



**COMPETITION COMMISSION OF INDIA**

**Case No. 40 of 2016**

**In re:**

**Shri Kailash Chander Sharma**

**Informant**

**And**

1. **Coal India Ltd.** **Opposite Party No. 1**
2. **Chairman-cum-Managing Director  
Coal India Ltd.** **Opposite Party No. 2**
3. **Central Institute of Mining and Fuel Research** **Opposite Party No. 3**
4. **Director, Central Institute of Mining and  
Fuel Research** **Opposite Party No.4**

**CORAM**

**Mr. Devender Kumar Sikri  
Chairperson**

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

**Mr. Sudhir Mital  
Member**

**Mr. U. C. Nahta  
Member**



**Dr. M. S. Sahoo**  
**Member**

**Justice G. P. Mittal**  
**Member**

**Appearances:** Shri F. K. Jha, Advocate for the Informant alongwith Shri Kailash Chander Sharma, Informant-in-person.

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

1. The information in the present case has been filed by Shri Kailash Chander Sharma (the 'Informant') under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') against Coal India Ltd. (the 'Opposite Party No. 1'/'OP-1'/'CIL'); Chairman-cum-Managing Director, CIL (the 'Opposite Party No. 2'/'OP-2'); Central Institute of Mining and Fuel Research (the 'Opposite Party No. 3'/'OP-3'/'CIMFR') and Director, CIMFR (the 'Opposite Party No. 4'/'OP-4') alleging *inter alia* contravention of the provisions of Section 4 of the Act.
2. The Informant is a service provider having specialisation in scientific and technical services in collection, preparation and transportation of coal samples. The Informant is further stated to be empanelled as third party sampler by CIL and has been getting work orders from it with 7-8 years' experience in the field.
3. It is alleged that CIL is in the dominant position having complete control over production, supply, distribution, storage, acquisition and control of coal. Earlier, CIL used to issue Global Tender Notice for scientific and technical services in collection, preparation and transportation of coal samples from loading/ unloading sites of different collieries of the subsidiaries of CIL. However, CIL authorised CIMFR to float Global Tender Notice (dated 09.02.2016) to hire technical service providers for scientific and technical



services in collection, preparation and transportation of coal samples from loading sites of various collieries of subsidiaries of CIL for 300 MMT of coal per year.

4. It is stated that Clause 5.1.1 of Chapter-5 of the said tender provides that:

*“The Bidders must have minimum business turnover of Rs. 25 crores per annum for last 3 years in similar services...”*

5. It is further stated that the aforesaid clause was revised and the turnover requirement was reduced to Rs. 20 crores.
6. It is also averred that CIL has instructed its branch offices in different States that the tender document must specify the value of the tender so that the prospective bidder could fulfil those conditions. It is averred that as per clause 5.1.1 (E), the bidders have to submit a certificate of solvency/ access to the lines of credit and availability of other financial resources in support of their adequacy of working capital (at least 20% of the annualised value of the work). However, it is alleged that there is no mention of such value anywhere in the tender document.
7. It is thus alleged that CIMFR did not specify in its tender document about the annualised value of work and rather fixed a new criteria for minimum business turnover of Rs. 25 crore per annum (subsequently revised to Rs. 20 crores), which was not the condition earlier. It is also alleged that CIMFR fixed Rs. 1 crore as minimum amount to be deposited alongwith the tender document, which was also not the pre-condition earlier.
8. It is alleged that Ministry of Coal & Power never instructed OP-3 to put such conditions in the tender documents. It is alleged that the same has been put to favour certain firm which was not specialist in the sampling at par with the Informant. It is alleged that it would be loot of coal money since earlier the



approved sampler used to get commission of Rs. 0.23-0.25 per tonne as per the directive of Ministry of Coal & Power, whereas the bidders in the present tender of OP-3 and OP-4 shall get commission of Rs. 40-50 per tonne for the same work.

