



Case No. 64/2013

M/s SRMB Srijan Limited  
SRMB House  
7, Khetra Das Lane,  
Kolkata – 700 012

...Informants

And

CRISIL Limited  
'CRISIL House',  
121-122, Andheri-Kurla Road,  
Andheri (East)  
Mumbai- 400 093

.....Opposite Parties

**CORAM:**

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M. L. Tayal  
Member

Mr. Justice S. N. Dhingra (Retd.)  
Member

Mr. S. L. Bunker  
Member

Present: Sh. Amit Gupta, Advocate for Informant

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

The information in the present case has been filed by the Informant against the Opposite Party (“OP”) under Section 19(1)(a) of the Competition Act, 2002,



("Act"), *inter alia*, alleging abuse of dominance through imposition of unfair or discriminatory conditions in the 'Ratings & Surveillance Agreement' in contravention of section 4 of the Act.

2. The OP is a rating agency that offers comprehensive range of rating services such as rating all types of bank facilities such as term loans, project loans, etc. The Informant alleged that OP was India's first, largest and most prominent credit rating agency and had a market share of 60% in the Indian ratings market.

3. The Informant contended that it entered into a Rating & Surveillance Agreement ("**Agreement**") with the OP on 18.10.2008 for rating bank loans amounting to Rs. 125 Crores. Vide e-mail dated 24.04.2009, the OP assigned a rating BBB/Stable/P3+ and communicated the rating rationale to the Informant (assessed risk for CRISIL BBB was moderate safety).

4. On 01.08.2010, the Informant acquired the shares of M/s Bhaskar Steel and Ferro Alloys Limited ("**Bhaskar Steel**"), which provided necessary backward integration infrastructure for the Informant in which it was stated to be lacking as per the rating rationale. Bhaskar Steel, under its previous management, was inconsistent in the payment of bank dues, but the Informant cleared its dues.

5. Vide e-mail dated 11.03.2011, the OP informed that the credit rating of the Informant had been downgraded to BB+/Stable/P4+ (assessed risk for CRISIL BB was moderate risk). The rationale for downgrading was the expected deterioration in the Informant's financial profile in 2010-11 and 2011-12 after the acquisition of around 41% stake in Bhaskar Steel. The Informant stated that it declined to accept the rating, stating that the rating rationale was not appropriate. The OP replied that rating



was not an annual exercise and could be reviewed any time during the year, depending upon information or additional development.

6. The Informant, dissatisfied with the rating service of OP, requested OP that the Agreement be terminated with immediate effect and the present rating be immediately withdrawn and removed from all forms of public dissemination. Despite sending a termination letter dated 18.04.2011, the OP asked the Informant for further documents for surveillance of credit rating facility. Vide its letter dated 17.05.2011, the OP communicated that the rating would be withdrawn as per its Rating Withdrawal Policy. Meanwhile, the Informant approached another credit rating agency, M/s. CARE, to get its bank facility rated.

7. The Informant further stated that vide e-mail dated 07.07.2011, the OP sent an invoice for Rs. 1,54,500/- plus service tax as annual surveillance fee for the year 2011-12. It was also stated by OP that after 15.07.2011 the amount payable would be Rs.3,25,558/- plus taxes. The Informant contended that instead of terminating the Agreement, the OP continued to disseminate the rating found to be unsuitable by the Informant. Vide e-mail dated 19.08.2011, the OP mentioned that non-payment of the said fee would result in contravention of the Reserve Bank of India (“**RBI**”) guidelines and might have an adverse impact on the Informant’s credit rating.

8. The Informant stated that vide letter dated 21.12.2011, the OP informed that the rating was suspended and not terminated for the reason that the Informant did not provide information on its operations and financials. Vide letter dated 08.02.2012, the Informant stated that despite categorically terminating the Agreement, it was being compelled to continue with the Agreement, as the OP was using pressure tactics to



defame the Informant by way of false information on its website and other media regarding non-cooperation of the Informant.

9. As per the Informant, the illegal actions of the OP regarding rating had a negative impact on creditworthiness and reputation of the Informant for the purpose of assessment of the Informant's group companies (M/s SRMB Srijan Ltd and Bhaskar Steel) by the bankers as both companies had a combined exposure of Rs. 250 crores. It was also stated that there had been a loss of up to 2% of incremental interest on these bank limits during this period, besides losses on account of reduction in concession of banker charges and loss of goodwill with the bankers, thereby reducing the prospect of future business expansion by the Informant.

10. Based on the above allegations, the Informant contended that OP, by imposing unfair and discriminatory conditions in sale of services of rating, had abused its dominance in the relevant market in contravention of the provisions of section 4 of the Act.

11. The Commission considered the information, facts and data placed on record by the Informant. For evaluating the allegations of the Informant regarding section 4 of the Act, the relevant market has to be considered as per section 2(r) read with section 19(5) of the Act. The relevant product market in the instant case is the market of credit rating services for availing banking facilities/loans, where OP is the service provider and Informant is the consumer of that service. As per the New Capital Adequacy Framework (commonly known as Basel II Guidelines) adopted by the RBI, banks provide capital based on the ratings assigned by the rating agencies. A bank loan rating indicates the degree of risk regarding timely payment of the bank facility being rated. The credit rating of an organization reflects the overall stability of the



account and the banks sanction facilities. The credit rating assigned by the OP is disseminated through various means to its subscriber base and to local and international news media and updated online on its websites [www.crisil.com](http://www.crisil.com) and [www.crisilratings.com](http://www.crisilratings.com). The relevant geographical market in the present case is the territory of India as the conditions of competition from the supply and demand side are homogeneous throughout India. Thus, the relevant market in this case would be *“the market of credit rating services for availing the banking facilities/loans in India”*.

