



In Re:

Shri Tom Joseph,
Address: F-121/6, Dilshad Colony,
Delhi - 110095.

Informant

And

- (i) Chairman, Steel Authority of India
Ispat Bhawan, Lodhi Road,
New Delhi - 110003. Opposite Party 1
- (ii) Chairman-cum-Managing Director
MECON Limited.
PO-Doranda, Ranchi-834002. Opposite Party 2
- (iii) VP & Head-(Minerals & Metals Business Unit)
Larsen & Toubro Limited,
Duckback House 41, Shakespeare Sarani,
Kolkata- 700017. Opposite Party 3
- (iv) Chief Executive Officer
Shapoorji Pallonji & Co. Ltd.
Engineering Procurement & Construction Division,
SP Centre, 41/44, Minoo Desai Marg,
Colaba, Mumbai-400005. Opposite Party 4
- (v) Chairman,
McNally Bharat Engineering Co. Ltd.,
Ecospace Campus-2B,
Plot No. 11F/12, New Town,
Rajarhat North 24 Pgs.,
Kolkata-700156. Opposite Party 5
- (vi) Chief Executive Office,
Trafalgar International FZE,
PO BOX 16824,
Jebel Ali Free Zone,
Dubai-United Arab Emirates. Opposite Party 6
- (vii) Managing Director,
Outotec India Pvt. Ltd.,
South City Pinnacle,
12th Floor, Sector-V,
Block EP, Salt Lake, Kolkata. Opposite Party 7



- (viii) Chairman,
Hindustan Dorr-Oliver Ltd. Dorr Oliver House,
Chakala, Andheri (East),
Mumbai-400099. Opposite Party 8
- (ix) General Director,
Mekhanobrchermet,
22nd Liniya, 3, Building 7,
VasilyevskyOstrove,
St. Perersburg, 199106, Russia. Opposite Party 9
- (x) Chairman,
Metallurgical Corporation of China, Shuguangxili,
28th Chaoyang District, Beijing,
Peoples Republic of China. Opposite Party 10
- (xi) General Director,
Uralsmashplant JSC 620012
Pervoi Pyatiletki Sq., Ekaterinburg, Russia. Opposite Party 11
- (xii) Chairman & Managing Director,
IVRCL Limited. "MIHIR".
H.No. 8-2-350/5/A/24/1B, Panchavati Colony,
Road No. 2, Banjara Hills, Hyderabad,
Andhra Pradesh-500034. Opposite Party 12

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. M. L. Tayal
Member

Justice S. N. Dhingra (Retd.)
Member

Mr. S. L. Bunker
Member

Present: Shri Ankur Kulkarni, Advocate for the Informant.

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

The present information was filed under section 19(1) of the Competition Act, 2002 ('the Act') by Mr. Tom Joseph ('the Informant')



against several enterprises namely, M/s. Steel Authority of India Limited, (**Opposite Party No. 1**) and eleven other parties shown above as OPs 2 to 12. The Informant alleged that the conduct of Opposite Parties in awarding of tender for Crushing, Beneficiation and Pellet Plants (Package-001) for 10 metric tonnes Expansion of GUA Ore Mines, Jharkhand (**Project**) was in contravention of the provisions of Sections 3 and 4 of the Act.

2. As per the Informant, in July 2008, OP1 invited Expression of Interest (EOI) from global players for installation of 4.0 Mt/year of pellet plant including beneficiation facilities at Gua & Bolani iron ore mines, vide tender no. RMD/K/PROJ/870 dated 05.07.2008. OP 1 initiated the project on top priority basis, as part of its expansion program. The project involved civil & structural work covering design, engineering, manufacture, supply, handling, storage, erection, commissioning of plant & equipment etc. Several international companies responded to the EOI.

