13. The Information has also brought out a series of civil and criminal litigations between Informants and Opposite Parties in relation to alleged dispute before various fora *i.e.* the Civil Courts in Bangalore, Criminal Court in Bangalore, Hon'ble High Court of Karnataka, Hon'ble National Company Law Tribunal, Hon'ble National Law Company Appellate Tribunal, District Legal Services Authority, Bangalore and the Hon'ble Supreme Court of India in relation to alleged dispute between the parties.



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14. The Commission considered the information in its ordinary meeting held on 14.09.2022 and decided to seek response/comments on the information as well as certain additional information from the Opposite Parties. The Informants were also granted liberty thereafter to file further response, if any, to such reply filed by Opposite Parties, with an advance copy to Opposite Parties. After seeking extension of time, Opposite Parties filed their response in confidential and non-confidential versions on 28.11.2022. The Informants, after seeking due extension of time, filed their response/rejoinder to the reply of the Opposite Parties, on 27.12.2022.

15. A summary of the response filed by the Opposite Parties is as follows:

- a. In 2007, Informant No. 1 and Sepson AB had entered into an understanding of forming a strategic alliance for industrial cooperation for 5 years including stocking, sales, marketing, service, parts, training and design development, while also agreeing to drive the process of indigenization in a phased manner and continuing discussion for setting-up joint venture activities in India for manufacturing and local integration. Informant No.1 was engaged with Sepson AB as a distributor for the territory of India by execution of Distributorship Agreements under broader understanding of strategic alliance for industrial co-operation. First Distributorship Agreement was for three years. In context of increasing indigenization, the Distributor Agreement was revised in 2011 for sourcing of few accessories for winches by Informant No.1. In 2012, on expiry of earlier alliance, a new strategic alliance for industrial cooperation agreement between the parties was entered on the same terms and conditions for another 5 years with revised paragraph for Industrial Cooperation to include provision for authorization for Informant No.1 to coordinate with customers for various sales, support and training and aftermarket support for Indian market. In the context of setting up Sepson India, a Memorandum of Understanding (MoU-2013) dated 16.10.2013 was executed for management and operation of Sepson India. It was under this agreement, that the parties agreed that Informant No.2 will work as MD of Sepson India and was made responsible for regular revision and implementation of the market plan to undertake the marketing of Sepson's



products. On 28.12.2013, Sepson AB along with the Informants, entered into a tripartite agreement (Sepson India Agreement-2013/Cooperation Agreement) with detailed understanding for management and operation of Sepson India over and above the understanding agreed under MoU-2013, in which the term of Informant No. 2 being MD of Sepson India was reiterated. On 25.06.2014, SCM-2014, was executed between the parties for the purpose of meeting the specific order of Tata Motors for a specific winch model. The agreement referred to the earlier executed Sepson India Agreement-2013 as a part of business concept, while also stating that Informant No.1 would act as a contractor for manufacturing and assembly to Sepson AB. On 23.06.2015, in context of the order of Tata Motors of 1250 winches, the understanding between the parties was discussed and it was reiterated that Informant No.2 is to be MD of Sepson India and Informant No.1 would source components from Indian suppliers, assemble the winches and deliver to Sepson India. Along with the execution of a new SCM-2015, a separate Employment Agreement-2015 between the parties was executed which, like SCM-2014, was meant for the purpose of executing the order of Tata Motors, while also retaining the understanding of the parties from the previous agreements. This agreement also provided for termination of SCM-2015 under Clause 18.5 (iv) with immediate effect if the Employment Agreement-2015 was terminated.

- b. As per the payment terms mentioned in the SCM-2015 and the purchase orders issued from time to time, Sepson India was required to make the payment towards manufacturing and assembly support for the winches as per the agreed timelines. However, the Informant No. 1 never honoured terms of SCM-2015 in letter and spirit and given the dependency on Informants, Informants started arm twisting Sepson India by unilaterally demanding the payment of full amount as the advance amount, which led to inordinate delays. Sepson India was forced to import winches from its holding company, Sepson AB and delivered to Tata Motors incurring huge financial losses. Such act of Informants was reflective of the fact that Informants never had any intention to adhere to the SCM-2015 and the intent on breaching the same was there since the beginning. The Informants



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have since the breakdown of the business relationship have engaged in forum shopping, abuse of process and approached each and every forum available including civil, criminal courts, Prime Minister's office to harass Opposite Parties and prevent them from doing business peacefully in India.

