



COMPETITION COMMISSION OF INDIA

Case No. 02 of 2021

In Re:

Vikas Verma

Flat No. C4-903 Olive County, Near Sector 5 Temple,
Sector 5, Vasundhra, Ghaziabad,
Uttar Pradesh – 201012

Informant

And

Adani Ports and Special Economic Zone Ltd.

Adani Corporate House, Shantigram, S.G. Highway,
Ahmedabad – 382421, Gujarat

Opposite Party No. 1

Dighi Port Ltd.

New Excelsior Building, 6th Floor, A.K. Nayak Marg,
Fort, Mumbai – 400001

Opposite Party No. 2

Mr. Shailen Shah

Resolution Professional and the Chairman of
the Implementation and Monitoring Committee
3rd Floor, Lodha Excelus, Apollo Mills Compound
N.M. Joshi Mag, Mahalaxmi, Mumbai – 400011

Opposite Party No. 3

Bank of India

Committee of Creditors through Lead Bank, Bank of India Ltd.,
Mumbai Large Corporate Branch, D.N. Road,
Fort, Mumbai – 400001

Opposite Party No. 4

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member



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Order under Section 26(2) of the Competition Act, 2002

1. The instant information is filed by Mr. Vikas Verma (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') alleging contravention of the provisions of Sections 3 and 4 of the Act by Adani Ports and Special Economic Zone Ltd. (hereinafter, '**APSEZ/ Opposite Party No. 1/OP-1**'), Dighi Port Ltd. (hereinafter, '**Opposite Party No. 2/OP-2**'), Mr. Shailen Shah (hereinafter, '**Opposite Party No. 3/OP-3**') and Bank of India (hereinafter, '**Opposite Party No. 4/OP-4**').
2. The Informant is an independent financial service advisor with primary focus on infrastructure sectors such as power, ports, roads, *etc.*
3. According to the Informant, APSEZ/OP-1 is the largest port owner, developer and operator in the country having its registered office in Ahmedabad and allegedly a dominant player on the eastern and western coasts of the country.
4. Dighi Port Ltd./OP-2 was incorporated under the provisions of the Companies Act, 1956, having its registered office in Mumbai.
5. OP-3 is the erstwhile Resolution Professional and is, presently, the Chairperson of the Implementation and Monitoring Committee, based in Mumbai.
6. OP-4 is the Lead Bank in the Committee of Creditors (CoC) comprising financial creditors.

Facts and Allegations as stated in the Information

7. The Informant states that DBM Geotechnics & Constructions Ltd. had filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code') before the National Company Law Tribunal, Mumbai (NCLT) for initiation of Corporate Insolvency Resolution Process (CIRP) of OP-2 which was admitted by NCLT *vide* its order dated 25.03.2018.



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8. OP-1 enjoys dominance on the east coast and west coast, *i.e.* within the territories of States of Gujarat, Goa, Kerala, Tamil Nadu, Andhra Pradesh and Odisha but does not have any port in the State of Maharashtra. Thus, allegedly with an intent to further extend its dominance on the western coast, OP-1, as a resolution applicant, proposed a resolution plan for acquisition of OP-2 in the said NCLT proceedings. According to the Informant, with the acquisition of OP-2, OP-1 would '*dominate pricing, create unfair competition, create monopolistic environment*' which would in turn cause an adverse effect on competition in the relevant market in violation of the provisions of the Act.
9. Despite being aware that OP-1 is a dominant player, OP-4, allegedly, with the assistance of OP-3 approved the resolution plan of OP-1 without subjecting its approval to sanction, permission and/or intimation to the Commission. It is alleged that the proposed resolution plan and/or arrangement agreed upon between OP-1 and OP-4 would further increase OP-1's dominance and by virtue of its position or control, OP-1 would dominate the port segment, prejudice the interest/welfare of the consumer and end-users. The dominant position of OP-1 has already affected various government run-ports in other states and the said acquisition would further enhance and substantiate the dominant position of OP-1 which would eliminate the fair competition in the relevant sector. Therefore, the said action of taking over of OP-2 by OP-1 would '*cause or abet commission*' of abuse of dominant position by OP-1 within the meaning of the provisions of Section 4 (2) of the Act.
10. It is stated by the Informant that the resolution plan of OP-1 was approved by NCLT *vide* its order dated 05.03.2020 and confirmed by the Hon'ble NCLAT on 24.07.2020.
11. Moreover, it is alleged that the resolution plan is contrary to the object of the Act which OP-1 is in the process of implementing without the required sanction, permission and/or intimation to the Commission. The same is likely to cause an appreciable adverse effect on competition and affect consumers' interests. The Informant states that Section 31(4) of the I&B Code is mandatory in nature for obtaining the necessary approval required under any law for the time being in



force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority (NCLT) under sub-section (1) or within such period as provided for in such law, whichever is later.

