



In Re:

Karnataka Iron and Steel Manufacturer's Association (KISMA)
Vijay Bank Building, Vijay Vital Nagar, Torangallu, Sandur Taluk,
District - Bellary

....Informant

And

National Mineral Development Corporation Limited (NMDC)
Khanij Bhawan, Masab Tank, Hyderabad - 500028

....Opposite Party

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. M. L. Tayal
Member

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

Mr. S. L. Bunker
Member

Present: Sh. Ramji Srinivasan, Senior Advocate with Ms. Manika Brar,
Advocate for the Informant.

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

The present information was filed by Karnataka Iron and Steel Manufacturers Association (hereinafter referred to as '**Informant**'), seeking inquiry under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') alleging abuse of dominance by National Mineral Development Corporation Limited (hereinafter referred to as the '**Opposite Party/OP**'), with respect to its mining activities and production of iron-ore in State of Karnataka. The Informant is stated to be a society registered in the



year 2010 under the Karnataka Societies Registration Act, 1960, with the objects of coordinating and facilitating the working of the affiliated Member Organizations and to assist them in the matter of procurement of iron ore and raw materials, sale of finished products, and development and promotion of new technologies etc.

2. The OP (NMDC), incorporated in 1958 is fully owned by the Government of India under the administrative control of the Ministry of Steel. It is involved in the exploitation of wide range of minerals including iron ore, copper, rock phosphate, limestone etc.

3. Informant alleged that OP got exclusivity/monopoly in iron ore mining due to a Supreme Court order dated 05, August, 2011, in *Samaj Parivartan Samudaya & Ors. vs. State of Karnataka and Ors.*, (Writ Petition (Civil) No. 562 of 2009), whereby the previous ban imposed on all mining activities in Bellary district in Karnataka was relaxed, permitting only the OP to exclusively resume and continue its mining activities in Karnataka. The OP was also free to determine and fix the price of iron-ore produced from its mines. The Centre Empowered Committee, appointed by the Supreme Court, surveyed and inspected all iron-ore mines and categorized them into 3 categories 'A', 'B' and 'C' mines. Through its order dated 03.09.2012, Supreme Court allowed mining operations to be resumed in 18 category 'A' mines so as to ensure supply of iron-ore to industrial consumers. Supreme Court further directed that iron-ore from NMDC and non-NMDC mines be made available to industrial consumers to the tune of 1 million tonnes and 1.5 million tonnes per month respectively. By its order dated 18.04.2013, the Supreme Court further allowed mining operations to be resumed in category 'B' mines also, provided they satisfy certain conditions imposed by the Apex Court. However, these mines actually required a considerable time for becoming fully operational and for increasing their production capacity to cater to the needs of industrial consumers.

4. The informant alleged that as a result of exclusivity of operations in the relevant market of sale of iron ore of different category, OP due to the order of



Supreme Court, was trying to limit its production to the level lower than the approved capacity of mines and was charging higher prices, taking advantage of its position of strength in the relevant market due to its monopoly. As a result of this position of strength over its consumers, OP was also supplying poor quality iron ore i.e. with low Fe content, high moisture, high percentage of fines, alumina and silica, which affected the productivity, leading to increased production costs. The OP was also offering iron-ore through e-auction on 'as is/where is' basis, without any specifications or grievance redressal mechanism.

5. The Informant further contended that the OP did not follow any consistent method or criterion to determine floor/base prices of iron ore and it frequently changed the price determination criterion to maximise its revenue. Till the year 2004-05, OP settled domestic prices based on negotiations with domestic customers keeping in view international export price settlement and prices of steel products. From the year 2005-06 to the year 2009-10, OP adopted the *netback calculation pricing mechanism* based on Japanese Steels Mills index. The *netback calculation pricing mechanism* was recommended by Ganesan Committee. The OP switched to quarterly pricing mechanism during the year 2010-11. In 2011-12, OP reverted back to Netback Mechanism, changing from JSM to Platts index. After the OP was allowed to resume its operations by Supreme Court through its order dated 03.09.2011, OP adopted different methods for pricing of iron ore lumps and fines. From the year 2012-13, OP changed its pricing mechanism from Platts index to prices compiled by Joint Plant Committee, Ministry of Steel, Government of India. Further, during April 2012 - September 2012, OP increased prices of iron-ore even when prices had fallen down in the international market.

6. The Informant contended that as a result of its position of strength, OP was able to operate in the market independently of its competitors and market forces.

