



SPEED POST / AD

भारतीय प्रतिस्पर्धा आयोग
COMPETITION COMMISSION OF INDIA

File No. 1(12)/2012-Sectt

31.8.2012

To,


Sh. P. L. Kandoi, President,
All Odisha Steel Federation,
Aditya Complex, Chauliaganj,
Cuttack-753003, Orissa

Case No 12/2012

Filed: All Odisha Steel Federation, through its President & Authorized Signatory, Sh. P. L. Kandoi, Aditya Complex, Chauliaganj, Cuttack-753003, Orissa.

Against: Orissa Mining Corporation Ltd., Representative through its Chairman, OMC House, Bhubaneswar-751001, Orissa

1. Reference your letter dated 13.8.2012.
2. The Commission considered the matter in the ordinary meeting held on 23.8.2012 and as per the directions of the Commission certified copies of order under section 26 (1) dated 18.6.2012 and order dated 23.8.2012 passed in the matter are forwarded herewith for your information.


(S.L. Bunker)
Secretary

Encl: (i) Certified copy of the order dated 18.6.2012 (5 pages)
(ii) Certified copy of the order dated 23.8.2012 (one page)

COMPETITION COMMISSION OF INDIA

Case No. 12/2012

18.06.2012

All Odisha Steel Federation

... Informant

V.

Orissa Mining Corporation Ltd.

... Opposite Party

ORDER UNDER SECTION 26(1) OF THE COMPETITION ACT, 2002

1. The present information has been filed by the All Odisha Steel Federation ('the informant'), - an association of steel manufacturing industry in the State of Odisha under section 19(1)(a) of the Competition Act, 2002 ('the Act') against the Orissa Mining Corporation Ltd. ('opposite party'), a Government of Odisha undertaking for alleged violation of section 4 of the Act.

2. It is averred by the informant that the chrome ore is used for manufacturing of stainless steel and other allied products including low carbon steel and high carbon steel for the metallurgical industry. Chrome ore is abundantly available in the State of Odisha and opposite party holds lease of eleven mines out of a total of twenty six mines operating in the State of Odisha and it is the biggest enterprise which sells chrome ore through public auction. The remaining chrome ore producers such as TATA Steel, IMFA Ltd., Balasore Alloys Ltd. etc. are producing chrome ore for their captive use. The chrome ore extracted by these private players (except TATA) is not sold in the open market. Therefore, the informant was heavily dependent on the opposite party for buying the said commodity.

3. It is contended that till the year 2007, the opposite party was fixing chrome ore price on the basis of sale price of the State owned IFCAL (IDCOL Ferro Chrome & Alloys Ltd.) or purchase price of Ferro-Chrome fixed by Alloy Steel Plant of SAIL (Steel authority of India). Post-2007, the opposite party changed its method of fixing the price of chrome ore by Price Setting Tenders (PST) on quarterly basis. In this



process, a small quantity of the overall annual/quarterly production is tendered for sale. On receiving the bids, the highest bid price is taken as H1 and the total production is sold on the basis of the H1 price. The companies are allowed to participate in the tender process regardless of their capacity, size or past lifting record.

4. It is alleged that in the said process certain bidders quote unrealistically high price to out-bid others which later on becomes the listed price and the entire industry is forced to accept the said rates. There were instances when these companies did not even lift the tonnage of chrome ore which they successfully bid through public auctions. It is stated that a few small manufacturers who lifted the chrome ore by quoting abnormally high prices were mostly located outside the State of Odisha where the power tariff/water cess and other taxes were substantially low due to the incentives given by the State Governments.

5. It is further contended that the tender document contained several restrictive terms and conditions which were arbitrary in nature. The informant has illustrated a few instances where the opposite party offered 14,000 MT chrome ore (friable) for sale through PST during the second quarter of 2010-11 but once the H1 bid was received for the said offer, the same was taken into consideration to sell the entire quantity/output of 2,55,770 MT of chrome ore. Further, during the third quarter of 2011-12, the opposite party floated tender to offer 10,000 MT chrome ore (friable) for sale but actually allocated the huge quantity of 77,850 MT to various companies on the basis of the H1 price. It is also alleged that the price of chrome ore had increased over 200% in the last three years which clearly suggested that opposite party's conduct was unfair. By virtue of its strength the opposite party was selling chrome ore at the rate of Rs. 10,000 per ton whereas their average manufacturing cost of chrome ore was just Rs. 1200 per ton.

