

MOOT PROBLEM

Indycosis is a nation established on the principles of democracy and socialism. A landlocked nation, the general trade in Indycosis is dependent upon the local manufacturers. The country is largely divided into three major parts i.e. the northern, the central and the southern part. Most of the population resides in these three regions and the internal trade amongst the regions is very common.

Coffee is one of the major products of Indycosis and is sold widely across the nation. A recent study indicated that the nation consumes high amounts of coffee, with almost 70% of the adult population consuming 6 – 7 cups of coffee per day. Large number of farmers and their families are dependent upon the coffee business. The love for coffee is so high that in 2015 there were protests outside the national parliament to declare coffee as the ‘national drink’ of Indycosis. One of the chief organization managing the protest was ‘Regional Association for Trade in Coffee’, which was commonly referred as RAT Coffee.

RAT Coffee was founded in 1980’s by Mr. Ravi Vermma, who started off as an activist working for the masses but ended up as a famous politician. Almost all coffee farmers in Indycosis paid a onetime membership fee and joined RAT Coffee. During the initial years, RAT Coffee worked for the betterment of coffee farmers and workers working at the coffee plantations. However, over the years RAT Coffee involved itself in politics and portrayed itself as an alternative to the ‘left parties’ that were dominant in Indycosis. With passage of time, the influence of RAT Coffee dwindled and it was believed that the association needed a new leader. Somewhere in the mid of 2010, Mr. Shashi Vermma, son of the veteran Mr. Ravi Vermma, returned to Indycosis after an illustrious career at the United Nations. Shashi Vermma showed keen interest in the national politics and also vowed to revive RAT Coffee and its political activities.

Varied types and varieties of coffee beans are grown by the coffee farmers in Indycosis. However there’s one variety, Mongrè, which is rare and grown only in certain months,

generally during the monsoon. Mongrè requires high quantity of water to grow and also demands high quantity of natural light. As Mongrè requires special conditions and is considered as an easily perishable product, not many farmers are willing to grow it. Since last 6 – 8 years, the demand for this variety of coffee has increased and many consumers are willing to pay as much as Rs. 200 per hundred grams. However, the coffee farmers do not sell directly to the consumers. The coffee beans are first bought by the traders who then send it to the distributor/retailers, who ultimately sell this to the consumer.

Arnub Ahuja, director of Arnub and Co., Rajdip Sharma, director of Rajdip Pvt. Ltd., and Barka Lal, director of Barka Industries, are three major private companies who buy Mongrè from the farmers and send it down the chain, ultimately to the consumers. These three traders are an important link in the market as without them, getting Mongrè to the consumers would be very difficult. Arnub is generally referred by friends as a loudmouth task-master who had established a name for himself in the trading community, sometimes even involving in arm twisting to get work done. Rajdip was considered as a sincere and upright person who was committed to his work. Barka was a new entrant in the market and adopted innovative and risky methods to survive in this highly competitive industry.

Since only few farmers were growing Mongrè, the total quantity of Mongrè available every season was around 1000 kilograms (kgs). The trade for Mongrè was not a very complex process. After the monsoons when Mongrè was ready, the farmers would invite for prices from the traders. The trader who was willing to buy at the highest price would generally get all of the Mongrè. In the year 2010, Barka, who was new to the market, wanted to survive in the market at any cost. She expressed willingness to buy Mongrè at Rs. 500 per kg; this was Rs. 200 more than usual price at which traders bought from the farmers. Since Barka was willing to pay a high price, all 1000 kg of Mongrè was sold to her. Barka, however, was not able to cater to the demands of all the consumers, mainly because Barka Industries was located in the northern part of the country and it took lot of time for goods to reach from the north to the south. Sometimes, the excess time undertaken in transportation led to Mongrè being spoiled, as adequate light was not available.

Arnub, who could not buy Mongrè in 2010, was very angry. He reportedly shouted and abused his business team and referred to them ‘lapdogs’ who should ‘never ever ever’ enter his office. Arnub decided that in the coming year, he would buy Mongrè from the farmers at an even higher price. Therefore, in 2011, he expressed interest to pay Rs. 600 per kg to the farmers and eventually bought all 1000 kgs of Mongrè from the farmers. These pricing wars continued year after year and every time the trader willing to buy at higher price was sold all the Mongrè by the farmers.