7. The Commission considered the information, facts and data through written submissions placed on record by the Informant. The relevant product



market in the present case undisputedly is ‘supply of iron ore.’ Iron ore mining activities in India are spread over in the States of Karnataka, Goa, Chhattisgarh, Jharkhand, Orissa, Maharashtra, Andhra Pradesh, Madhya Pradesh and Rajasthan of which Karnataka, Goa, Chhattisgarh, Jharkhand and Orissa which cumulatively contribute 98% of the total iron ore production of country. Industrial consumers of iron ore are located in close proximity to iron ore mines to ensure minimum transportation costs to the industries. The transportation costs form a substantial part of cost of iron ore to the industry. The conditions of competition in supply of iron ore for industry located in an area are distinctly homogenous only if iron ore is supplied from mine situated in that area. In the present case, the relevant geographical market would be State of Karnataka, because transporting iron ore from other states would involve heavy transportation costs. It would not be economically viable for industrial consumers in State of Karnataka to purchase iron ore from other states and vice versa. Thus, the relevant geographical market in the present case would be ‘geographic region of Karnataka.’ The relevant market in the present case would therefore be the market for ‘production/supply of iron ore in the State of Karnataka’.

8. In the present case, the OP is the only producer/supplier of iron-ore to industrial consumers in the relevant market, conferring a position of dominance to it. However, there is no evidence/material to lead to a prima facie inference that OP was abusing its dominance to the detriment of its consumers. The mining activities and subsequent pricing of iron ore were being done as per the orders of the Supreme Court and under the supervision of Supreme Court appointed monitoring committee. The Supreme Court had banned mining in District Bellary and extended such ban to Districts of Chitradurg and Tumkuru by its orders of July, 2011 etc. Thereafter, Supreme Court, vide its order dated 05.08.2011 permitted resumption of mining operations of OP1’s Kumaraswamy and Donimalai mines, subject to mandatory condition that the entire production of OP 1 from the State of Karnataka should be sold only by way of e-auction. Thus, OP 1 was producing iron ore in the State of Karnataka under the orders of the Supreme Court, and,



neither it was selling nor fixing the sale price of iron ore in the State of Karnataka of its own but in compliance of order of the Supreme Court.

9. As regards the contention of the Informant that OP has adopted arbitrary pricing mechanism as a result of its dominant position in the relevant market, the observation of the Commission in Case no. 15/2013, *Association of Indian Mini Blast Furnaces vs. National Mineral Development Corporation and Ors.*, still holds ground. This Commission observed as under:

“The relevance of determining relevant market and dominance of an enterprise is only necessary in free markets. Since, in this case, the mining activities were being done as per the orders of the Supreme Court and pricing was looked after by another Committee, determination of relevant market may not be appropriate. Most of the actions of the OP stated in the information were in pursuance of the order of the Hon’ble Supreme Court. The Supreme Court had banned mining in District Bellary and extended such ban to Districts of Chitradurg and Tumkuru by its orders of July, 2011 etc. Thereafter, Supreme Court, vide its order dated 05.08.2011 permitted resumption of mining operations of OP1’s Kumaraswamy and Donimalai Mines alone. Further, the Supreme Court made it mandatory that the entire production of OP 1 from the State of Karnataka should be sold only by way of e-auction. The Supreme Court banned the supply of iron ore by OP 1 even to its long term customers under the then existing long term contracts. Thus, OP 1 was producing iron ore in the State of Karnataka under the orders of the Supreme Court, and, neither it was selling nor fixing the sale price of iron ore in the State of Karnataka of its own. Thus, all the actions of OP 1 in so far as it pertained to State of Karnataka were in compliance of the orders of the Supreme Court.

It is also significant to mention herein that Supreme Court has dealt with the pricing policy decisions of OP and has categorically passed an order stating that the fixation of basic price by OP was transparent and did not require any interference. The Supreme Court directed the Central Empowered Committee to monitor the prices adopted by OP and have discussions with OP for any change thereof. The Central Empowered Committee was of the view that the pricing mechanism adopted by OP in fixing of basic price need not be interfered with. Besides, based on the changes in Government policy and iron ore trade dynamics, OP had also been changing its pricing policy from time-to-time. Since the international market shifted to fixing the prices on quarterly basis, instead of annual system prevalent till 2009-10, OP also started fixing prices for its domestic long-term customers on quarterly basis with effect from April, 2010 along with export contracts. Every enterprise is free to undertake such prudent and sound commercial decisions to survive in a dynamic business environment and such changes prima facie do not raise competitive concerns.”

10. In view of the above discussion, there does not exist a *prima facie* case for causing an investigation to be made by the Director General in the matter.



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

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

New Delhi

Dated: 05/02/2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(S. N. Dhingra)
Member

Sd/-
(M.L. Tayal)
Member

Sd/-
(S.L. Bunker)
Member