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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 38 of 2015

In Re:

Astha Power Corporation Pvt. Ltd.

B-1, Industrial Estate,

Sanathnagar, Hyderabad.

Informant

And

Reliance Gas Transportation Infrastructure Ltd.

101, Shivam Apartment,

9, Patel Colony, Bedi Bunder Road,

Jamnagar, Gujarat.

Opposite Party

CORAM:

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U. C. Nahta

Member



Mr. M. S. Sahoo
Member



Justice [Retd.] G. P. Mittal
Member

Appearances: Shri A. N. Haksar, Sr. Advocate along with Shri Sanjeev Ralli, Advocate for Informant and Shri Paras Kuhad, Sr. Advocate along with Shri R. Sasi Prabhu, Advocate for OP.

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

1. The information was filed under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the ‘Act’) by Astha Power Corporation Private Limited (hereinafter referred to as the ‘**Informant**’) against Reliance Gas Transportation Infrastructure Limited (hereinafter referred to as the ‘**Opposite Party**’/ ‘**OP**’) alleging, *inter alia*, contravention of the provisions of section 4 of the Act.
2. Facts of the case may be briefly noted:
 - 2.1 As per the information, it is stated that the Informant has spent about Rs.107.50 crores as on 31st March, 2015 for installing a natural gas based power plant at Medak District in the State of Telangana with the intention of supplying power to Telangana State Distribution Company Limited (TSDISCOMS). It is stated in the information that all major equipment’s needed for the first two units have already been erected.
 - 2.2 It is further stated that the said power plant is located at about 14 KMS away from the Main Line Valve-13 (‘MLV-13’) on the East West Pipeline (EWPL) owned by OP, passing through the District of Medak in the State of Telangana.



2.3 It is also stated that in 2008, the Hon'ble Supreme Court *vide* its order dated 16th May, 2008 in Civil Appeals 8094 of 2002, 8101, 8102, 8095, 8096 and 8093 of 2002, directed Andhra Pradesh Electricity Regulatory Commission ('APERC') to reconsider the applications of mini power plants including the Informant. Resultantly, APERC *vide* its order dated 15th April, 2010 directed the erstwhile Government of Andhra Pradesh ('GoAP') to recommend to the Ministry of Petroleum & Natural Gas, Government of India ('GoI') for allocation of natural gas to the Informant. Subsequently GoAP *vide* letter dated 4th June, 2010 had recommended to GoI for allocating natural gas from Reliance KG basin to the power plant of the Informant. Thereafter, a team from Central Electricity Authority ('CEA') had visited the Informant's power plant to verify and submit a report on the Informant's preparedness to receive gas for its power plant and had also scrutinized the possibility of its completion during the 11th plan period itself. Meanwhile, the matter could not proceed any further as the GoI decided to put on hold any further allocation of natural gas for the power projects, hence, the project could not materialize at that point of time.

2.4 The Informant has stated that as part of its efforts to secure natural gas for its power plant in line with the recommendations made by the Government of Andhra Pradesh *vide* its letter dated 4th June, 2010 it had signed a Gas Transportation Agreement ('GTA') on take-or-pay basis with Gas Authority India Limited ('GAIL') dated 24th November, 2011. However, the Informant at that time did not have a Fuel Supply Agreement in place therefore, GAIL could not start the construction of either the dedicated pipeline or hook-up facility or the re-delivery point and accordingly, the aforementioned GTA was terminated.

2.5 Thereafter, it is stated that the Informant had approached the Petroleum and Natural Gas Regulatory Board ('PNGRB') on 6th September, 2012 and obtained approval dated 14th December, 2012 for constructing a dedicated natural gas pipeline between MLV-13 of OP and the aforementioned power plant. Subsequent to the approval, the Informant had conducted a route survey



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for laying the aforementioned gas pipeline. However, the detailed design and actual construction of the said gas pipeline required the finalization of the terms and design of the hook-up facility with OP.

