



**COMPETITION COMMISSION OF INDIA**

**Case No. 32 of 2014**

**In Re:**

M/s. Imperia Structures Limited

**Informant**

**And**

Dakshin Haryana Bijli Vitran Nigam Limited (DHBVN) **Opposite Party No. 1**

Superintending Engineer (Operations),

Executive Engineer (Operations)

and SDO(Operations) of DHBVN

**Opposite Party No. 2**

**CORAM**

**Mr. Ashok Chawla**  
**Chairperson**

**Mr. Anurag Goel**  
**Member**

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

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

**Mr. Sudhir Mittal**  
**Member**

**Mr. Augustine Peter**  
**Member**



**Present:** Advocates Mr. Mukul Dhawan, O. P. Ahuja, and K. L. Gajnani for the Informant.

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

Information in the instant matter has been filed by M/s. Imperia Structures Limited under Section 19(1) (a) of the Competition Act, 2002 (**‘the Act’**) against Dakshin Haryana Bijli Vitran Nigam Limited and some of its officials [Superintending Engineer (Operations), Executive Engineer (Operations) and SDO (Operations) of Sub-division Kadipur, Gurgaon] for their alleged contravention of the provisions of Section 4 of the Act with respect to supply of electricity to its residential project.

2. The Informant is stated to be engaged in the business of real estate development. The Opposite Party No. 1 is a Government of Haryana undertaking constituted under the Haryana Electricity Reform Act, 1997 and is engaged in the activity of distribution of electricity to the residents of southern Haryana. The Superintending Engineer (Operations), Executive Engineer (Operations) and SDO (Operations) of Kadipur are the officials of the Opposite Party No. 1 and are responsible for execution of electricity distribution work of the Opposite Party No. 1. The allegations of the Informant primarily pertain to the anti-competitive conduct of the Opposite Party No.1 and its officials have been made proforma party to the case.
3. As per the information, the Director General, Town And Country Planning, Haryana has granted a license (No. 64 of 2011) to M/s. Phoenix Datatech Services Private Limited (**‘Phoenix’**), M/s. Prime Infoways Private Limited (**‘Prime Infoways’**) and M/s. Prime IT Solutions Private Limited (**‘Prime IT Solutions’**) for development of group housing colony over an area measuring



17 acres in the village Garoli Khurd and Bassai, Sector – 37 C, Gurgaon, Haryana.

4. The above three license holders have entered into a Development Agreement with the Informant on 07.08.2012 for development of a residential project in the name of Imperia Residential Towers (**‘the project’**). It was agreed by the above license holders to transfer the rights in respect of development, construction and sale of residential units in the project to the Informant. Also, a General Power of Attorney (GPA) was executed in favour of the Informant.
5. Subsequently, M/s. Phoenix and the Informant had sought amalgamation from the High Court of Delhi vide application dated 01.02.2013 which was allowed under sections 391 and 394 of the Companies Act, 1956. As per the amalgamation, M/s Phoenix was amalgamated into M/s Imperia Structures Ltd. i.e., the Informant. Thus, after the amalgamation the Informant now is the owner of 11 acres; M/s. Prime Infoways is the owner of 3.5 acres and M/s Prime IT Solutions is the owner of 2.5 acres of land.
6. On 10.12.2013 the Informant wrote an application along with required documents to the Opposite Party No. 1 for sanction of electricity load of 4500 KVA to its project developed on 11 acres of land owned by it. It was stated in the application that it will be in a position to avail 1500 MW load by January, 2015 and thereafter depending on occupancy it will avail the rest of the load. It was also reiterated in the application that 11 KV supply shall be taken on 11 KV independent feeder from 66/11 KV substation. Certain other technical formalities as communicated by the Opposite Party No. 1 vide its letter dated 21.02.2014 were also duly complied by the Informant.
7. The Informant stated that the Opposite Party No. 1 vide its letter dated 03.04.2014 asked to fulfil certain other conditions such as to furnish the bank guarantee equivalent to 1.5 times of bill of material of electrical infrastructure



as per approved plans, to declare the total ultimate load as per the plan sanctioned by DTCP, etc.

8. The Informant complied with all the formalities raised in the letter 03.04.2014. It was clarified by the Informant that load of 4500KVA is required for its share of 11 acres of land and the other co-owners shall apply separately for their part of land. The Informant informed the Opposite Party No. 1 that it will submit bank guarantee for electrification of 11 acres of land which falls in its share, not for the entire land of 17 acres as other co-owners are not developing their portion of land at present.
9. It is alleged that being a statutory authority engaged in distribution of electricity and responsible to prepare a scheme for electrification for supply 4500 KVA electricity on 11 KV feeder from 66/11 substation to the residential project developed by it in 11 acres of land, the Opposite Party No. 1 enjoys a dominant position.
10. It is the case of the Informant that the Opposite Party No. 1 is taking undue advantage of its dominant position by insisting it to submit a bank guarantee for electrification of entire 17 acres, irrespective of the fact that it is the owner of only 11 acres of the land. Further, the Opposite Party No. 1 is in the process of framing the scheme of electrification on 66 KV for the entire 17 acres of land without appreciating the fact that the other co-owners of the land such as M/s Prime Infoways and M/s. Prime Infoways are currently not developing their land.
11. It has been submitted by the Informant that the Opposite Party No. 1 imposing the above said conditions based on a circular dated 08.03.2013 issued by Chief Engineer (Commercial), DHBVN, Hissar for approval of electrification plan and sanction of load for colonies/multi-storey buildings developed by private colonizers. As per the Informant, clause 5 of the said circular states that a