As per the data available since 2010, the following were prices at which traders bought Mongrè from the farmers:

Year	Trader	Per Kg price at which trader bought Mongrè (Rs.)	Total quantity bought (kg)
2010	Barka Industries	500	1000
2011	Arnub and Co.	600	1000
2012	Arnub and Co	650	1000
2013	Rajdip Pvt. Ltd.	655	1000
2014	Barka Industries	700	1000
2015	Arnub and Co.	750	1000
2016	Arnub and Co.	850	1000

While these prices were readily accepted by the farmers, it was being very difficult for all the traders to survive in the market, especially Rajdip, who could buy Mongrè only once in last 7 years. Somewhere in the middle of 2016, Arnub, Rajdip, and Barka were invited at a wedding of one of the coffee farmers. Coincidentally, three of them were seated together and started enjoying the high-quality food and drinks served at the wedding. While they were enjoying the wedding shenanigans, Arnub expressed his concerns for the way in which the market for Mongrè was functioning currently. Rajdip was vocal about his almost non-existence in the market due to the current pricing system. Arnub mentioned that he was thinking of this ‘problem’ and had a way of solving it. He opined

that if all three of them expressed intention to buy at the same price and demanded only 1/3rd of Mongrè, all of them can survive in the market. Rajdip, under desperation to save the business, paid lot of heed to this idea and was of the view this could idea could be saviour for his business. Barka, on the other hand, was wary of the ideas of these two old men, and remained mostly silent during the conversation without expressing any particular opinion over the idea. As the wedding reception continued, Arnub met various other people. One significant meeting was with Shashi Vermma, who being considered as an important guest at the wedding. Shashi, being a former diplomat, spoke politely to everyone and already had an eye on winning hearts for the 2019 national elections. Shashi initiated conversation with Arnub; however, Arnub was quick to rebuke and referred to Shashi and RAT Coffee as an 'insignificant rodent' of the Indycosis politics. This particular remark captured the attention of social media and Shashi was at the receiving end of memes and jokes, with #RodentShashi trending for several days.

As the Mongrè season for 2017 set in, Arnub sent an email to Rajdip and Barka and recalled their discussion at the wedding. As per the email, Arnub said he would express interest to buy Mongrè at Rs.500 per kg from the farmers and would demand only 330 kgs of it.

When the prices reached the farmers, they were shocked to learn that all the three traders had quoted identical price of Rs.500 per kg and demanded only 330 kgs of Mongrè. The farmers expressed their discontent to the traders; however, the traders were unwilling to alter the prices. Since Mongrè is a perishable good, the farmers did not have much time to negotiate. Some of the farmers expressed that Rs.500 per kg even though a comparatively low price, was not an unacceptable price. Even though many others disagreed with this view, all farmers decided to sell Mongrè at Rs.500 per kg for this year.

As all three traders now had 330 kgs of Mongrè, they quickly sold their shares to their distributors and ultimately to the consumers. With this arrangement, it was observed that Barka who was based in the northern region, mostly sold her part of Mongrè in the North, Arnub did so in the South and Rajdip did in the other regions. This arrangement saw that fresh Mongrè was easily available to all the people of Indycosis. The balance sheets of

all the three traders reflected profits at the end of the financial year. Many news media and analysts in Indycosis hailed this move from the traders. One particular news channel, called as Republic Indycosis News, vehemently supported the move and referred to Arnub as the Robin Hood of Mongrè lovers and the reason for there being high efficiency in the Mongrè market. They also compared him with the Bollywood actress, Aliaa Bhat, who is well known for her intelligent comments.

As the noise in the news subsided, the farmers started preparing for the next season of Mongrè. The Mongrè for 2018 was ready by the end of the preceding year and the farmers invited traders to express the prices for which they wish to buy. Similar to the last year, all the three traders quoted exactly identical prices and demanded similar quantities. The farmers decided to oppose this pricing, which they referred to as ‘unfair’ and being pre-decided by the buyers. The farmers protested against Arnub’s office and believed that he was the main cause for their lack of revenue. Viewing this as an opportunity, Shashi jumped in the support of farmers and held a media conference describing the act of Arnub and other traders as anti-competitive in nature. Some political and media outlets supported Shashi and stated that there has to be free will in determining prices. Other media outlets called this as a poor move that would disturb the newly achieved stability in the market and that buyers are free to decide at what price they want to buy a product. Noisiest amongst this was Republic Indycosis News, which started a campaign against Shashi using #ShashiGetsPersonal on the social media.

