



COMPETITION COMMISSION OF INDIA

Case No. 51 of 2015

In Re:

**Mohan Meakin Limited
Mohan Nagar, Ghaziabad,
Uttar Pradesh - 201007**

Informant

And

**GAIL (India) Ltd.
16, Bhikaji Cama Place, R. K. Puram,
New Delhi – 110066**

Opposite Party

CORAM

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

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

**Mr. M. S. Sahoo
Member**

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



Present: *For the Informant:*

Shri Anupam Roy, Advocate
Shri V. N. Koura, Advocate
Shri Nikhil Mundeja, Advocate
Shri R. C. Jain

For the Opposite Party:

Shri Kapil Kher, Advocate
Ms. Nikita Ved

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

1. The information in the present case has been filed by Mohan Meakin Limited (hereinafter referred to as the '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against GAIL (India) Ltd. (hereinafter referred to as the '**Opposite Party**') alleging, *inter alia*, contravention of the provisions of section 4 of the Act in the matter.
2. As per the information, the Informant is a manufacturer of glass bottles. For its manufacturing activities the Informant requires natural gas *i.e.*, Re-gasified Liquefied Natural Gas ('**R-LNG**'). The cost of manufacture of the end product is stated to be heavily dependent on the price of R-LNG.
3. The Opposite Party is a company incorporated under the Companies Act, 1956, and is *inter alia* engaged in the distribution and marketing of gas including exploration, transmission, extraction and processing of natural gas (including R-LNG) and related products in various states in India *i.e.*, Andhra Pradesh, Delhi, Goa, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan *etc.* As per the information, the Opposite Party has a huge network of pipeline infrastructure for gas transportation stretching a length of



10,977 kms with a capacity of 210 Million Metric Standard Cubic Meter per day (MMSCMD).

4. The Informant has stated that the Opposite Party supplies natural gas to the Informant for its glass bottle manufacturing facility situated at Mohan Nagar, Ghaziabad, Western Uttar Pradesh and also to other glass bottle factories located at Firozabad, Western Uttar Pradesh. It has been alleged that for past several years the Opposite Party had supplied R-LNG to Informant's unit at a much higher price in comparison to other manufacturing units located in Firozabad, Western Uttar Pradesh. This discriminatory pricing has allegedly resulted in heavy losses to the Informant leading to a closure of its glass bottle manufacturing unit/ factory at Mohan Nagar, Ghaziabad. The Informant has furnished the details of comparative prices at which the Opposite Party has sold and supplied R-LNG to the Informant and to other glass factories at Firozabad, Uttar Pradesh, during years 2010 to 2013. The same was alleged to be amounting to differential pricing by a dominant supplier of natural gas.
5. Besides, the Informant has also alleged that the Opposite Party has incorporated unfair and one-sided clauses in the Gas Sale Agreement entered between them on 27.12.2008 (hereinafter referred to as 'GSA'). It is alleged that the Opposite Party, by way of such clauses, has forced the Informant to purchase a specified quantity of R-LNG each year for a period of twenty years, failing which, the Informant was obligated to off-take the shortfall under the 'take or pay clause'. As a pre-condition to the GSA, the Opposite Party also required the Informant to furnish an unconditional, standby, automatic revolving and irrevocable standby Letter of Credit (hereinafter referred to as 'LOC') which the Opposite Party could draw upon for recovery of any amount claimed by it. The Informant has also alleged that the Opposite Party had threatened to withdraw money from the LOC



furnished by the Informant, until it recovers the full amount claimed by it or further likely to be claimed by it under the 'take or pay' provisions.