3. However, OP1 withdrew the EOI and subsequently invited two EOIs vide letter nos. RMD/K/PROJ/1528 and RMD/K/PROJ/1529 dated 26.09.2008 for installation of beneficiation facilities to produce 4 million tons/year of pellets each at Gua & Bolani mines on turnkey basis. The eligibility criteria for the beneficiation part of the project was that (i) bidder/consortium should possess the technology for beneficiation of hematite iron ore fines; (ii) bidder/consortium must have executed/ provided technology for atleast 1 beneficiation plant based on hematite ore with a capacity of 3 MT/year or above and; (iii) the plant should have operated successfully for at least one year. Similarly the eligibility criteria for pelletization were as follows: (i) Bidder/consortium shall possess the technology for pellet plant; (ii) bidder/consortium must have executed minimum of 2 pellet plants each with a capacity of 3 MT/year or above based on hematite iron ore and; (iii) the plants should have successfully operated atleast for one year.

4. The Informant averred that OP2, a consultant of OP1 submitted a 'Detailed Project Execution Report (DEPR)' with regard to Gua mines project and estimated the cost of project including the plant at INR 1950



crores. On basis of EOIs received from global players, OP1 invited tender RMD/K/PROJ/NIT/GOM/016 dated 25.05.2010 for installation of 4 metric tonne per annum capacity pellet plant at Gua, West Singhbhum, Jharkhand, on divisible turnkey contract basis. On the last date of submission of tender, two bids were received from two consortiums comprising of OP3 backed by OP7; and OP 10 backed by M/s Metso, OP5 and M/s Gayathri Projects Limited.

5. The raw material division of OP1 held a pre-bid conference on 12th and 13th November, 2010 at Kolkata for a new beneficiation plant with 12.5 Mt/year capacity. OP1 received an overwhelming response and asked the bidders to furnish their work experience and other details. The Informant alleged that OP1 and OP2 used the information furnished by the participants to frame pre-qualification criteria and thus manipulated the entire process of bidding. The Informant has further averred that second round of techno-commercial discussions took place between OP1, OP2 and the two consortiums of bidders and both of them were found to be eligible. The price bids were to be opened on 14.07.2011 but the bid was later cancelled without assigning any reasons.

6. The Informant also stated that vide tender no. RMD/K/PROJ/NIT/GOM/11-12/046 dated 01.10.2011 OP1 invited a fresh tender for crushing, beneficiation and pellet plant for expansion of Gua Iron Ore Mines to 10 MT on divisible turnkey basis either as a sole bidder or as a consortium covering design, engineering, supply of plant equipment, civil & structural work, erection, testing etc. The eligibility criterion was made more stringent to benefit global players and prevent other firms from participating. Minimum eligibility criterion for beneficiation plant was raised from 3 MTPA to 5 MTPA and potential participants who were previously eligible were unable to participate as beneficiation & pellet plant projects were integrated.

7. Technical bids for new tender were opened on 27.01.2012 and after multiple rounds of discussion with each consortium, three consortiums (a)



M/s L&T, M/s Outotec and M/s Metso ('consortium1'); (b) M/s MBE (McNally Bharat) and M/s Mekhanobrchermet ('consortium 2') and (c) M/s SP-EPC (Shapoorji Pallonji), M/s Trafalgar (ECM) and M/s Uralmash ('consortium 3') were found to be eligible. OP 1 notified the revised date of opening of price bid as 17.01.2013. It was also clearly specified therein that un-priced copy of revised price bids were to be submitted latest by 15.01.2013.

8. The Informant further alleged that the bids were not opened on the stipulated day i.e. 17.01.2013 but were opened the next day and the request of consortium 3 for extension of time was ignored. The price sheets in the technical bids were also replaced in a clandestine manner without following the usual practice of submitting price bids in a sealed envelope after technical evaluation. In the present case, OP2 furnished the final estimate only after price bid was opened on 18.01.2013.

9. Based on the above facts, Informant alleged that OP1 and OP2 abused their dominant position in violation of section 4(1) of the Act by raising the minimum eligibility criterion from 3 MTPA to 5 MTPA for the beneficiation plant as well as integrating both beneficiation and pellet plant in the tender. Restricting the eligibility conditions led to decrease in number of participants from 20 in the first tender to only 3 consortiums qualifying as eligible in the second tender. Informant further contended that a new clause regarding payment in foreign currency to foreign sub-contractor of Indian bidder was added, intended to give price advantage to consortium 1 of which M/s Metso was a member and also an equipment manufacturer. Permitting direct payment to foreign sub-contractors conferred undue price advantage on OP 3 in terms of CENVAT & CVD for imported supplies being made directly by M/s Metso which otherwise would have been routed through OP 3. Informant also highlighted that OPs 1 and 2 made several changes in terms and conditions in tender in order to provide benefits to the opposite parties, especially OPs 3, 4, 5 and 7.