Shashi decided that RAT Coffee would once again work for the coffee farmers and would ensure that farmers get fair price for the Mongrè coffee beans that they were selling. RAT Coffee approached the Competition Commission of Indycosis (‘CCI’) and in a written complaint stated that the traders who were buying Mongrè coffee from the farmers had engaged in a cartel-like behavior. After examining the complaint which described the sudden price reduction for farmers, the CCI was of the *prima facie* view that this matter required further investigation as there could be possible contraventions of the prevailing laws. Therefore, the CCI directed the Director General (‘DG’) to conduct an investigation into the matter under Section 26(1) of the Competition Act, 2002 and submit an investigation report. The DG, accordingly, conducted an investigation and submitted its report to the Commission. The DG reported that there seemed to be collusion and

meeting of minds prior to three traders expressing their interest in buying Mongrè in the year 2017 and 2018. Both Barka and Rajdip co-operated with the DG and produced the email sent by Arnub. However, in their submissions both stated that they were of opinion that this new system of pricing was for the good of everyone and that without this new system, the market would be in an imbalance. Arnub, however, did not reply to any correspondence from the DG and in a public statement said that CCI has no power to hear this case and that this case was bogus just like RAT Coffee.

The DG also found that even though the traders bought Mongrè coffee at a cheaper rate in 2017 and also quoted cheaper for price 2018, the purchase price of the consumers had not reduced. The trend in purchase and sale price of Mongrè coffee at various stages since 2010, tabulated by the DG, is as under:

Year	Per Kg price at which traders bought Mongrè coffee	Per Kg price at which Mongrè coffee was sold by the traders to the distributors/retailers	Per Kg price at which the Mongrè coffee is available to the consumers in the market
2010	500	1500	2000
2011	600	1600	2100
2012	650	1650	2150
2013	655	1655	2155
2014	700	1700	2200
2015	750	1750	2250
2016	850	1850	2350
2017	500	1500	2500
2018	500	1500	2700

The CCI, after examining the report submitted by the DG and all the other information available, opined that it would further inquire into this matter and shall adjudicate if there has been contravention of the existing competition laws. RAT Coffee requested the CCI to adjudicate on this matter expeditiously as the Mongrè coffee beans for 2018 are lying in the warehouse and they do not have high shelf life. The CCI acceded to this request.

After recording their findings, the CCI held that the conduct of the Mongrè traders (i.e. Arnub and Co., Rajdip Pvt. Ltd. and Barka Industries) is anti-competitive and thereby issued the following directions in its order dated 25 January 2018:

1. The Mongrè traders are directed to pay a penalty of 10% of its average turnover for the last three preceding financial years.
2. The Mongrè traders are further restrained from buying Mongrè coffee from the farmers or from accessing the market of Mongrè coffee in any other manner for the subsequent five years i.e. from 2018-2022.

Aggrieved by the decision of the CCI, the traders filed an appeal before the National Company Law Appellate Tribunal on 30th January, 2017. In the appeal, the traders argued among other things that that the Competition Act, 2002 didn't recognize the concept of buyer's cartel. Also, the CCI had not appropriately considered the prevalent situation in the market of Mongrè coffee and this order shall adversely affect the interest of all stakeholders. Further, the CCI had exceeded its power by denying the Mongrè traders access to the market of Mongrè coffee.

After hearing the arguments of both the parties, the NCLAT in its order 20th February, 2018 reduced the period of restraint imposed upon the Mongrè traders in the order passed by CCI from five years to the current year i.e. 2018-2019. Aggrieved by the order passed by the NCLAT, the traders approached the Hon'ble Supreme Court under Section 53T of the Competition Act, 2002.

A separate writ petition was simultaneously filed before the Derry High Court on 1st February, 2018, alleging that the order of the CCI violates the Fundamental Rights of the Mongrè traders. However, the High Court on 6th February, 2018, dismissed the plea *in limine*. Aggrieved by the order of the High Court, the traders, filed an appeal before the Supreme Court of Indycosis.

The Supreme Court clubbed both the appeals and posted the matter for final hearing. The Supreme Court shall now listen to all the arguments and claims of the parties including, but not restricted to, the alleged anti-competitive practices by the Mongrè traders, powers of CCI and NCLAT to deny market access to any business enterprise and maintainability of the writ petition in relation to violation of Fundamental Rights.

The laws of Indycosis are *in pari materia* with the laws of India. The currency used in Indycosis is Rupee and the value of an Indycosis Rupee is same as that of an Indian Rupee.

All names, characters, persons, entities, etc., referred above are fictional in nature and any resemblance with any person living or dead is purely coincidental.

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