6. It has been stated that after the closure of its Mohan Nagar manufacturing unit, the Informant had intimated the Opposite Party about the same by way of letters dated 13.02.2014, 14.03.2014, 15.05.2014, 15.09.2014 and 04.12.2014 and also had served notice under clause 8.1(b) of the GSA to intimate the Opposite Party about its reduced requirement of R-LNG @ 4000 SCM per day (from 25000 SCM which was earlier agreed as per GSA) w.e.f. 01.03.2014. As per the Informant, the Opposite Party accepted the said amendment and reduced the LOC to Rs. 80,00,000 for 2014-15 and Rs. 90,00,000 for 2015-16 based on the reduced consumption of R-LNG. The Informant claims that necessary modifications were also made to the infrastructure/ pipeline to reduce the supply of gas accordingly and the said changes were also recorded in a 'Joint Minutes' prepared pursuant to their meeting on 14.03.2014 and signed by both the Parties.
7. However, irrespective of the above changes, on 28.02.2015, the Opposite Party intimated to the Informant *vide* letter dated 28.02.2015 that the liability for the year 2014 against 'Pay For If Not Taken' is Rs. 26 crores. Accordingly, a demand of Rs. 9.94 crores under clause 14.1 (c) of GSA for the year 2014 was made in the same letter.
8. On the basis of above stated facts, the Informant has contended that the conduct of the Opposite Party is abusive within the meaning of section 4 of the Act.
9. The Commission perused the information available on record. The Informant and the Opposite Party were given an opportunity to present oral submissions pursuant to which both the parties, represented by their legal counsels, presented



their submission on 30.07.2015. Both the parties also furnished their written submissions which were duly taken on record.

10. The Opposite Party, vide its written submissions dated 20.08.2015, denied all the allegations made by the Informant. Bereft of details, the Opposite Party urged that the relevant market in the present case would be the energy market for western Uttar Pradesh and has submitted that it is not dominant in the said relevant market. It is urged that the agreement between the Informant and the Opposite Party was entered before coming into force of the Act *i.e.*, in 2008. It is highlighted that the dispute is limited to 'take or pay liability' for 2014 whereby the Opposite Party demanded Rs. 9.44 crores for gas not withdrawn but contracted by the Informant. The Opposite Party submitted that it is not a producer of LNG but only purchaser of such natural gas from its upstream supplier *i.e.*, Petronet LNG Limited's (PLL) facilities at Dahej. Since the Opposite Party is bound to make payment for the quantities of gas contracted by it with PLL, it is difficult for it to allow the buyers to take lesser than the contracted gas.
11. On the allegation of discriminatory pricing, the Opposite Party has denied it stating that the difference in price charged is due to the type of gas supplied. The Opposite Party has submitted that it is charging uniform and non-discriminatory price from all its customers who are being supplied R-LNG. The difference in price of gas being supplied to Agra – Firozabad and the Informant plant is due to the type of gas. Whereas the Agra – Firozabad industries are being supplied gas under Administered Price Mechanism (APM) (which is allocated by and whose price is decided by the Ministry of Petroleum & Natural Gas, Government of India), the gas which is being supplied to the Informant's plant is R-LNG, which is imported gas and whose price is governed by international prices. The Opposite



Party has further contended that the gas to Firozabad industries was allocated by Government on the instructions of Hon'ble Supreme Court of India and it has no control over the prices of the same.

12. On the alleged mutual reduction of the annual contracted quantity, the Opposite Party categorically denied that it had ever agreed to reduce the quantity. It is submitted that the Opposite Party had several meetings with the Informant on this issue but the Informant was informed that the contracted quantity cannot be reduced during the currency of the contract as the Opposite Party has already tied up such volume of gas with its upstream supplier *i.e.*, PLL. Further, the Opposite Party claims to have communicated *vide* its letter dated 18.09.2014 to the Informant that for the year 2014, the Informant has agreed, as per contract, for 368000 MMBTU of LT-RNLG but examination revealed that from January, 2014 till July, 2014 the Informant drew only 30416 MMBTU against contracted quantity of 214836 MMBTU for these months. The Informant was also informed that they were liable to make payment of Rs. 14.13 crore for 'take of pay' value for these months as per the contract. It is the case of the Opposite Party that the Informant, despite the request of the Opposite Party (dated 20.02.2014) to issue an LOC of Rs. 4.74/- crore, issued an LOC of Rs. 80,00,000/-.
13. The Opposite Party has further denied that it has imposed one sided clauses in the GSA and has claimed that the terms and conditions are similar to and pursuant to its agreements with its upstream suppliers. Besides, the Opposite Party has highlighted that the Informant has filed a writ petition before the High Court of Allahabad seeking directions that the Opposite Party should supply gas to the Informant at the same rates at which it is supplying to other glass manufacturing units. The Informant has also filed an Original Miscellaneous Petition (OMP) at the Delhi High Court seeking restraint against encashing of LOC by the Opposite



Party. As such, the Opposite Party contended that the Informant has already invoked its contractual remedies and the present information has no competition law concern to require intervention by the Commission.

