



Case No. 44 of 2013

In Re:

Sponge Iron Manufacturers Association (SIMA) ... Informant
Regd. Office 1501, Hemkunt Tower, 98, Nehru Place, New Delhi-110019

And

Coal India Ltd. (CIL)OP-1
Regd. Office 10, Netaji Subhash Road, Kolkata - 700001

Central Coalfields Ltd. (CCL)OP-2
Darbhanga House, Cutchery Road, Ranchi – 834029, Jharkhand

Eastern Coalfield Ltd. (ECL)OP-3
Sanctoria P.G Dishergarh Burdhan, West Bengal – 713333

Western Coalfields Ltd. (WCL)OP-4
Coal Estate, Civil Lines, Nagpur, Maharashtra – 440001

South Eastern Coalfields Ltd. ((SECL)OP-5
Post Box No. 60, Seepat Road, Bilaspur, Chhattisgarh – 495006

Northern Coalfields Ltd. (NCL)OP-6
Singrauli, P.O. Singrauli, Dist: Sidhi, Madhya Pradesh – 486889

Mahanadi Coalfields Ltd. MCL)OP-7
P.O. Jagruti Vihar, Burla, Dist: Sambalpur, Odisha - 768020

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



Order under Section 26(1) of the Competition Act, 2002

Informant is a registered association of sponge iron manufacturers in India formed with a view of promoting and protecting the interests of the Indian Sponge Iron Industry. The informant had been receiving representations from its members about the drastic reduction of quantity of Coal supplied by Coal India (OP 1) and its subsidiaries (collectively referred to as ‘Opposite parties’) as against the Fuel Supply Agreements (‘FSA’) entered into by the members of the informant association with respective opposite parties.

2. Briefly, OP 1 is stated to be the largest producer of coal in India. OP 1 and other opposite parties allegedly enjoyed a virtual monopoly over the production and supply of coal, producing over 80% of the coal in India. Being a monopoly, OP 1 forced its consumers i.e. companies involved in manufacturing Sponge Iron, Steel, dependent upon coal supply from by OP, to enter into one-sided, anti-competitive FSA and Memorandum of Understandings (MoUs) under which these buyers had no bargaining power or power to negotiate. Bereft of any alternative option, these buyers of Coal had no choice but to accept the dictated terms and conditions mentioned under the FSA and the MoUs.

3. The information further stated that in spite of being subjected to such unfair terms under the FSA and MoUs, there was no guarantee for the buyers that the quality or the quantity of the Coal being supplied will be in conformity with the terms and conditions as mandated therein. On various occasions, these buyers rejected the poor-quality coal supplied by the opposite parties, but OP regarded it as a case of deemed delivery under FSA and declared that the buyer was liable to pay for the Coal rejected. Also, on numerous occasions members of the informant association suffered a massive production shortfall resulting into idling of its machineries and manpower owing to short supply of coal by Coal India and its subsidiaries.



4. The informant alleged various anti-competitive practices e.g. one sided/onerous FSA and MOUs; short supply of coal despite an assured quantity under FSA or under the New Coal Distribution Policy (NCDP), diverting coal mandated to be supplied under FSA to sale through e-auction to earn super normal profits; poor/ Inferior quality of coal sold and supplied under FSA; differential pricing of coal etc. All these, as per the information, resulted in anti-competitive effects leading to constraint on national growth; massive wastage of manpower and resource involved in production of sponge iron leading to enormous energy loss. Poor quality of coal supplied lead to lesser production of sponge iron consequently resulting in lesser production of steel etc.

5. On the basis of above stated facts, the Informant alleged abuse of dominant position by the OPs in the relevant market of supply of coal to Sponge Iron plants in India. The informant, *inter alia*, prayed to the Commission to direct the opposite parties to cease and desist from imposing one-sided, unfair and anti-competitive conditions in future FSA and MoU and a direction to the opposite parties to modify the unfair and arbitrary conditions contained in existing FSA, MOUs etc for supply of Coal.

6. The Commission has perused the material placed on record. The relevant market in this case would be the market for 'production and sale of coal in India'. By virtue of the Coal Mines (Nationalization) Act, 1973, coal mines were taken over by the Central Government. Subsequently, on creation of OP 1 in the year 1975, the same were vested in it. OP 1 along with its subsidiaries is consequently having a statutory monopoly in the production and sale of coal in India. Therefore, the issue of dominance needs no further elaboration at this point. Otherwise also, the Commission has held OP 1 ((along with its subsidiaries) to be *prima facie* dominant in the relevant market in some of its earlier cases, viz. Case No. 3/2012, Case No.11/2012 and Case No. 59/2012.

7. It is apparent from information that the informant's member companies were totally dependent on OPs for supply of coal for running their sponge iron



plants. Taking advantage of their dominant position, OPs were allegedly not adhering to the terms and conditions in the FSA/MOUs and conducting themselves in a manner detrimental to the interest of the informant. The terms and conditions of FSA also show it being heavily loaded in favour of OPs. Since the consumer had no alternative and was dependent upon the OPs, the conduct of the OPs needs to be investigated for alleged contravention of the provisions of the Act.

8. As stated earlier, OP1 was held to be *prima facie* dominant in the relevant market, in Case No. 3/2012, Case No.11/2012 and Case No. 59/2012 and the Commission being of the opinion that there existed a *prima facie* case of abuse of dominance under section 4 of the Act directed the DG to cause a thorough investigation to be made into the matter. The DG has already filed its investigation report in the above said cases. Subsequently, in Case nos. 5/2013, 7/2013 and 37/2013 of the similar nature the Commission again directed DG to investigate the anti-competitive conduct of OP1, under section 26(1) of the Act.

9. In view of above, the Commission is of the opinion that the investigation of this case be clubbed with the Case nos. 05/2013, 07/2013 and 37/2013, currently being investigated by the Director General.

10. The Secretary is, therefore, directed to send a copy of this direction to the office of the DG. DG shall investigate the above matter for violation of the provisions of the Act. In case the DG finds opposite parties in violation of the provision of the Act, it shall also investigate the role of the persons who at the time of such contravention were incharge of and responsible for the conduct of the business of the companies involved so as to fix responsibility of such persons under section 48 of the Act. DG shall give opportunity of hearing to such persons in terms of section 48 of the Act. The report of DG be submitted within 60 days from receipt of the order.



11. Nothing stated in this order shall tantamount to a final expression of opinion on merit of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

New Delhi
Dated: 23/7/2013

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
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Member

Sd/-
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