



(Case No. 23 of 2013)

In Re:

M/s Dipak Nath, Sivasagra, Assam

Informant

Phukan nagar, Sivasagar-785640, Assam

And

M/s Oil and Natural Gas Corporation Ltd., New Delhi.

Opposite Party No.1

Jeevan Bharti Tower-II, 124, Connaught Circus, New Delhi

The General Manager, Corporate Material Management Department,

Opposite Party No.2

ONGC, IDT Campus, Kaulagarh Road, Dehradun-248003

CORAM:

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M. L. Tayal  
Member

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

Mr. S.L. Bunker  
Member

Present: Mr. Subodh Pathak, Advocate for the Informant.



**ORDER UNDER SECTION 26 (2) OF THE COMPETITION ACT, 2002**

The Informant is stated to be a registered partnership firm, engaged in the business of civil and transport contractor. The Informant is also a registered vendor of ONGC for supplying various kinds of cranes to ONGC on hire.

2. As per the information given to the Commission u/s 19 (1) (a) of the Competition Act, 2002, OP was hiring the services of the various kinds of cranes of the Informant since 2000 through the process of tenders. During the month of December, 2012, OP issued a notice inviting bids under two bids system from domestic bidders for hiring of 174 nos. of hydraulic cranes for the onshore deployment at various work centers of OP within the country for a period of 3 years. For North Eastern Sector, which included Assam, Tripura and West Bengal, bids were invited for 71 cranes [Jorhat/ Sivasagra/ Silchar, (Assam) - 56, Agartala (Tripura) - 6 & Kolkata/ Bokaro (W.B) - 7].

3. The Informant submitted that he was engaged in the North Eastern Sector and had been providing services to OP in the past. However the OP prescribed an eligibility criteria in the bid tender of December, 2012 that a bidder must own minimum 4 nos. of cranes and submit his bids for minimum of 7 nos. of cranes for the same sector (Agartala/Kolkata/Bokaro). The bidders were free to submit bids for one or more sectors. The Informant was aggrieved with the aforesaid condition and had also shown his resentment at the pre-bid conference and asked the OP for equalizing eligibility criteria for all sectors and requested to modify the criteria to owning of three cranes and offering of minimum three cranes.

4. The Informant alleged that the conduct of OP in imposing unfair and discriminatory condition in the purchase of services, was abusive in nature and was in violation of the provisions of Section 4(2) of the Act.



5. The Commission considered the matter and heard the counsel for the informant at length.
6. In order to examine the allegations of the informant relating to abuse of dominant position, first the relevant market is to be defined. The Commission is of the view that the relevant product market in this case would be the market of *'hiring of hydraulic cranes.'* From the end user's point of view, the service of *hydraulic cranes* was not substitutable with other types of light cranes. Thus, *prima facie*, the relevant product market in this case would be *'hiring of hydraulic cranes.'* The relevant geographic market in this case appears to be the north eastern region of India including the state of West Bengal. The condition of competition for providing hydraulic cranes on hiring basis in north eastern region is distinct from the other neighbouring areas because of the distance and peculiar features of the north eastern region from the rest of India. Moreover, the relevant product in question cannot be transported easily and economically to north eastern region from other regions where these products are required by OP. Also, it is not economically viable for an owner of hydraulic cranes located in other parts of the country to provide the services to OP in north eastern region. Thus, the Commission is of the view that the relevant geographic market in the present case would be the North Eastern Region of India. Hence, considering the relevant product market and relevant geographic market as stated above, the relevant market in the present case would be *"the market for hiring of hydraulic crane in the North Eastern Region of India including the State of West Bengal."*
7. Further the dominance of the enterprise needs to be examined in terms of explanation (a) to section 4 of the Act keeping in view the factors mentioned under section 19(4). The informant in the information merely averred that the OP abused its dominant position, without alleging that the OP enjoyed a dominant position in the relevant market. However, as per the information available in public domain, the OP, *prima facie*, does not appear to be in dominant position because hydraulic cranes are hired in large scale not only by the other oil and gas exploration companies operating in the region but also by the public and private sectors companies engaged in various other activities, such as construction, transportation. Thus, there are large numbers of enterprises operating in *North Eastern region of India* which hire hydraulic cranes. So, the OP does not appear to be a dominant procurer of hydraulic cranes on hiring.



8. From the above, it is observed that a number of service procurer are easily available to the service providers in the relevant market as per their choices/ preferences.

9. In view of the above market construct, *prima facie* OP is not dominant in the relevant market for “hiring of hydraulic crane in the North Eastern Region of India including the State of West Bengal.” As such, dominance of OP in the relevant market is *prima facie* not in existence and so there is no question of abuse of the same.

10. Moreover in an earlier case before this Commission, *CSR Nanjing Puzhen Co. Ltd. Vs Kolkata Metro Rail Corporation Ltd* (Case No. 54 of 2010), it was held that tender conditions cannot be termed as discriminatory or unfair just because the informant was unable to meet those conditions. The conditions can vary according to specific requirement of a particular tender having regard to local conditions obtaining therein. Thus the impugned conditions not being unfair or discriminatory cannot be said to be abusive.

11. On the issue of applicability of section 3 of the Act, *prima facie*, there is no case of bid rigging in the present matter. Although the Informant submitted that in response to the tender dated 01.03.2012 of ONGC all the bidders had colluded to rig the bid but the same was later cancelled by OP. The Informant had also not submitted any evidence of bid rigging with respect to the earlier tender or the latest tender of the OP wherein the alleged unfair and discriminatory terms and conditions are incorporated. Thus, *prima facie*, no case is made out under Section 3 (3) of the Act.

12. In view of the foregoing, the Commission finds that no *prima facie* case is made out against OP. The Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.



13. The Secretary is directed to inform the parties accordingly.

New Delhi

Date: 05.07.2013

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(Dr. Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member

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