12. The credit rating agencies in India have to register themselves with Securities and Exchange Board of India (“SEBI”) and are governed by SEBI (Credit Rating Agencies) Regulations, 1999 (“SEBI Regulations”). Further, to become an external credit rating agency for banking products, credit rating agencies have to get prior approval from the RBI. From these regulations, it is clear that there exist regulatory barriers to enter into bank loan rating market. As per SEBI, at present there are 5 rating agencies in India other than the OP: (a) M/s Credit Analysis & Research Ltd. (CARE) (b) M/s ICRA Ltd. (c) M/s Fitch Rating India Pvt Ltd. (d) M/s Brickwork Ratings India Pvt. Ltd. and (e) M/s SMERA Rating Agency of India Limited. Companies are free to choose any of these rating agencies. Moreover companies need to get themselves rated for their creditworthiness prior to seeking a bank loan only if their bank advises them to do so. If the companies seeking the rating feel that the ratings assigned by the rating agency are not appropriate, they have the option of not accepting it. The rating assigned is an independent opinion of an external agency and can change from time to time depending on the financial and other related information furnished by the companies.



13. Section 19(4) of the Act states that the Commission needs to consider various factors under the section while assessing whether an enterprise enjoys a dominant position or not. The Informant submitted that, having a market share of 60%, the OP was a dominant enterprise in the relevant market and that it was India's first, largest and most prominent credit rating agency. On its website, the OP claims to have assigned ratings for bank facilities to more than 12,614 entities as on March 31, 2013, representing over 50% of all the companies which have their bank loans rated in India. The OP rates the maximum number of companies for their bank loans in India and its bank loan ratings cover companies of all sizes. Based on the above information and analysis, *prima facie*, the OP appears to be in a dominant position in the market of credit rating services for availing the banking facilities/loans in India.

14. The grievance of the Informant pertains to non-termination of the Agreement by the OP even though the Informant did not want to continue the same and continuous display and circulation of Informant's rating in public domain against its wishes. The above conduct of the OP does not appear to be in violation of section 4 of the Act because Regulation 14(c) under Chapter III (General Obligations of Credit Rating Agencies) of SEBI Regulations provides that 'the client shall agree to a periodic review of the rating by the credit rating agency during the tenure of the rated instrument'. Further Regulation 14(d) specifies that 'the client shall agree to cooperate with the credit rating agency in order to enable the latter to arrive at, and maintain, a true and accurate rating of the client's securities and shall in particular provide to the latter, true, adequate and timely information for the purpose'. With respect to monitoring of ratings, Regulation 15(1) of the SEBI Regulations specifies that 'every credit rating agency shall, during the lifetime of securities rated by it continuously monitor the rating of such securities'. Regulation 15(2) provides that 'every credit rating agency shall disseminate information regarding newly assigned



ratings, and changes in earlier rating promptly through press releases and websites, and, in the case of securities issued by listed companies, such information shall also be provided simultaneously to the concerned regional stock exchange and to all the stock exchanges where the said securities are listed'. In relation to the procedure for review of rating, Regulation 16(3) provides that 'a credit rating agency shall not withdraw a rating so long as the obligations under the security rated by it are outstanding, except where the company whose security is rated is wound up or merged or amalgamated with another company'. The SEBI Regulations only mention equity and debt instruments in general. Basel II Guidelines were adopted by RBI since 2007 and hence bank loan rating is not specifically mentioned in the SEBI Regulations. The terms and conditions mentioned in the Agreement only reflect the various clauses mentioned in the above regulations; hence the conduct of the OP cannot be conceived to be in violation of the provisions of section 4 of the Act.

15. Whenever the Informant wanted to discontinue the rating services it had to follow the withdrawal procedure mentioned in the Agreement. Clause 13 of the Agreement clearly mentions that "client may request CRISIL for withdrawal of the rating by giving to CRISIL a written advance notice of three months, along with written consent of the concerned bank". While not following these procedures, the Informant seems to be complaining about abuse of dominance by the OP while the conduct of the OP only adheres to the guidelines regulating the sector and hence its conduct *prima facie* does not seem to have violated any of the provisions of section 4 of the Act.

16. In view of the above discussion, it appears that OP was *prima facie* a dominant enterprise in the relevant market of provision of credit rating services for availing banking facilities in India. Further, it appears that the OP was following the



regulatory guidelines provided by SEBI for rating agencies and the alleged conduct of the OP *prima facie* was not abusive in terms of the provisions of section 4 of the Act. For the reasons mentioned above, the Commission is of the opinion that there arises no competition concern actionable under section 4 of the Act and the case deserves to be closed under section 26(2) of the Act. The case is therefore, hereby closed under section 26(2) the Act.

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

New Delhi  
Date: 12/11/2013

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(Dr. Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member

Sd/-  
(M. L. Tayal)  
Member

Sd/-  
((Justice (Retd) S. N. Dhingra)  
Member

Sd/-  
(S. L. Bunker)  
Member