



In Re:

Association of Indian Mini Blast Furnaces
Through Sh. R. K. Kapoor,
President/Authorised Representative
701, Surya Kiran, 19, KG Marg,
New Delhi - 110001

Informant

And

National Mineral Development Corporation Limited
Khanij Bhawan, Masab Tank,
Hyderabad - 500028, India

Opposite Party

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice S. N. Dhingra (Retd.)
Member

Mr. S. L. Bunker
Member

Present: Ms. Surbhi Mehta, Advocate for the Informant.

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

The present information was filed by Association of Indian Mini Blasts Furnaces (hereinafter referred to as '**Informant**'), seeking inquiry under Section 19(1)(a) of the Competition Act, 2002, (hereinafter referred to as the **Act**) alleging abuse of dominance by National Mineral Development Corporation Limited (hereinafter referred to as the **Opposite Party/OP**), with respect to its mining



activities and production of iron-ore in State of Karnataka. The informant represents the interests of Steel/pig iron manufacturers in Karnataka, i.e. the industries engaged in production of steel/pig iron and other associate products through blast furnace procedure. The members of the Informant association are primary consumers of the iron-ore produced/excavated by the OP from its mines. The OP is a fully owned public enterprise and is under the administrative control of the Ministry of Steel, Government of India. The Informant has alleged that OP was engaged in exploration and production of minerals in the states of Chhattisgarh and Karnataka and was the single largest producer and supplier of iron ore in the country.

2. The Informant alleged that the OP got exclusivity/monopoly in iron ore mining due to a Supreme Court order dated 05, August, 2011, in *Samaj Parivartan Samudaya & Ors. vs. State of Karnataka and Ors.*, (Writ Petition (Civil) No. 562 of 2009), by which the previous ban imposed on all mining activities in Bellary district was relaxed, permitting only the OP to exclusively resume and continue its mining activities in its 2 mines and sell the produce/output in Karnataka and adjoining regions through e-auction. The stockpile of 25 million tonnes, extracted before the ban was imposed, and lying with the closed mines, was allowed to be sold under the supervision of Supreme Court appointed Monitoring Committee i.e. Centre Empowered Committee. The OP abused this monopolistic situation.
3. The informant stated that to ensure supply of iron-ore to industrial consumers, Supreme Court further directed that iron-ore from NMDC and non-NMDC mines be made available to industrial consumers to the tune of 1 million tonnes and 1.5 million tonnes per month respectively. The price of iron-ore from non-NMDC mines was to be determined by Monitoring Committee, whereas OP was free to determine and fix the price of iron-ore produced from its mines. The Centre Empowered Committee, appointed by the Supreme Court, surveyed and inspected all iron-ore mines and categorized them into 3



categories, A, B and C. The Supreme Court through its order dated 13.04.2012, permitted 18 category A mines to resume operations, but only 4 of these mines resumed operations by December 2012/January 2013, producing 1.96 million tonnes per annum, as against the requirement of 25 lakh tonnes per month. As such, since August 2011, OP was enjoying exclusive privilege of carrying out mining operations in the State of Karnataka.

4. The Informant contended that after the removal of ban by Supreme Court, the total market share of OP as supplier of iron-ore increased from 29.43% to 61.54% and share of iron ore lumps increased from 44.76% to 96.39% within a period of one year. Apart from the dominant position enjoyed by OP in the relevant market, the OP also enjoyed a major market share of 36% in 2010-11 and 40.30% in 2011-12, in India. The informant further highlighted that operating margins of OP increased massively in the financial years 2010-11 and 2011-12 and reached 74.98% and 78.13% respectively. These were higher by 36% and 35% compared to the nearest company.

5. It is alleged by the Informant that the OP adopted arbitrary and excessive pricing mechanism. As per the Supreme Court order dated 02.12.2011, the OP was given liberty to fix its prices, however, it was constantly changing the basis adopted for determining the prices to maximise its profits. The OP had previously adopted 'Net Back Calculation Pricing Mechanism' on basis of which prices were determined with reference to international prices prevailing in export market but later prices were adopted on the basis of demand and supply difference without any consultation with the Informant. Due to the discriminatory pricing adopted by OP, industrial users could not purchase the iron-ore and as a result almost 90% of stock, remained unsold in e-auctions. Further, during April-June 2012, OP increased prices of iron-ore even when there was no change in prices in the international market. In August, 2012, OP increased the prices, when on the contrary, prices had fallen down in the international market. The



difference between prices of lumps and fines offered by the OP was much higher compared to the difference between the price of lumps and fines in international markets. The Informant had also brought forth the huge differences between the base prices with respect to 62% Fe Iron-ore, fixed by the OP and prices fixed by the SC Committee (CEC), indicating differences of 20.6% in January 2012 which rose to 50.2% by December 2012.

6. Subsequent to relaxing of ban on mining by the Supreme Court by order dated 05.08.2011, the OP was offering iron-ore through e-auction, under '*as is where is*' basis, irrespective of the guaranteed physical and chemical specifications of 65% iron content, 5.5% for both alumina and silica, 0.08% for phosphorus and 0.05% for sulphur, for lumps measuring between 6-30 mm. Industrial consumers were forced to buy iron-ore lumps with low iron content and more impurities and moisture, which affected the productivity of the industrial consumers and increased the costs.
7. Based on the above said allegations, informant contended that OP was a dominant player in the relevant market and was adopting unfair pricing mechanism, amounting to violation of section 4(2)(a)(i) and section 4(2)(a)(ii) of the Act.
8. The Commission considered the information, facts and data placed on record by the Informant. For evaluating the allegations of the informant regarding section 4 of the Act, the relevant market is to be considered as per section 2(r) read with section 19(5) of the Act. The relevant market comprises of the relevant product market and relevant geographical market. The relevant product market proposed by the Informant was 'iron ore lumps in size of 10 mm to 40 mm.' The Informant further bifurcated the relevant market into two-tiers, one tier comprising of non-NMDC iron ore and the other comprising of NMDC iron ore in Karnataka region.