9. It is stated that there will be huge misuse of money by way of commission if the present tender is allowed to be acted upon as it would be another scam. Further, it is stated that the technical bid was opened on 25.03.2016 and three firms have been technically qualified. As per CBI disclosure, the two firms, which were technically qualified, are blacklisted and FIR was lodged against their employee/ director.
10. Further, it is stated that the Opposite Parties themselves have approved the conditions for the sampler and thereby, selected the Informant for the sampling of coal. There are only three samplers who are having experience in the field of coal and they are already sampling the coal including the Informant. The qualified bidders do not have any experience in the field but are having unholy nexus with OP-1 and OP-2. There is none to challenge the authority of OP-1 and OP-2 as they control 90% of coal in the State of Jharkhand. That OP-1 and OP-2 have *malafide* intention to favour foreign firms of their choice so that other approved Indian samplers, having experience in the field, do not get chance to compete in the bid as per the tender document dated 09.02.2016.
11. Lastly, it is stated that the impugned tender process be stopped and fresh bid for 450 MMT be invited in conformity with the observations of Ministry of Coal & Power alongwith other modified conditions as prayed for by the Informant.
12. Based on the above averments and allegations, the present information has been filed by the Informant against the Opposite Parties seeking various



remedies mentioned therein including a direction to the Opposite Parties to pay a compensation of Rs. 50 Lakh to the Informant.

12. The Commission has perused the information and the material available on record besides hearing the learned counsel Shri F. K. Jha who appeared on behalf of the Informant.
13. The present case pertains to allegations regarding the eligibility conditions specified in the Global Tender Notice *i.e.* NIT No. CIMFR/PUR-14(7)2015-16 dated 09.02.2016 invited by CSIR - Central Institute of Mining and Fuel Research, Dhanbad for hiring of technical service providers for providing scientific and technical services in collection, preparation and transportation of coal samples from loading sites located at various collieries belonging to the subsidiaries of Coal India Limited to CSIR-CIMFR Campus at Digwadih and its Research Centres at Nagpur, Bilaspur and Ranchi and similarly collection, preparation and transportation of coal samples from the unloading sites of power utilities to CSIR-CIMFR Campus at Digwadih and its Research Centres at Nagpur, Bilaspur and Ranchi.
14. The Informant is primarily aggrieved by the following clauses of the impugned tender: (i) the bidders shall submit Earnest Money Deposit value of Rs.1,00,00,000/- (Rs. One crore) and (ii) the bidders must have minimum business turnover of Rs.20 (Rs. Twenty crore) per annum for the last (03) three years in similar services.
15. From the information, it appears that CIL authorised CIMFR to float the impugned tender to empanel third party technical service providers for providing technical services relating to collection, preparation and transportation of coal samples from the loading sites of various collieries belonging to the subsidiaries of Coal India Limited to CSIR-CIMFR Campus at Digwadih or to its Research Centres at Nagpur, Bilaspur and Ranchi and similarly collection, preparation and transportation of coal samples from the



unloading sites of various power utilities to CSIR-CIMFR Campus at Digwadih or its Research Centres at Nagpur, Bilaspur and Ranchi.

16. As per clause 4.1.4 of the impugned tender, third party technical service providers are to assist in the collection and preparation of samples at loading and unloading points of various subsidiaries of Coal India Limited and various power utilities for satisfying the requirements of sampling agreement as per provision of Fuel Supply Agreement (FSA) and as per the procedure specified in the tender document.
17. Thus, it is clear that impugned tender was invited to empanel third party technical service providers providing collection, preparation and transportation of coal samples from the loading and unloading points to CIMFR or to its research centres and therefore CIL is a buyer of the technical services and the Informant/ other similar bidders are the suppliers of the said technical services.
18. The Commission further observes that the services availed by CIL - a company engaged in the business of coal mining - through the impugned tender is restricted to only power sector whereas coal being an intermediate input is used in other sectors such as steel, captive power, fertilizer, cement, sponge iron and others. Further, it is observed that coal is also imported to meet the requirements of these user industries. Therefore, in order to ascertain the moisture content, GCV, for technical evaluation, process control, quality control and for commercial transaction purpose; collection, preparation and transportation of coal samples would be required by these sectors/ buyers. Furthermore, the services bought by CIL (miner) are neither stated nor otherwise found to be unique and cannot be distinguished from similar service required by power and other aforementioned sectors.
19. Accordingly, the Commission is of the view that *services relating to collection, preparation and transportation of coal samples* constitute the relevant product market. As the impugned tender allows technical services



providers from India and abroad to participate and therefore the relevant geographic market is *India*. In the result, the relevant market in the present case is ‘*provision of services relating to collection, preparation and transportation of coal samples in India*’.