14. The Informant, vide its submissions dated 21.09.2015, in reply to the Opposite Party's written submissions reiterated the facts and allegations provided in the information and the same are not reproduced herein to avoid repetition.
15. As per the facts available on record, it appears that the Informant, an industrial consumer, is primarily aggrieved by the alleged abuse of dominant position by the Opposite Party for supply of R-LNG by way of imposing unfair and discriminatory terms and conditions in the GSA. For the purpose of examining the allegations of the Informant, it is necessary to determine the relevant market. As per the Act, the relevant market is to be determined keeping in view the relevant product market and the relevant geographic market.
16. In this regard, it is pertinent to mention here that the Commission has dealt with similar issue in various cases. In Case No. 71 of 2012 (*Faridabad Industries Association (FIA) Vs M/s Adani Gas Limited*), the Commission while examining the relevant product market categorised the consumers of natural gas into two different categories *i.e.*, industrial and domestic based on intended use and the price of natural gas. While industrial consumers use the purchased gas to meet the fuel and energy requirements of their plants, the end use of gas in case of domestic consumers is self-consumption/ domestic cooking purposes which is entirely different from industrial consumers. As such, the Commission is of the view that the same reasoning applies to the present case. As the Informant is a buyer of natural gas from the Opposite Party for commercial/ industrial use, the



relevant product market in this case is the market for ‘*supply and distribution of natural gas to industrial consumers*’.

17. As far the relevant geographic market is concerned, the Commission notes that the natural gas is generally transported through either city gas distribution network or through pipeline. The Commission observes that the laying down of city gas distribution network or pipeline is authorised by Petroleum and Natural Gas Regulatory Board (PNGRB) in every city/ state. The determination of relevant geographic market is therefore dependent on the facts and circumstances of every particular case. While the city gas distribution network is confined to a particular city, a pipeline may pass through various States. Therefore, the geographic market in the present case cannot be taken to be the whole of India but has to be limited to the particular geographic city/ State in which the actual consumer(s) are located *i.e.*, the state of Uttar Pradesh. Accordingly, the geographic market in the present case would be ‘the State of Uttar Pradesh’.

18. In view of the relevant product market and the relevant geographic market defined above, the relevant market in the present case may be considered as the market for ‘*supply and distribution of natural gas to industrial consumers in Uttar Pradesh*’.

19. As per the information available in the public domain, the Opposite Party possesses a position of strength in the relevant market as determined above. As per the TERI Energy Data Directory & Yearbook (TEDDY) 2012-13, there are three major pipeline entities engaged in gas transportation across the country *i.e.*, the Opposite Party, Reliance Gas Transportation Infrastructure Limited (RGTEL) and Gujarat State Petroleum Corporation (GSPCL). The Opposite Party is operating the Hazira-Vijapipur-Jagdishpur (HVJ) and Dahejpur-Vijaipur Pipelines (DVPL) which constitute about 10841 km (about 70.67%). The recently



commissioned Dhabhol-Banglore pipeline is also owned and operated by the Opposite Party. RGTIL is operating 1469 km (about 9.57%) East-West pipeline (EWPL) to evacuate gas from KG-D6 gas in Andhra Pradesh. GSPL is mainly focused in the state of Gujarat consisting about 1874 km (about 12.22%).

20. The preliminary review of the gas transportation sector suggests that the pipelines operated by these three entities mentioned above cater to the States through which they pass. Therefore, if one entity operates in one State and owns the infrastructure (*i.e.*, the pipeline) in that State, it faces no competition as such from other two entities. As per its official website, the Opposite Party has adopted a gas management system to handle multiple sources of supply and delivery of gas in a co-mingled form and provide a seamless interface between shippers, customers, transporters and suppliers and is present in sixteen states including Uttar Pradesh. In addition, the Opposite Party also operates regional gas pipeline network across India.
21. Further, as per the publically available information, there are four natural gas pipelines in the State of Uttar Pradesh which cover seventeen major districts of Uttar Pradesh. They are: HVJ-GREP-DVPL Natural Gas Pipeline, DVPL-GREP Capacity augmentation Trunk Pipeline, Dadri-Bawana-Nangal Natural Gas Pipeline and Karanpur-Moradabad-Kashipur-Rudrapur Natural Gas Pipeline. All these pipelines are owned by the Opposite Party. Therefore, it appears that the Opposite Party holds a position of strength being the owner of the network/ gas transportation pipeline for supply and distribution of R-LNG in the state of Uttar Pradesh.



