



COMPETITION COMMISSION OF INDIA

Case No. 24 of 2020

In Re:

M/s Dhiraj Gupta
18, Samaspur Jageer,
Delhi – 110 091.

...Informant

And

Delhi Metro Rail Corporation Limited
5th Floor, C- Wing, Metro Bhawan,
Fire Brigade Lane, Barakhamba Road,
New Delhi – 110 001.

...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 M/s Dhiraj Gupta ('Informant') under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') against Delhi Metro Rail Corporation Ltd. ('DMRC') (Opposite Party/ OP) alleging abuse of dominant position in contravention of the provisions of Section 4 of the Act.
2. As per Information, the Informant is a sole proprietorship firm run by the Proprietor *i.e.*, Shri Dhiraj Gupta. It is stated that OP had invited bids for licensing of parking rights at Kashmere Gate, Kanhaiya Nagar and Shastri Nagar Metro Stations of Line 1 of DMRC by notification DMRC/Tender(O&M)/OPR-417/2019/455/1334 dated 01.02.2019



(hereinafter 'Contract'). After qualifying the technical bid and financial bid for the Contract, a Letter of Acceptance (LOA) was issued by OP reminding the obligations of the Informant as per the terms of the Contract.

3. It is stated that the area allotted for parking, is in three pieces, with a net existing parking area of 5084.0 square metres and a net proposed parking area of 3183.47 square metres. The calculation of area is alleged to be in violation of sub clause 2.3 of the Contract.
4. It is contended that actual area available for parking is much less than the allotted area of parking due various reasons. The floor of the parking lots is in rough condition because of which parking lots usually remain vacant. It is further alleged that OP postponed all obligations under the Contract but has never refused to accept the monthly license fee which was being deposited regularly.
5. It is alleged that the illegal parking agents of Shri Jagtar Singh, who operate the nearby parking area (Sukha Ped) with the help of corrupt officials of New Delhi Municipal Council (NDMC) and local Kashmere Gate Police Station, SHO are causing problems by way of complaints, threats and actions restricting the usage 3183.47 square metres of proposed parking area of OP, by the Informant. Further, it is alleged that NDMC has been causing problems by imposing garbage fine on the Informant whereas it is workers of Municipal Corporation of Delhi who intensely dump the garbage near the unfenced parking area of the Informant and the garbage spreads due to various reasons.
6. It is alleged that OP has violated all basic conditions of the Contract by imposing a locking period clause so that the Informant cannot find a way out of the Contract and has been suffering huge losses as the cost of maintenance of the three lots is at least two times costlier than usual.
7. It is averred that sub clause-1.2 (f) of the "Instruction to Tenderer (ITT)" under the Interest Free Security Deposit clause, is arbitrary as it states that after receiving of LOA, without prejudice to OP's other rights under the Contract and the Tender Security, OP may terminate the Contract in the event the Tenderer fails to supply Interest Free Security Deposit/ Performance Security or other specified documents or fails to execute the License Agreement as per clause F4.



8. It is alleged that such acts of OP have caused grave mental, physical and monetary harassment to the Informant, which are likely to cause pressure related diseases leading up to death/ suicide.
9. Further, it is alleged that the failure of OP to provide fair and agreed upon conditions as per the terms of the Contract is in gross violation of Section 4 of the Act. That OP has abused its dominant position by (i) fixing predatory price for services of parking; (ii) imposing compulsion to follow the guidelines of civic bodies as well as that of OP which are contrary in nature; (iii) imposing locking period in the Contract and LoA; (iv) indirectly forcing to follow the obligations by the act of black-listing from future tenders as well as forfeiture of security deposit; (v) limiting and restricting the provision of services to market; (vi) stipulating that the tender terms are subject to the acceptance by NDMC of handing over the land having green area to DMRC and (vii) delaying the signing of contract but receiving the monthly license fee as per the tender bid.
10. Based on the above, the Informant, *inter alia*, prayed the Commission to: (i) direct OP to pay a sum of Rs. 3,20,00,000/- (Rupees Three Crore Twenty Lakh Only) as compensation to the Informant for the loss incurred because of the failure of OP for not providing parking lots in fair and proper condition as mentioned in the tender; (ii) direct OP to award twice the amount of security deposit to the Informant for breaching the obligations mentioned under the tender; (iii) direct OP to pay a lump-sum amount of Rs. 10,00,00,000/- (Rupees Ten Crore only) as compensation for the irreparable loss of participation in future tenders and (iv) pass such order or further order(s) as deemed fit and proper in the facts and circumstances of the present case.
11. The Commission has perused the Information filed and has also considered the information available in the public domain. The Commission notes that the OP had invited bids for licensing of parking rights at Kashmere Gate, Kanhaiya Nagar and Shastri Nagar metro stations falling under line 1 *vide* tender notification DMRC/Tender(O&M)/OPR-417/2019/455/1334 dated 01.02.2019. The Informant had bid for the same and was awarded the parking rights for operation of the aforesaid sites by OP. It is noted that the gravamen of the Informant arises from the handing over of open parking lots with no fences at Kashmere Gate metro station by OP. No allegation



with respect to parking lots at Kanhaiya Nagar and Shastri Nagar metro stations have been mentioned in the Information. The non-implementation of the General Terms and Conditions of the Contract awarded by OP are alleged to be unfair and abusive and in contravention of the provisions of the Section 4 of the Act, as detailed hereinabove.