9. As per information obtained from public domain¹, over the years, there has been a change in the nature of raw material used in blast furnace industries i.e. from a totally lump oriented feed towards use of higher sinter and pellet. As such, the requirement of fines has gone up considerably and more emphasis is placed on enriching quality of iron ore fines through technology. Further, low grade iron ore can also be used by the blast furnaces by incurring some additional costs on processing the lumps. Hence, the relevant product in the present case cannot be limited to iron-ore lumps of 10 mm to 40 mm because iron ore lumps, iron ore pellets and iron ore fines of different sizes and quality in terms of purity, moisture content etc. are easily substitutable as raw material for industrial consumers. The relevant product market appears to be much wider than the market delineated by the Informant. As such, relevant product market in this case would be ‘production/supply of iron ore.’
10. Iron ore mining activities in India are spread over in States of Karnataka, Goa, Chhattisgarh, Jharkhand, Orissa, Maharashtra, Andhra Pradesh, Madhya Pradesh and Rajasthan of which Karnataka, Goa, Chhattisgarh, Jharkhand and Orissa contributing to 98% of the total iron ore production of country. Industrial consumers of iron ore are located in close proximity of iron ore mines to ensure that minimum costs are incurred on transportation of iron ore to the industries. In the present case, the relevant geographical market would be State of Karnataka, because transporting iron ore from other states would involve heavy transportation costs. It is therefore, not economically viable for industrial consumers in State of Karnataka to purchase iron ore from other states and vice versa. Thus, the relevant geographical market in the present case would be ‘geographic region of Karnataka.’

¹ Indian Bureau of Mines, www.ibm.nic.in



11. In view of the above discussion, the Commission is of the view that relevant market in the present case would be market of 'production/supply of iron ore in the State of Karnataka'.

12. As regards the contention of the Informant that OP has adopted unfair pricing mechanism, the Commission in Case No. 69/2012, Sponge Iron Manufacturers Association vs. National Mineral Development Corporation and Ors., while considering the issue of dominance by the OP, had observed that OP held only 16% of the market share in India 2011-12 and is not dominant in the relevant market. As per a recent press release by Ministry of Steel, Government of India, published in May, 2013, during the years 2011-12 and 2012-13, OP produced 26.91 and 24.67 million tonnes of iron ore, amounting to about 16% of total iron ore production in India. However, there is no specific information in the public domain to highlight the market share of OP in region of Karnataka. The figures regarding market share of OP, operating margins etc. do not appear to be of much credence as no source of the same has been given. Even though it may be assumed that the OP was dominant in the State of Karnataka, there was nothing in the public domain to *prima facie* lead to the inference that OP was abusing its dominance.

13. The relevance of determining relevant market and dominance of an enterprise is only necessary in free markets. Since, in this case, the mining activities were being done as per the orders of the Supreme Court and pricing was looked after by another Committee, determination of relevant market may not be appropriate. Most of the actions of the OP stated in the information were in pursuance of the order of the Hon'ble Supreme Court. The Supreme Court had banned mining in District Bellary and extended such ban to Districts of Chitradurg and Tumkuru by its orders of July, 2011 etc. Thereafter, Supreme Court, *vide* its order dated 05.08.2011 permitted resumption of mining operations of OP 1's Kumaraswamy and Donimalai Mines alone. Further, the Supreme Court made it mandatory that the entire



production of OP 1 from the State of Karnataka should be sold only by way of e-auction. The Supreme Court banned the supply of iron ore by OP 1 even to its long term customers under the then existing long term contracts. Thus, OP 1 was producing iron ore in the State of Karnataka under the orders of the Supreme Court, and, neither it was selling nor fixing the sale price of iron ore in the State of Karnataka of its own. Thus, all the actions of OP 1 in so far as it pertained to State of Karnataka were in compliance of the orders of the Supreme Court.

14. It is also significant to mention herein that Supreme Court has dealt with the pricing policy decisions of OP and has categorically passed an order stating that the fixation of basic price by OP was transparent and did not require any interference. The Supreme Court directed the Central Empowered Committee to monitor the prices adopted by OP and have discussions with OP for any change thereof. The Central Empowered Committee was of the view that the pricing mechanism adopted by OP in fixing of basic price need not be interfered with. Besides, based on the changes in Government policy and iron ore trade dynamics, OP had also been changing its pricing policy from time-to-time. Since the international market shifted to fixing the prices on quarterly basis, instead of annual system prevalent till 2009-10, OP also started fixing prices for its domestic long-term customers on quarterly basis with effect from April, 2010 along with export contracts. Every enterprise is free to undertake such prudent and sound commercial decisions to survive in a dynamic business environment and such changes *prima facie* do not raise competitive concerns.
15. In view of the above discussion, there does not exist a *prima facie* case for causing an investigation to be made by the Director General under section 26(1) of the Act. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.
16. The Secretary is directed to inform the parties accordingly.



New Delhi
Date 03/10/2013

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Anurag Goel)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. N. Dhingra)
Member

Sd/-
(S. L. Bunker)
Member