- c. The cause of action, in all the specified forums where the suits were initiated by the Informants, has been the same *i.e.* automatic termination of SCM-2015 which arose because of voluntary resignation of Informant No.2 from the post of MD with immediate effect in breach of Employment Agreement-2015 by Informant No.2, which had occurred on March 17, 2016.
- d. The Informants were neither prevented from approaching any other winch maker for manufacturing winches nor prevented from manufacturing their own winch in any manner. All the restrictions imposed on the Informants under SCM-2015 were standard commercial restrictions and reasonable in nature.
- e. The abrupt resignation by Informant No.2 in breach of Employment Agreement-2015 was not due to personal reasons but as a retaliatory measure against the Opposite Parties for not acceding to his unfounded and unfair demand of commission of 8% over and above the manufacturing markup agreed under the SCM-2015. Informant No.2 was not put under any lock-in condition, and he was free to resign from the employment after giving the prescribed written notice to Sepson India.
- f. List of registered vendors as available on website of Directorate General of Quality Assurance with respect to vehicles do not reflect names of either of the Opposite Parties.
- g. The Opposite Parties do not supply winches to the Indian Army, rather it supplies to OEMs like Tata Motors Ltd., Ashok Leyland, *etc.* The Opposite Parties have never participated in any approval process of MoD and have never entered into any contract with it to supply its winches. It is the customers of Opposite Parties *i.e.*, OEMs who participate approval process of MoD. It was also stated that





OEMs have their own selection process of selecting a vendor and that successful selection of Sepson winches by the OEM's was on account of superior quality and meeting the various techno-commercial parameters of the OEM's.

- h. The Opposite Parties operate in the relevant product market of “*vehicle mounted winches*”. Also, with regard to the geographic market, it has been stated that the market could not be restricted to Indian Army since the winches were sold to OEMs, which have factories at various locations in India. Therefore, the relevant market has been defined as “*vehicle mounted winches in India*”. Sepson India faces competition from several other players like Rotzler Holding GmbH + Co KG Germany, Ingersoll Rand (India) Limited, Paras Defence and Space Technologies Limited, etc. Sepson India has no distributors in India and entire marketing and sales activities of Sepson branded winches are managed by Sepson India itself and thus it is not dominant. The conditions imposed in SCM-2015 were reasonable based on the risk analysis and interest of the Parties and the concerned condition of automatic termination is not an unfair or discriminatory condition for purchase of services from Informants but a necessary condition to ensure legal compliances under Companies Act and there is no contravention of section 4(2)(a)(i) of the Act. With respect to the allegation of unfair vertical restraint, the condition of automatic termination of SCM-2015 was an agreed understanding resulting from the importance of Informant No.2 and the related business considerations and risks and was not an unfair or unreasonable condition. Further, there is no appreciable adverse effect on competition due to the same.

16. The Informants, while reiterating their contentions raised in the Information, have submitted that self-recovery winches of Sepson for Indian market, were exclusively supplied to OEMs for use by end customers, Indian Army and not for civilian market and there is a stark line of difference between military and civilian winches by stating that unlike a normal cash and carry consumer product, marketing/manufacturing of self-recovery winches is technologically complex and a unique industrial marketing/production activity. The Informants have denied the claim of the Opposite



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Parties of not being aware of being the only approved vendor for self-recovery winches for military vehicles in India. It has also been stated that there is no legal bar on the Commission to take action against Opposite Parties and the proceedings under the Act are not barred merely because the proceedings/litigations under other laws are pending before other courts/authorities

17. On 07.02.2023, it was decided to relist the matter in one of the ensuing meetings of the Commission. Thereafter, the matter was considered by the Commission on 28.06.2023, wherein the Commission decided to pass an appropriate order in due course.