22. In view of the above discussion, the Commission is of the view that the Opposite Party appears to be dominant in the relevant market of ‘*supply and distribution of natural gas to industrial consumers in Uttar Pradesh*’.
23. That brings the Commission to analyse whether the conduct of the Opposite Party is abusive within the meaning of section 4 of the Act. At the outset, it may be noted that since the GSA between the Opposite Party and the Informant pertains to 2008, the clauses are not specifically looked into by the Commission, the same being beyond the scope of scrutiny. It is apparent that one of the main contentions of the Informant is that the Opposite Party reduced the annual contracted quantity from 25000 SCM to 4000 SCM which was duly recorded in the joint minutes of the meeting dated 14.03.2014. However, the Commission notes that the same was refuted by the Opposite Party. The Commission perused the exchange of letters between the Opposite Party and the Informant. The letter dated 13.02.2014 was sent by the Informant asking for a reduction in the annual contracted quantity from 25000 SCM to 4000 SCM. Thereafter, the Informant has annexed another letter dated 14.03.2014 wherein it has mentioned about a letter from GAIL (dated 20.02.2014) wherein the Opposite Party has demanded an LOC for Rs. 4.74/- crores. Thereafter, the Informant has annexed many more letters wherein it has requested the Opposite Party to execute a contract for the reduced annual contracted quantity but there is no document to support that the Opposite Party had agreed to it. From the correspondences placed on record, it appears that the Informant was requesting the Opposite Party to reduce the annual contracted quantity and execute a fresh LOC accordingly. However, there is nothing on record to suggest that the same was accepted by the Opposite Party. Therefore, the demand by the Opposite Party for Rs. 4.74/- crores cannot be termed as arbitrary or unfair.



24. On differential pricing, the Informant has alleged that the Opposite Party discriminated between the Informant in Ghaziabad and other similarly placed glass bottle factories which are located in Firozabad. The Opposite Party has contended that the R-LNG supplied to plants in Firozabad was different from the R-LNG supplied to the Informant and since the former was covered by APM, the Opposite Party had no control over it. In this context it may be relevant to note that in Case No. 20 of 2013 (*M/s Saint Gobain Glass India Limited vs M/s Gujarat Gas Company Limited.*), the Commission segregated the relevant product market on the basis of price mechanism applicable to various segments of consumers *i.e.*, Administered Price Mechanism (APM) and Non-Administered Price Mechanism (Non-APM). It was noted that APM natural gas is meant for a select group of consumers such as consumers of power sector, fertiliser sector, consumers covered under court orders and those having allocation of less than 0.05 MMSCMD of natural gas, therefore, it cannot be clubbed with non-APM natural gas to form a single relevant product market.

25. The Commission notes that in the present case, while the Informant belongs to a category where APM does not apply, the glass bottle factories located in Firozabad (Taj Trapezium Zone) are covered under APM pursuant to an order passed by the Hon'ble Supreme Court as cited by the Opposite Party. It may be noted that where non-APM is applicable, the prices of R-LNG imported into the country by PLL are determined by the fuel oil linkages as part of the contracts signed between individual companies like RasGas and PLL¹. The end user price of R-LNG is not subsidized by the Government of India and hence is a complex mix of various components such as purchase price, exchange rate, regasification charges, transmission charges, taxes, contractual risks, competing fuel pricing *etc.* However, in case of segments or class of consumers falling under the APM

¹ This is based on the information available on GAIL's (OP) website, available at http://gailonline.com/final_site/ratechart.html



category, it appears that the supplier has no control over the prices of gas as contended by the Opposite Party. The Commission is convinced with the reasoning provided by the Opposite Party that the manufacturing unit of the Informant and the manufacturing units in Firozabad are distinct categories of consumers and hence the difference in R-LNG prices between these categories cannot be termed as discriminatory.

26. On the basis of aforesaid, the Commission is of the view that there is no competition issue involved in the present case and the same deserves to be closed down under section 26(2) of the Act.

27. The Secretary is directed to inform all concerned accordingly.

Sd/-

(S. L. Bunker)
Member

Sd/-

(U. C. Nahta)
Member

Sd/-

(M. S. Sahoo)
Member

Sd/-

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

New Delhi

Date: 27.10.2015

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