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developer has to furnish bank guarantee equivalent to 1.5 times of bill of material of electrical infrastructure and clause 20 provides that interim load shall be given to developer depending upon completion of work of creation of electrical infrastructure in phases as per indicative layout plan submitted by the developer.

12. Based on the above averments, the Informant prayed to the Commission to direct the Opposite Party No. 1 to supply 4500 KVA on 11 KV feeder to its 11 acres of land without insisting for electrification of entire 17 acres and pass such further and other orders as the Commission may deem fit in the facts and circumstances of the case.
13. The Commission considered all the material on record and the arguments advanced by the advocate for the Informant. It is revealed from the information that the allegations of the Informant pertain to infringement of the provisions of section 4 of the Act.
14. For applicability of the provisions of section 4 of the Act, it is required that the entity in question must be an enterprise in terms of section 2 (h) of the Act. As per the scheme of the Act, for an entity to fall within the definition of the term enterprise it must be engaged in any activity which is relatable to the economic and commercial activities. Since the Opposite Party No. 1 is engaged in a commercial activity of supply of electricity, it falls under the definition of “enterprise” in terms of section 2 (h) of the Act.
15. Since the dispute between the Informant and the Opposite Party No. 1 is related to the supply of electricity to the land/project of the Informant, the market for the distribution of electricity is considered as the relevant product market in the instant case wherein the Opposite Party No. 1 is the distributor of electricity and the Informant is the buyer. No other products can be considered as substitute of electricity distribution. The relevant geographical



market is considered as Southern Haryana because electricity distribution in the state of Haryana is divided into two geographical zones – northern and southern Haryana and the Opposite Party No. 1 is responsible for distribution of electricity in Southern Haryana. As such, the relevant market in the present case is ‘*the market of distribution of electricity in southern Haryana*’.

16. Since, the Opposite Party 1 is the only enterprise engaged in the business of distribution of electricity in southern Haryana indisputably, it is in a dominant position in the relevant market as defined above.

17. As far as the abusive conduct of the Opposite Party No. 1 is concerned, the Informant contended that clause 5 and clause 20 of the circular issued by the Opposite Party No. 1 on 08.03.2013 are unfair and amounts to abuse of its dominant position. As per clause 5 of the said circular a developer has to furnish bank guarantee equivalent to 1.5 times of bill of material of electrical infrastructure and clause 20 stipulates that interim load shall be given to developer depending upon completion of work of creation of electrical infrastructure in phases as per indicative layout plan submitted by developer. Accordingly, the Opposite Party is insisting the Informant to produce bank guarantee equivalent to 1.5 times of bill of material of electrical infrastructure works to be executed as per approved plan i.e., 66 KV load for electrification of entire 17 acres of land instead 4500 KVA on 11 KV feeder to 11 acres of land owned by the Informant. Further, the Opposite Party No. 1 insisting for electrification to the extent of load as per the sanctioned plan of DTCP and one electric connection against one license issued by DTCP.

18. *Prima facie*, clause 5 and clause 20 of the circular dated 08.03.2013 issued by the Opposite Party No. 1 do not appear to be unfair and therefore abusive in terms of the provisions of section 4 of the Act. It is observed that for rational distribution of electricity among the consumers, the Opposite Party No. 1 prescribes certain norms such as production of bank guarantee equivalent to



1.5 times of bill of material of electrical infrastructure works to be executed as per approved plan, load as per the approve plan, one connection against one license, etc. These terms and conditions appear to be based on appropriate business justification and for rational/judicious distribution of electricity, a scarce resource.

19. Further, it is observed that vide the 'Development Agreement' dated 07.08.2012 between M/s Phoenix, M/s Prime Infoways, M/s Prime IT Solution and the Informant, the Informant was assigned rights to develop the project on the entire 17 acres of land, even though it enjoys ownership of only 11 acres of land, transferred from M/s Phoenix. Given the fact, there seems to be no reason on the part of the Informant for insisting to pay bank guarantee equivalent to 1.5 times of bill of material of electrical infrastructure works to be executed for only 11 acres of land.

20. Based on the above analysis, the Commission is of the prima facie opinion that the conduct of the Opposite Party No. 1 cannot be considered as abusive in terms of the provisions of section 4 of the Act so as cause an investigation by the Director General under the provisions of section 26(1) of the Act.

21. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.

22. The Secretary is directed to communicate this decision to the parties accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**



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

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

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

**Sd/-  
(Sudhir Mittal)  
Member**

**Sd/-  
(Augustine Peter)  
Member**

**New Delhi  
Date: 06.08.2014**