



सत्यमेव जयते



COMPETITION COMMISSION OF INDIA

Case No. 04 of 2022

In Re:

Swastik Road Carrier

Proprietor: Mr. Jagdish Prasad Mittal
Hall No - 1, 1st Floor, Chittod Complex Zone – 1
M. P. Nagar, Bhopal – 462 011
Madhya Pradesh.

Informant

And

Central Railside Warehouse Company Limited

Warehousing Bhawan, 4/1 Siri Institutional Area
August Kranti Marg, Hauz Khas
New Delhi – 110 016.

Opposite Party

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by Mr. Jagdish Prasad Mittal (“**Informant**”) on 12.01.2022 under Section 19(1)(a) of the Competition Act, 2002 (“**the Act**”) against Central Railside Warehouse Company Limited (“**OP**”/ “**CRWC**”), alleging contravention of the provisions of the Act.
2. Facts, as gathered from the Information and the documents annexed therewith, are noted in the succeeding paragraphs.



सत्यमेव जयते



3. The Informant is stated to be the sole proprietor of a proprietorship firm, viz., Swastik Road Carrier, based out of Bhopal, Madhya Pradesh.
4. The OP is a Government of India enterprise, incorporated for the purposes of planning, developing, promoting, and acquiring railside warehousing complexes/terminals/multimodal logistics hubs on land leased or acquired from Indian Railways, and is stated to provide state-of-the-art warehousing facilities and competitive modes of handling and transportation facilities of cargo. For provision of the said facilities, OP issues various Notice Inviting Tenders (NIT) and invites bidders to undertake the projects/services all over India.
5. The Informant has stated that a tender bearing No. CRWCII/RWC-Nishatpura/H&T tender 2021-22/0691 was floated by the OP for appointment of a service provider for the purpose of handling rail/road borne cargo at a railside warehouse complex located at Nishatpura, Bhopal, Madhya Pradesh. The NIT in the impugned tender was issued on 17.06.2021 by the OP on its portal.
6. The Informant has averred that the bid submitted by the Informant for the said tender was rejected by the OP citing “conflict of interest” clause, whereunder the OP has the right to reject a bid if the bidder is engaged in the same line of business as that of the OP.
7. Subsequently, on 05.08.2021, a new NIT was published by the OP, incorporating a condition that the OP has a right to reject the bid of a bidder if the bidder is running a similar line of business as that of the OP such as the business of operating Private Freight Terminal (PFT), etc., in the region. Further, the NIT provided that in case of breach of the said condition, the tenderer shall be disqualified/blacklisted for the next three (3) years from participating in any tender floated by the OP. As per the Informant, such a condition has been drafted solely to disqualify the Informant in an arbitrary manner to unduly enrich other parties and thereby create a monopoly system.



सत्यमेव जयते



8. The Informant is also stated to have approached various authorities regarding the impugned tender and requested them to direct the OP to invite fresh bids and cancel the existing tender. Additionally, the Informant has also raised the issue of corruption in the impugned tender floated by the OP.
9. After considering the Information, the Commission, *vide* its order dated 08.02.2022 decided to forward a copy thereof to the OP with a direction to file its reply thereto alongwith details of the players who are operating in the similar business and associated activities like that of the OP in the concerned region as well as those who are operating at State/ Pan-India level. The OP was further directed to clarify as to whether the bidders who participate in its tenders for procuring handling services, hail from local region or from far-off places in the State/ All India level.
10. The OP in its reply *inter alia* provided an illustrative list of some of the Private Freight Terminal Operators operating in similar business as that of OP. Further, OP stated that bidders who participate in the tender for providing handling services hail from local as well as from far-off places in the State and All India Level.
11. The Informant, despite grant of opportunities, did not file any response to the aforesaid reply of the OP.
12. Accordingly, the Commission considered the matter on the basis of material available on record and decided to pass an appropriate order in due course.
13. On perusal of the Information, the Commission observes that the Informant is primarily aggrieved by the conduct of OP in disqualifying and rejecting its bid in the first tender on the ground of “conflict of interest” and thereafter again providing for disqualification of bidders on ‘Conflict of Interest’ basis and further providing for disqualification/ blacklisting for next three years in case of breach of such condition.
14. The Commission has perused the conditions provided in the NIT dated 05.08.2021 and is of the opinion that term enabling the OP to disqualify bidders due to “conflict



सत्यमेव जयते



of interest”, does not appear to be unfair or anti-competitive in any manner. The Informant itself has enclosed a copy of the letter dated 01.10.2021 written by CMD of OP wherein the rationale for such term has been clearly spelt out. The letter clearly states that “...*there were various instances wherein warehouses had diverted the customers of CRWC for their own benefit, thereby causing business loss to CRWC and Railways as well*”. In fact, a cursory search of information available in public domain reveals that such/similar clauses/conditions are found in the tenders floated by other procurers of services as well.¹

15. Even otherwise, from the reply of OP, it appears that there are several players who are operating in business similar to that of OP and the bidders who participate in the tenders for providing handling services hail from local as well as from far-off places in the state/ All India level. Accordingly, from the reply, there appears to be many such players who procure similar services and there also seems to be a number of players bidding for providing such services on Pan India as well as regional basis. In this market construct, OP does not appear to command any market power and as such the issue of abuse of dominance does not arise.
16. The Commission also deems it appropriate to reiterate that a procurer, as a consumer, can stipulate certain technical specifications/ conditions/ clauses in the tender document as per its requirements which by themselves cannot be deemed anti-competitive if the same appear to be commercially justifiable. It is, however, made clear that if any stipulation made by dominant procurer is found to be unfair or anti-competitive in any manner, appropriate action against such procurer can be initiated as per the scheme of the Act.
17. Further, as brought out *supra*, in the instant matter, the impugned clause of the NIT does not appear to contravene the provisions of the Act.

¹ https://cewacor.nic.in/Docs/TendersArchive/Tender_Archive-2020-21/CoalRoadTender.pdf



सत्यमेव जयते



18. In light of the above, the Commission finds that no case is made out against the OP in the instant matter. Accordingly, the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
19. The Secretary is directed to communicate to the Parties, accordingly

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 02/05/2022

New Delhi