12. Based on the above, the Informant has, thus, alleged that OP-1's resolution plan is *inter alia* violative of the provisions of Section 3(1) of the Act and thus, void and illegal under Section 3(2) of the Act. OP-1's resolution plan, with the assistance of OP-3 and OP-4, would '*enhance and substantiate*' OP-1's dominant position in the port sector/segment and would enable it to operate independently of competitive forces, in turn adversely affecting the interest of the competitors and end users. This is, thus, *ex facie* illegal and is an abuse of the dominant position in terms of the provisions of Section 4 of the Act. The Informant has further stated that the balance of convenience lies in favour of the Informant.

Reliefs Sought

13. Accordingly, the Informant has prayed for the following reliefs as under:
- a) To hold an enquiry into the arrangement/resolution plan of acquiring OP-2 by OP-1, *inter alia*, including the enquiry into the appreciable adverse impact the resolution plan would have on competition and market forces in the relevant market post acquisition;
 - b) To provide a copy of the report and/or findings undertaken in terms of the above;
 - c) If the findings of enquiry in terms of above reveals that the acquisition of OP-2 is in contravention of the provisions of the Act, the Hon'ble Commission take action against OP-1 in accordance with the Act;
 - d) OP-1, OP-3 and OP-4 be restrained and be ordered to cease and desist from implementing the resolution plan;
 - e) That the resolution plan of OP-1 along with the act of its implementation be declared anti-competitive, null and void as per Section 3 of the Act;
 - f) A declaration that OP-1, OP-3 and OP-4 have violated Section 4 of the Act and appropriate fine/penalty be imposed accordingly;
 - g) Pending the hearing and disposal of this complaint the Hon'ble Commission may pass an *ex parte* ad interim orders in terms of Section



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33 of the Act restraining OP-1, OP-3 and OP-4 from implementing the resolution plan, thereby, restrain the dominant position being created as prohibited under the Act, until the enquiry is complete in term of prayer above and/or appropriate orders be passed.

14. The Commission considered the information in its ordinary meeting held on 12.02.2021 and decided to pass an appropriate order in due course.
15. Subsequently, the Informant filed a letter dated 20.02.2021 alongwith a news release of OP-2 and a news report indicating that APSEZ/OP-1 has completed acquisition of OP-2. The Informant reiterated its submissions and stated that APSEZ/OP-1 which is already the largest port operator in India would dominate the port segment and prejudice the interest/welfare of the consumers and end users. The Informant further stated that the said acquisition is contrary to the provisions of Sections 3 and 4 read with Section 19(1)(a) of the Act and thus, prayed for *ad interim* injunction against the said acquisition.
16. The Commission perused the information on record. The Commission notes that the resolution plan has been approved by the NCLT and confirmed by the Hon'ble NCLAT. Moreover, the Commission, while perusing the order dated 24.07.2020, available on record, passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 466 of 2020 *Mr. Vishal Vijay Kalantri v. Mr. Shailen Shah (Resolution Professional of Dighi Port Limited) & Others*, also notes that a submission was made before the Hon'ble NCLAT in the said proceedings that "*obtaining of requisite approval under Competition Act, 2002 with regard to the provision of the Combination in the instant case is stated to be not required as the same is below threshold limit*".
17. Insofar as the allegations of the Informant as to the contravention of the provisions of Section 4 of the Act are concerned, the Commission observes that even if the contention of the Informant is accepted that APSEZ/OP-1 has increased its dominance, the mere existence of dominance bereft of any abusive conduct under the provisions of Section 4 of the Act, cannot be held to be the basis to order an investigation. There is neither any allegation nor any evidence



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of abusive conduct under Section 4(2) of the Act before the Commission, at this stage. Post-facto, if any matter of abusive conduct under Section 4 of the Act is brought to the notice of the Commission, the same may be looked into at that stage in terms of the provisions of the Act. Further the allegations being misconceived, as such no case under Section 3 of the Act is also maintainable before the Commission.

18. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case under the provisions of Sections 3 and 4 of the Act and the information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises and the same is also rejected.
19. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 24/03/2021