20. In this relevant market, CIL appears to be a dominant player being a major buyer/ procurer of services relating to collection, preparation and transportation of coal samples in India due to its dominance in coal mining and attendant requirements flowing therefrom such as sample collections.
21. Before considering the impugned terms, the Commission notes that the tender in question is a result of FSA entered into by and between CIL and power utilities. It is observed that the quality and grade of coal supplied has been a constant source of dispute between CIL and the power utilities. Further, it is observed that in order to settle the dispute between the two, engaging third parties to assist in sampling collection was put forward as a solution. Furthermore, it is observed that Central Electricity Authority in concurrence with CIL has empanelled 26 third party samplers for collecting samples for testing. The said list has been annexed by the Informant itself as *Annexure-C* to the information.
22. Having observed that, the Commission notes that the plea of the Informant challenging the pre-qualification conditions that the bidder must have minimum business turnover of 20 crore per annum for last 3 years as it seeks to debar Indian firms, is misconceived as there are 26 third party samplers enlisted by CEA in concurrence with CIL. It is observed that the said list contains organisation such as Central Power Research Institute (CPRI), Central Mine Planning & Design Institute (CMPDI), Mineral Exploration Corporation Ltd (MECL). The Commission further observes that the tender as per Clause 2.3 allows the participation of bidders through joint venture, consortium or association. However, it is not clear from the information as to whether the Informant had made any attempt to form one or the reason for not



opting for the same. Thus, no entry barrier appears to have been created through the impugned condition.

23. So far as the allegations regarding the requirement of submission of Earnest Money Deposit of Rs.1,00,00,000/- (Rs. One crore) is concerned, the same is completely misconceived as by no stretch of submission such requirement can be deemed to be abusive.

24. A consumer of services must be allowed to exercise its consumer choice and freely select between competing products or services. This right of consumer's choice must be sacrosanct in a market economy because it is expected that a consumer would decide what is best for it and free exercise of consumer choice would maximize the utility of the product or service for the consumer. For an individual, that consumer's choice is based on personal assessment of competing products or services, their relative prices or personal preferences. For any other type of consumer, this process of decision making in exercise of consumer's choice is more structured and reflected in procurement procedures. Such a consumer may use experts or consultants to advise, do its own technical assessment, take advice of others it may trust or even purchase from known and reliable sources. The process of such decision making may result in purchase by nomination or limited tender or open tender. The consumer is the best judge. In case of public entities, the entity is a representative consumer on behalf of the public. There are administrative mechanisms in place for carrying on the due process of exercising consumer's choice on behalf of the public. Of course, there could be competition concerns in rare cases where a monopoly/ dominant buyer exercises the option in an anti-competitive manner but the present case is not in that category.

25. Lastly, it may also be noted that the Informant, being aggrieved with the eligibility conditions mentioned in the impugned tender, had also filed petitions challenging the same before the Hon'ble High Court of Delhi and





High Court of Jharkhand at Ranchi but has not disclosed the details/ status of the same.

26. In view of the above, the Commission is of the view that no case is made out against the Opposite Parties for contravention of the provisions of Section 4 of the Act and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.

27. The Secretary is directed to communicate to the Informant accordingly.

**Sd/-**

**(Devender Kumar Sikri)  
Chairperson**

**Sd/-**

**(S. L. Bunker)  
Member**

**Sd/-**

**(Sudhir Mital)  
Member**

**Sd/-**

**(U. C. Nahta)  
Member**

**Sd/-**

**(Dr. M. S. Sahoo)  
Member**

**Sd/-**

**(Justice G. P. Mittal)  
Member**

**New Delhi**

**Date: 14/07/2016**

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