



**COMPETITION COMMISSION OF INDIA**

**Case No. 08 of 2014**

**In Re:**

**M/s GHCL Limited**

**Informant**

**And**

**1. M/s Coal India Limited**

**Opposite Party No. 1**

**2. M/s Western Coalfields Limited**

**Opposite Party No. 2**

**CORAM**

**Dr. Geeta Gouri  
Member**

**Mr. Anurag Goel  
Member**

**Mr. M. L. Tayal  
Member**

**Mr. S. L. Bunker  
Member**

**Order under section 26(1) of the Competition Act, 2002**

The present information has been filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by M/s GHCL Limited ('the informant') against M/s Coal India Limited ('the opposite party No. 1'/CIL) and M/s Western Coalfields Limited ('the opposite party No. 2'/WCL) alleging *inter alia* contravention of the provisions of section 4 of the Act.



2. The informant is a company incorporated under the Companies Act, 1956 and is *inter alia* stated to be engaged in the business of manufacture and sale of soda ash, a basic industrial raw-material predominantly used in manufacture of glass (flat/ container), detergent, chemicals, silicates and a host of other basic chemicals. The informant commenced its commercial production of soda ash in 1986 at its manufacturing facility at Sutrapada, Distt. Somnath Gir (earlier in Junagadh District) in the State of Gujarat.

3. It is stated in the information that the informant, which requires coal for running its captive power plant, was issued with a Letter of Assurance No. NGP/WCL/S&M/C-12(348-B)/798 dated 07/08.06.2010 (LOA) by the opposite party No. 2 calling upon the informant to fulfil various conditions precedent to enable the opposite party No. 2 to enter into a Coal/ Fuel Supply Agreement (FSA) dated 08.11.2012 with the informant for supply of coal. It is stated that LOA, apart from the usual conditions precedent of requiring the informant to obtain all requisite approvals and permissions, under Para 3.1 required the informant to furnish a commitment guarantee in the form of a bank guarantee for a sum of Rs. 1,00,38,900/- (Rupees One Crore Thirty Eight Thousands only) equivalent to 10% of the base price of indigenous coal as on the date of application for issue of LOA. In compliance thereof, the informant issued the commitment guarantee as stipulated above and also complied with all the conditions precedent stipulated under LOA. The said commitment bank guarantee issued by IDBI Bank Ltd., Ahmedabad was enhanced and renewed from time to time as required by the opposite party No.2. The informant, which was eager to commence purchase of coal from the opposite parties, wrote to the opposite party No.2 on 11.09.2012 informing the opposite party No.2 about compliance with the conditions precedent to LOA and calling upon them to approve FSA. Immediately upon receipt of the said letter, the opposite party No.2 replied the same day stating: *“The signing of FSA in respect of LOA issued to GHCL Ltd., vide letter No. NGP/WCL/S&M/C-12(348-B)/798 dt.07/08.06.2010 shall be executed after receipt of certain clarification sought from MOC/CIL. However, bank guarantee submitted towards Commitment*



*Guarantee and additional Commitment Guarantee are expiring in Oct 2012 and requires to be extended. You are therefore requested to kindly extend the validity of the Bank Guarantee submitted towards Commitment Guarantee, failing which, WCL shall have no option to encash the Bank Guarantee.”*

4. It is alleged that a plain reading of the said letter clearly demonstrates that the opposite parties had coerced the informant into extending the commitment guarantee issued by the informant by threatening to encash the commitment bank guarantee even though there was no default or failure on the part of the informant. The informant replied to the said letter dated 12.09.2012 on 04.10.2012 explaining its position and also complied with the unreasonable demand of the opposite party No.2 for the extension of the commitment guarantee to avoid the encashment thereof.

5. It is the case of the informant that upon compliance with the conditions precedent and meeting even the unreasonable demands of the opposite party No.2 for extension of commitment guarantee, the informant was provided a model draft of FSA for its approval. Since, there were a few clauses in the said FSA which were absolutely one sided, the informant requested the opposite party No. 2 to redraft the said clauses to make it more balanced. However, the opposite party No. 2 made it clear to the informant that these are standard terms of supply of coal by opposite party No. 2 and as such the terms and conditions of FSA were not negotiable and that any delay or failure to execute FSA within the stipulated time period would result in the opposite party invoking the bank guarantee issued by the informant. Being left with no alternative, the informant sent its duly authorized representative to execute FSA, which was mandatory for commencing supply of coal under the Coal Distribution Policy, 2007 ('the Policy').

6. Accordingly, it is averred that the informant sent its duly authorized representative only to be given to understand that the informant will have to execute a Memorandum of Understanding (MOU) along with FSA. Since,



there was no whisper about this requirement and further as the terms and conditions of the said MOU were absolutely one-sided and loaded against the informant, the duly authorized representative of the informant expressed his inability to execute such a one-sided MOU without obtaining clearance from the informant. It is alleged that a plain reading of MOU would clearly establish that the conditions relating to quantity and quality of coal to be supplied under the FSA were diluted.