2.6 In view of the above the Informant had explained its requirements to OP on 1st March, 2013. Thereafter, OP had asked the Informant to furnish a formal Request For Quotation ('RFQ'). The formal RFQ was sent to OP by the Informant *vide* e-mail dated 5th March, 2013. In response, OP *vide* e-mail dated 2nd April, 2013 had forwarded a Draft Agreement for Hooking up of Shipper's Facilities (hereinafter referred to as the '**Facility Agreement**').

2.7 The Informant has alleged that the said draft 'Facility Agreement' contained arbitrary, unfair and unreasonable anti-competitive terms including but not limited to clauses 4.1, 4.2, 5.1, 6.1 and Exhibit A in contravention of section 4 of the Act. The excerpts of the aforementioned clauses are as follows:

***“Clause 4.1: Commissioning Date:** ‘Commissioning date’ means the date to be notified by the Transporter at least seven (7) days in advance by which date Hooking Up facility shall be commissioned and which date shall not be later than 18 months from the date of receipt of the Hooking Up charges by the Transporter from the shipper.*

***Clause 4.2: Term of the Agreement:** The term of this Agreement will be for an initial term of ten (10) years commencing on the Execution Date and this Agreement may be extended by the mutual agreement of the Parties.*

***Clause 5.1 (vi) Transporter's Obligations:** Transporter shall provide at least fifteen (15) days prior notice to the Shipper in case of maintenance job is required to be undertaken in respect of the Hooking Up facilities that may affect the supply of Gas through the Hook Up Point.*



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Clause 6.1 Hooking Up Charges: (i) *It is agreed between the Parties that an amount of Rs. 17.38 Crores (Hooking Up Charges) plus the applicable taxes is payable by the Shipper to the Transporter for providing facilities in accordance with Clause 3.1 at the Hook Up Point for hooking up East-West Pipeline with Shipper's Facilities. In the event, Parties desire to extend the term of this Agreement beyond ten (10) years, Parties shall mutually discuss and agree on the charges payable by the Shipper to the Transporter towards repair and/or replacement of the Hooking Up Facilities.*

(ii) *Transporter shall deliver an invoice to the Shipper, as soon as possible, on execution of this Agreement towards the Hooking Up Charges together with the applicable taxes and Shipper shall make payment to Transporter forthwith in accordance with such invoice.*

(iii) *It is agreed between the Parties that in the event of early termination of this Agreement for any reason whatsoever prior to the expiry of the initial term as provided above, Shipper shall not have any claim on the Hooking Up Charges paid to the Transporter.*

Exhibit A to the Facility Agreement: *“The proposed facilities shall be designed to handle a max flow rate of 0.3 MMSCMD (with scope for expansion upto 0.6 MMSCMD). For future expansion upto 0.6 MMSCMD, the modalities (including time and incremental cost) shall be mutually agreed between the parties”.*”

3. On the basis of said allegation, the Informant has, *inter alia*, prayed for an investigation in the matter for abuse of dominant position by OP along with an order to direct OP to modify its hook-up facility agreement with fair and reasonable clauses.



4. The Commission has perused the material available on record including the information and heard the parties on 13th August, 2015 and also considered their respective submissions.
5. The Commission observes that as per the facts of the case it is essential to delineate the relevant market. As per the facts it is observed that the Informant has erected a natural gas based power plant. Further it is observed that to generate power based on natural gas, the Informant would require access to EWPL pipeline thereby facilitating it to purchase natural gas. It is clear from the description that the Informant is a buyer of gas and gas transportation services therefore, the relevant product market in the present case would be '*transportation of natural gas through pipeline*'.
6. With regard to relevant geographic market, it may be noted that GoI had approved setting up of EWPL by OP to transport gas from Kakinada (Andhra Pradesh) to Bharuch (Gujarat). The Commission observes that, from the information available in the public domain the said pipeline traverses through the States of Andhra Pradesh, Telangana, Karnataka, Maharashtra and Gujarat and OP has been authorized to serve as a common carrier pipeline for delivering gas to cater to numerous customers located along the pipeline in the aforesaid States. Further, it is observed that there exists no other licensed natural gas transporter within the State of Telangana. Furthermore, as per the information, the Informant's power plant is located within the State of Telangana. Accordingly, the Commission opines that the relevant geographic market would be the '*State of Telangana*'.
7. Based on the above delineation, the Commission is of the opinion that the relevant market in the instant case would be market for the services of '*transportation of natural gas through pipeline in the State of Telangana*'.
8. The Commission observes that the Informant intends to seek access to natural gas through pipelines for its power plant. Based on the information available in the public domain it is observed that presently apart from OP's natural gas