10. The Informant lastly alleged that consortium 2 quoted an inflated price of Rs. 3200 crore only as a cover bid and there was an implied understanding between the parties to rig the bidding process to facilitate awarding of the contract to one of the consortiums.

11. The Commission considered all the material on record including the information and the arguments addressed by the Advocate for the Informant.

12. Iron ore after extraction and pig iron in lump form is extracted by sieving it multiple times. Beneficiation is the second stage of iron ore processing where iron ore containing high impurities such as alumina and silica is treated to increase the physical properties. From the beneficiated ore, powdered fines are converted into sinter by process of agglomeration. Pelletization involves converting the fine residual ore into small balls and can be later used for production of pig iron. All the above stages in iron ore processing are intended to remove the impurities present in iron ore and refine its physical properties and value. Iron ore processing involves use of capital intensive technology which also needs to be licensed.

13. In the present case, the relevant product market appears to be the technology for iron ore processing, specifically the crushing, beneficiation and pelletization, which enable the iron ore mines to increase their output and efficiency. The process of crushing, beneficiation and pelletization of iron ore are capital intensive in vertical stages, which could either be supplied by different firms specializing in a particular stage/technique or by firms specializing in more than one stage. Therefore, the relevant product market in the present case *prima facie* seems to be setting up of iron ore (hematite) processing plants. The relevant geographic market in the instant case is whole of India as iron ore processing plants can be set up at or near any iron-ore/hematite mine. As such, the product market in the present case is setting up of iron ore (hematite) processing plants in India.

14. Iron ore production in India depends on mine lease and the existing distribution of mine lease is fragmented between captive and non-captive



mines. OP 1 obtains its entire requirement of iron ore from its captive mines and Gua iron ore mine is one of the captive mines operated by OP 1. As per Indian Bureau of Mines, India's iron ore production consisting of lumps, fines and concentrates in 2011-12 was 167 million tonnes and in 2010-11 was 207.16 million tonnes. Captive mines production in these two years were 42.8 million tonnes and 44.7 million tonnes respectively which indicates that the share of captive mines is about 25.63% & 21.6% respectively in these two years. It also indicates that 75% of iron ore was produced by non-captive mines. As per OP1's annual reports for 2010-11 and 2011-12, its captive mines produced 24.45 million tonnes and 22.35 million tonnes of iron ore respectively. Though OP1 produces more than 50% of iron ore in captive mines category, in India's iron ore production its share is only about 13.38% & 11.8% respectively for these two years and prima facie it is not a dominant producer of iron ore in India. In the same manner when OP 1 is not dominant in production of iron ore, it can be presumed that it is also not dominant in procuring facilities for iron ore processing in India. As such OP1 is not dominant player in the market of iron ore processing in India.

15. OP 2 is a project consultant for OP 1 in the Gua iron ore mines project and is not dominant in the relevant market in any manner. The other Opposite Parties i.e. OP3 to OP12 are operating in different sectors related to engineering, construction, consultancy, research and design besides catering to various segments of mineral and metal processing. Their relationship with OP1 can be described as that of seller and buyer. OP3 to OP12 are operating at different stages of iron ore processing and not in the relevant market. As such, prima facie OPs are not dominant in the relevant market as they are engaged/operating in different stages/markets. As prima facie no OP is dominant in the relevant market, abuse of dominant position on their part cannot be inferred.

16. As regards the violation of Section 3 of the Act, there is no substantial evidence or material to point out any understanding or agreement between the opposite parties to rig the bidding process. Prima facie, there does not



appear to be any violation of section 3(3) read with section 3(1) of the Act by the opposite parties or the three consortiums.

17. 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 under section 26(1) of the Act. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.

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

New Delhi
Date: 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