7. It is alleged that upon hearing the response of the duly authorized representative of the informant, the opposite party No.2 referred to Para 3.4.2 of LOA and threatened to encash the commitment bank guarantee furnished by the informant if the duly authorized representative of the informant refused to execute MOU alongwith FSA.

8. The informant is aggrieved by the fact that the opposite party No.2 instead of executing FSA as required under the Policy of 2007 required the informant to execute an MOU which had the effect of diluting the terms and conditions of the FSA on issues like quality control, grade failure, short supply, joint sampling *etc.*, which are the material terms and conditions of supply of coal under the agreement.

9. Based on the above averments and allegations, the informant has filed the instant information before the Commission.

10. From the information, it appears that the informant company *inter alia* is engaged in the business of manufacture and sale of soda ash and requires coal for running its captive power plant. Further, the informant appears to be aggrieved by the conduct of the opposite parties in requiring the informant to sign MOU and addendum to FSA, the effect of which is stated to dilute the conditions relating to quantity and quality of coal to be supplied as provided under FSA. Besides, it is alleged that the terms of FSA are also abusive being one-sided.



11. On a careful perusal of the information and the documents filed therewith, it appears that the informant is essentially aggrieved by the following acts and conduct of the opposite parties:

(a) The opposite parties have abused their dominance by dictating the terms and conditions of supply of coal through LOA, FSA, MOU and the Addendum to FSA by imposing such one-sided onerous conditions upon the buyers without seeking, much less considering, the inputs of the power producers and have thus acted independent of the market forces.

(b) The clause relating to Deemed Delivered Quantity in FSA was fully loaded against the informant and gave undue leverage to opposite parties to evade and avoid their liability for short supply.

(c) The terms and conditions of supply were not as mandated under the Coal Distribution Policy, 2007. LOA, FSA and MOU, which the informant was asked to execute did not address all aspects of supply like quality control, grade failure, short supply, joint sampling *etc.*, and these were not detailed/ enumerated in clear terms and conditions.

(d) The opposite parties have not been able to honour their contractual commitments/obligations with regard to the annual contracted quantity to consumers who were issued LOAs and have executed FSAs/MOUs pursuant thereto.

(e) Inferior quality of the coal supplied by the opposite party No.2 caused severe operational and maintenance problems apart from forcing the informant to purchase quality coal from alternate sources.

(f) By taking advantage of their dominant position, the opposite parties have not only diverted the coal agreed to be sold through LOA/FSA route to the e-auction purchasers and thereby deprived the consumers like the informant of



the annual contracted quantity of coal but, have also failed to improve their infrastructure to increase their coal production to meet the annual contracted demands of their consumers thereby forcing these consumers to import coal from alternate sources to meet their energy needs.

12. It may be pointed out that the Commission in the cases of *M/s Maharashtra State Power Generation Company Ltd. v. M/s Mahanadi Coalfields Ltd. & Ors.*, Case No. 03 of 2012, *M/s Maharashtra State Power Generation Company Ltd. v. M/s Western Coalfields Ltd. & Ors.*, Case No. 11 of 2012 and *M/s Gujarat State Electricity Corporation Limited v. M/s South Eastern Coalfields Ltd. & Ors.*, Case No. 59 of 2012 *vide* its order dated 09.12.2013 against CIL and its subsidiaries in the context of similar facts and allegations defined the relevant market as production and sale of non-coking coal to the thermal power producers in India. As the allegations in the present case also have been made by the informant in the context of requirement of coal for its captive power plant, the relevant market in this case would also be on the similar lines.

13. Furthermore, the Commission *vide* its aforesaid order has held CIL and its subsidiaries to be in a dominant position in the said relevant market.

14. Taking into account the averments and the allegations made by the informant, the Commission is of *prima facie* view that the opposite parties appear to have contravened the provisions of section 4(2)(a) (i) of the Act by imposing unfair terms and conditions upon the informant, as noted and detailed above.

15. Accordingly, the Commission directs the Director General (DG) to cause an investigation to be made into the matter and to complete the investigation within a period of 60 days from receipt of this order.



16. The DG is also directed to investigate the role (if any) of the persons who were in charge of, and were responsible to the companies for the conduct of the businesses of such companies, after giving due opportunity of hearing to such persons.

17. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observations made herein.

18. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.

**Sd/-  
(Geeta Gouri)  
Member**

**Sd/-  
(Anurag Goel)  
Member**

**Sd/-  
(M. L. Tayal)  
Member**

**Sd/-  
(S. L. Bunker)  
Member**

New Delhi

Date: 11/03/2014