pipeline no other pipeline is providing gas transportation services in the State of Telangana. Further, Mallavaram Bhopal Bhilwara via Vijaipur pipeline constructed by GSPL India Transco Limited in the State of Telangana is under construction. Furthermore, the said pipeline under construction is located at a distance of more than 200 Kms from the Informant's power plant. In view of the above, the Commission notes that there exists no other pipeline other than EWPL of OP in the relevant market for constructing a Hook up Facility for the Informant. Accordingly, the Commission is of the opinion that OP is dominant in the said relevant market.

9. Since OP is observed to be in a dominant position in the relevant market it is pertinent to examine the alleged conduct of OP as to whether it is anti-competitive or not under section 4 of the Act.
10. The Commission observes that as per the information the grievances of the Informant emanates only from the Draft Agreement for Hooking up of Shipper's Facilities and not from the gas transportation services in general.
11. The Commission observes that in its written submissions filed by OP dated 06th August, 2015, OP has stated that it is not engaged in the 'construction of Hook-up Facility' and has also stated that it had at no stage insisted on constructing the said facility through its own contractors or by itself as a pre-condition to providing access to EWPL. Further, OP has also stated that it had never declined to provide access to a facility constructed by a third party such as GAIL or contractors of the Informant.
12. In support of the abovementioned contention, OP has alluded that the Informant is not dependent upon OP for construction of the said Hook-up Facility as the Informant itself in the information has submitted that it had in the first instance approached GAIL and had entered into an agreement for construction of a Hook-up facility with EWPL.



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13. The Informant *vide* its additional submissions dated 11th September, 2015 has stated as follows:

“... the senior officers of the Informant and of the Opposite Party held meetings and discussions on the outstanding issues in relation to objectionable clauses contained in the Draft Hooking-up Agreement. During the said meetings and discussions, the objections/ grievances of the Informant raised in the present Information Petition were adequately considered and understood by the Opposite Party. As a result of the same, the issues/ grievances raised in the Petition have been resolved between the parties to their mutual satisfaction. In principle, both the parties have arrived at mutually agreed terms and conditions of Hooking-up Facility Agreement.

3. *That in view of the above developments which have been taken place subsequent to the filing of the Information/ Petition and the same have resulted in the resolution of the objections of the Informant in relation to the terms of Draft Hooking-up Agreement, the grievances of the Informant as stated in the present Information/ Petition stand resolved, therefore, the Informant does not wish to press the objections and grievances mentioned in the Information/ Petition...”*

14. On a careful consideration of the written submissions filed by both the parties regarding the alleged abusive terms, the Commission notes that the Informant has the choice of selecting specialized contractors to carry out the construction of hook-up facility and it is not dependent upon OP only for constructing the same. Further, OP has also not insisted on any precondition for providing access to EWPL through a hook-up facility. Therefore the alleged conduct does not amount to an abuse under section 4 of the Act.

15. In view of the above, the Commission is of the view that no case, whatsoever, is made out against OP for contravention of the provisions of section 4 of the



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Act and the information is ordered to be closed forthwith in terms of the provisions contained in section 26 (2) of the Act.

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

Sd/-

(Ashok Chawla)
Chairperson

Sd/-

(S. L. Bunker)
Member

Sd/-

(Sudhir Mital)
Member

Sd/-

(Augustine Peter)
Member

Sd/-

(U. C. Nahta)
Member

Sd/-

(M. S. Sahoo)
Member

Sd/-

(Justice [Retd.] G. P. Mittal)
Member

New Delhi

Date: 19.11.2015