6. Attention was further invited to clause 9 of PST, wherein it was stated that the opposite party reserved the right to accept the quoted price or fix suitable price considering the market scenario, which according to the informant was arbitrary in nature. The informant substantiated its submissions by making reference to the September – December 2011 quarter when the opposite party did not accept H1 price of Rs. 12,120/- per MT and instead declared the price as Rs. 14,641/- per MT. Thus, according to the informant, the opposite party was reserving the right not to accept the highest bid price and thereby frustrating the entire exercise for calling tenders through an open auction.



7. In nutshell, the price setting mechanism of the opposite party was assailed by the informant alleging that it fixed the price of chrome ore unrealistically high which made it difficult for the informant association members to run their businesses vis-a-vis other competitors who were obtaining the same input at much lesser price due to reasons specified in the information. Lastly, it was stated that the association members lifted only 24% of the total quantity during the second quarter of 2011-12 which according to the informant showed consistent decreasing trend of the members of the informant association to purchase the chrome ore from the opposite party.

8. The counsel for the informant contended that the opposite party was in a dominant position in the relevant market and by virtue of holding the position of strength. It was abusing the position by offering the chrome ore at arbitrary and whimsical prices. It was also contended that chrome ore is being produced mostly in the State of Odisha and the opposite party is having significant production/control on said commodity. The opposite party, however, disputed and denied the aforementioned allegations of abuse of dominance.

9. The opposite party was called for preliminary conference before the Commission on 02.05.2012 and Mr. Saswat Mishra, MD, Orissa Mining Corporation appeared on behalf of the opposite party. He submitted that the empanelling of enterprises for sale of chrome ore was started to assure and maintain supply of certain quantity of chrome ore to the empanelled enterprises, since the opposite party could not meet the total demand of chrome ore buyers. While justifying the tender process, he further submitted that the process was adopted to discover fair market price of chrome ore. It was also stated that they were in the process of introducing e-auction w.e.f. July, 2012 so as to bring more transparency in the process of selling chrome ore. As per the details furnished by the opposite party, its share in the tradable quantity i.e. chrome ore, for domestic and export, was 60.05% out of which the domestic sale alone was 85.81% which was suggestive of dominance of the opposite party in the relevant market.

10. The grievance of the informant hovers around section 4 of the Act, contending that the opposite party by virtue of holding the dominant position in the chrome ore production and sale sector in the State of Odisha, abused its dominance by fixing the excessive sale price of chrome ore. It is contended that the excessive pricing falls within the ambit of section 4(2)(a) of the Act. To buttress the submissions, the informant has relied upon certain judicial pronouncements.



11. It may be noted that section 4 of the Act prohibits the conduct of an enterprise or a group in a dominant position. This section *inter alia* covers the whole gamut of practices of a dominant player in the relevant market which directly or indirectly impose unfair or discriminatory conditions/prices in the purchase or sale of goods or services and also prohibits the practices which limit/restrict the production of goods or provision of services or market etc. Dominant position has been defined in explanation (a) of section 4 of the Act, as a position of strength, enjoyed by an enterprise, in the relevant market, in India which enables it to operate independently of its competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour. Factors mentioned under section 19(4) of the Act have to be considered for deciding the dominant position of an enterprise.
12. From the facts disclosed by informant, it is to be seen whether the opposite party was enjoying the dominant status in the relevant market and if so, whether the alleged conduct would fall within the four corners of section 4 of the Act. It is apparent that the opposite party was the leading chrome ore manufacturer in the State of Odisha meant for sale in the open market. As per the material available on record it was the leading chrome ore producer in whole of India. The other chrome ore producers such as TATA Steel, Balasore Alloys, IMFA, Jindal Steels, FACOR Ltd., ICCL etc. were mainly captive users and were not selling chrome ore in open market like the opposite party.
13. Therefore, it can be safely assumed that, *prima facie*, the opposite party was enjoying a dominant status in the relevant market of sale of chrome ore. The relevant product market in this case would be the sale of chrome ore and the relevant geographic market would be the State of Odisha where this commodity was available in abundance. It can also be inferred that the opposite party was enjoying a position of strength in the relevant market as there was no significant /other competitor. Further, the conduct of opposite party regarding the fixing of prices by offering only a small quantity for auction *prima facie* appears to be abusive of its dominance.
14. In view of the above, the Commission is of the opinion that there exists a *prima facie* case under section 4 of the Act and directs DG to cause an investigation into alleged abuse of dominance by opposite party. The DG is directed to submit the investigation report within 60 days from the receipt of the order.
15. It is ordered accordingly.



16. The secretary is directed to convey a copy of this order alongwith the information and the documents filed therewith to the office of the DG.

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Member (G)

Sd/-
Member (R)

Sd/-
Member (SG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy



Sd/-
31/8/2012

S. ROHLAUT
Assistant Director
Competition Commission of India
New Delhi