18. The Commission has carefully considered the Information, responses of parties and other material available on record. It appears that the grievance of Informants stems from the termination of SCM-2015 which was entered into between Sepson India and the Informants, as he ceased to be the employee of Sepson India, upon resignation. This is alleged to be an unfair term being imposed by Opposite Parties, in contravention of provisions of section 4 and 3(4) of the Act.

19. On perusal of the information as well as response filed by Opposite Parties and rejoinder filed by the Informant, the Commission notes that the SCM-2015 was in relation to an order received from Tata Motors Limited regarding a particular winch model to be mounted on vehicles (1250 winches) produced by Tata Motors Limited.

20. It is also pertinent to note Clause 3.8 of the SCM-2015, which is reproduced as under:

*“The confirming party has also agreed to be appointed as Managing Director of the Company on such terms and conditions as may be agreed by way of Separate employment agreement between the confirming party and the company.”*

21. As seen from above, a separate employment agreement was also entered into between Sepson India and Informant No.2 through which Informant No.2 was employed as the Managing Director of Sepson India to look after the day to day affairs of the company (Employment Agreement-2015).



22. The Commission notes that Clause 18 of the SCM-2015, provides for ‘Term and Termination’ of the agreement. Clause 18.5 (iv) specifically provides that the SCM-2015 could be terminated upon termination of the Employment Agreement-2015. The relevant clause is reproduced as under:

*“18.5. Termination for Cause: This Agreement shall be terminated for a Cause unless decided otherwise. As used herein, the term “Cause” shall mean any of the following:*

*(i) [.....]*

*(ii) [.....]*

*(i) [.....]*

*(ii) Termination of lease deed entered into between the Company and Venkat dated July 1, 2015 for Nelamangala factory premises and termination of employment agreement dated September 7, 2015 entered into between the Company and Venkat.”*

23. The Commission notes that upon resignation of Informant No.2, Employment Agreement-2015 was terminated. Consequently, the termination of Employment Agreement-2015 triggered the termination of SCM-2015.

24. The Commission has also taken note of the various litigations filed by the Informants and Opposite Parties before various fora across India since the termination of SCM-2015.

25. As per the information and submissions placed before the Commission, it *prima-facie* appears that the matter pertains to issues relating to terms of SCM-2015 and Employment Agreement-2015. Thus, considering the nature of issues between the parties herein, no competition concern seems to have arisen in the present facts and circumstances which seem to be emanating purely from the contractual terms agreed upon between the parties. Accordingly, the Commission does not deem it necessary to delineate the relevant market and undertake further assessment thereupon.

26. In view of the foregoing, *prima-facie*, no case of contravention of provisions of sections 3(4) or 4 of the Act is made out in the facts, circumstances and allegations levelled in case and the matter is ordered to be closed forthwith under section 26(2) of the Act.



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27. Before parting with the order, the Commission deems it appropriate to deal with the request of Informants and Opposite Parties seeking confidentiality over certain documents/information filed by them under Regulation 35 of the Competition Commission of India (General) Regulations, 2009 (General Regulations). Considering the grounds put forth by the parties for the grant of confidential treatment, the Commission grants confidentiality to such documents/information in terms of Regulation 35 of the General Regulations read with section 57 of the Act for a period of three years from the passing of this order. It is, however, made clear that nothing used in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used for the purposes of the Act in terms of the provisions contained in section 57 thereof.
28. Notwithstanding the order passed above, the Commission particularly emphasizes that the findings may not be construed as expressing any opinion on merits in any manner in respect of other ongoing proceedings *inter se* the parties in any court or forum.
29. The Secretary is directed to communicate to the parties accordingly.

**Sd/-**  
**(Ravneet Kaur)**  
**Chairperson**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**Sd/-**  
**(Bhagwant Singh Bishnoi)**  
**Member**

**New Delhi**  
**Date:22/08/2023**