12. At the outset, before examining the alleged conduct, the Commission considers it essential to examine as to whether OP falls within the purview of the Act for the purposes of Section 4 thereof *i.e.*, whether OP is an '*enterprise*' within the meaning of Section 2(h) of the Act. It is noted from the information available in the public domain that OP is providing Mass Rapid Transport System (MRTS) in the National Capital Region (NCR) and is engaged in the development, maintenance and management of modern metro system for mass urban transportation. The aforesaid activities engaged by OP are economic activities and are not sovereign functions therefore, OP is covered within the definition of '*enterprise*' in terms of Section 2(h) of the Act.
13. For analysing the allegations in terms of the provisions of Section 4 of the Act, the first requirement is to delineate the relevant market as per Section 2(r) of the Act. The Commission observes that the Informant has neither defined nor has mentioned anything with respect to the relevant market. Be that as it may, the Commission observes that with a view to facilitate metro commuters, park and ride facilities have been made available at most of the metro stations, wherever space is available, since inception of services by OP. Parking facility has been made available at the metro stations for the convenience of passengers by outsourcing the services of parking management. Furthermore, the Commission notes that in urban agglomerations, it is common for many organisations such as Courts, Hospitals, Shopping Malls, local bodies *etc.*, to outsource the operation and management of their parking lots to third parties. OP is one such procurer. Thus, the relevant product market is '*procurement of services for provision of parking lot management*'.
14. With respect to relevant geographic market, the Commission observes that OP's network covers about 389 Kms with 285 stations. The network runs beyond the boundaries of Delhi and connects with the neighbouring regions of NOIDA, Greater NOIDA and Ghaziabad in Uttar Pradesh, Gurgaon, Faridabad, Bahadurgarh and



Ballabhgarh in Haryana *i.e.*, areas falling under the National Capital Region. Furthermore, the Commission observes that Line-1 of OP originates at Shaheed Sthal New Bus Adda in Ghaziabad and traverses through parts of East Delhi and terminates at Dilshad Garden located in North Delhi. The impugned three parking lots managed by the Informant under the Contract *i.e.*, Kashmere Gate, Kanhaiya Nagar and Shastri Nagar metro stations all fall under Line-1 of OP and are all located within the geographic limits of North Delhi.

15. The Commission is of the opinion that having regard to the homogeneity of conditions of competition for provision of parking lot services, the relevant geographic market may be taken as ‘*Delhi*’. Based on the above, the relevant market is ‘*procurement of services for provision of parking lot management in Delhi*’.
16. After delineating the relevant market, the next step is to assess the dominance of OP in the relevant market. The Commission observes that the Informant has neither assessed the dominance of OP nor has placed any information on record to establish the dominance of OP. It is observed that provision of mass urban transportation is the primary business of OP and provision of parking services is one of its residual activities. Further, as per Delhi Urban Art Commission, Annual Report, 2018-19 with the phenomenal growth in the vehicular population in Delhi, parking has become a universal problem impacting the entire City. While the vehicular population in Delhi has been growing exponentially, the space available for parking has not increased commensurately. To assess as to whether OP is a dominant procurer of parking lot management services in the aforesaid relevant market, data of parking lots owned but outsourced for management to third parties by Delhi Municipal Corporations (North, South, East), New Delhi Municipal Council and Delhi Cantonment Board have been compiled and has been compared with OP.

| Geography | No. of Parking Lots | No. of Parking Lots of OP |
|-----------------------------------|----------------------------|----------------------------------|
| North Delhi Municipal Corporation | 210 | 31 |
| South Delhi Municipal Corporation | 96 | 38 |
| East Delhi Municipal Corporation | 39 | 12 |
| New Delhi Municipal Council | 106 | 3 |
| Delhi Cantonment Board | 0 | 0 |
| Total | 451 | 84 |

Source: https://deptewb.mcd.gov.in:8443/mcd_rpcellweb/searchClickedRpcParkingSite Accessed on 29-07-2020
https://www.ndmc.gov.in/departments/enforcement_achievements.aspx Accessed on 29-07-2020



17. It is observed from the above table that in Delhi, OP has 84 parking lots while North Delhi Municipal Corporation has 210 parking lots; South Delhi Municipal Corporation has 96 parking lots; East Delhi Municipal Corporation has 39 parking lots; New Delhi Municipal Council has 106 parking lots and Delhi Cantonment Board has none. In North Delhi also, OP has just 31 parking lots as against North Delhi Municipal Corporation which has 210 parking lots. Moreover, apart from these, there are various parking lots which are operated at Railway Stations, Courts, Hospitals, Shopping Malls *etc.* In this market construct, OP does not seem to have the ability to operate independently in the aforesaid relevant market. It is not found to be dominant procurer of parking lot management services in Delhi or even in North Delhi area where the three stations operated by OP are located. In the absence of dominance, the examination of the issue of abuse of dominance by OP does not arise.
18. Thus, in light of the above analysis, the Commission finds no case of contravention of the provisions of Section 4 of the Act against OP in the instant case. The matter is thus closed forthwith in terms of the provisions of Section 26(2) of the Act.
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

Date: 26.08.2020
New Delhi