



COMPETITION COMMISSION OF INDIA

Case No. 16 of 2019

In Re:

**M/s Maa Metakani Rice Industries
Represented through Shri Puneet Jhunhunwala, Partner
Jhunhunwala House, Nandapada,
Sambalpur – 768001
Odisha**

Informant

And

**State of Odisha
represented through
Commissioner-cum-Secretary,
Food Supplies & Consumer Welfare Department, Government of Odisha,
Odisha State Secretariat, Sachivalaya Marg,
Unit-2, Keshari Nagar,
Bhubaneswar- 751001,
Odisha**

Opposite Party No. 1

**Odisha State Civil Supplies Corporation Ltd.
C/2, Nayapalli
Bhubaneswar- 751012
Odisha**

Also at:

Kacheri Road, Sambalpur- 768001, Odisha

Opposite Party No. 2

CORAM

**Mr Ashok Kumar Gupta
Chairperson**

**Ms Sangeeta Verma
Member**

**Mr Bhagwant Singh Bishnoi
Member**



Presence:

For the Informant:

Mr. Prabhu Prasanna Behera,
Advocate
Mr. Abhishek Choudhary, Advocate
Mr. Puneet Jhunjhunwala, Partner
(Maa Metakani Rice Industries)

For OSCSCL:

None

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

1. The present information has been filed by M/s. Maa Metakani Rice Industries, a registered partnership firm represented through its partner Mr. Puneet Jhunjhunwala (hereinafter, '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, '**Act**') alleging contravention of the relevant provisions of Section 4 of the Act, by the State of Odisha, represented through Commissioner-cum-Secretary, Food Supply & Consumer Welfare Department (FS & CW Department), Government of Odisha (hereinafter, '**Opposite Party No. 1/OP-1**') and Odisha State Civil Supplies Corporation Ltd. (hereinafter, '**Opposite Party No. 2/OP-2**', collectively referred to as '**Opposite Parties/OPs**').
2. The Informant is stated to be in the business of rice (paddy) milling, production of rice, broken rice, bran, *etc.* and sale thereof, to act as Custom Milling Agent of OP-2 for the aforesaid purpose and to undertake custom milling on account of Food Corporation of India ('**FCI**'), National Collateral Management Services Limited ('**NCMSL**'), Orissa State Cooperative Marketing Federation Limited ('**MARKFED**'), Tribal Development Cooperative Corporation of Odisha Limited ('**TDCCOL**') and other Government Agencies.
3. According to the Informant, OP-2 was established on 03.09.1980 as a company, under the erstwhile Companies Act, 1956, fully owned by the Government of Odisha. It has been stated that OP-2 is the largest agency involved in paddy procurement in the State of Odisha as it purchases more than 90% of the total paddy produced in the State. It is



further stated that all the rice mills in the State including that of the Informant, are totally dependent on OP-2 to run their rice mills.

4. The Central Government extends price support for paddy through FCI and State agencies. The procurement is open-ended which is carried out at Minimum Support Price ('MSP') *i.e.*, whatever food grains are offered by the farmers, within the stipulated procurement period, conforming to the quality specifications prescribed by Government of India, are purchased at MSP (and bonus/incentive, if any) by the Government agencies including FCI for Central Pool. Government agencies undertake MSP operation at *mandis*/temporary purchase centres/aggregation points. Custom Milled Rice ('CMR') is manufactured by milling the paddy procured by State Government/State agencies and FCI. In the State of Odisha, paddy is mainly procured by State Government/State agencies and the resultant CMR is delivered to State Government/State Agencies and FCI by rice millers. The State of Odisha has been procuring paddy from farmers since the Kharif Marketing Season ('KMS') 2003-04. The season starts from 1st of October and continues till 30th of September of the immediate next year. Two crops of paddy are cultivated in a KMS, namely, Kharif and Rabi.
5. OP-1 is stated to play a significant role in supporting the activities of OP-2 by providing subsidy to recompense for its losses.
6. The Informant claims to have entered into an agreement on 23.11.2015 with OP-2 for custom milling of paddy for the KMS 2015-16 (hereinafter, '**Agreement**'). Clauses 25 and 26 of the Agreement provides for Standard Fire Insurance coverage of the stock of OP-2 kept and maintained at the custom miller's premises, *vis-a-viz* the Informant.
7. As per the Informant, the salient features of the insurance coverage clauses under the Agreement are as under:

7.1. OP-2 is responsible, on behalf of the custom miller, for taking out a comprehensive fire floater insurance policy for its stock *i.e.* paddy, rice and



gunny bags lying within the premises of different rice millers of Odisha. The Informant is required to pay proportionate Insurance premium as decided by OP-2.

7.2. The custom miller shall be responsible for any damage/deterioration in the quality of paddy belonging to OP-2 due to unsafe and unscientific storage by the miller. Further, OP-2 shall not be held responsible for any damage/loss of stock of OP-2 due to fire and other calamities, if such stock is kept unscientifically and in an unsafe manner by the miller.

8. The Informant started custom milling of paddy for the KMS 2015-16 and after milling, commenced the delivery of rice.
9. During the said period, as per requirement, OP-2 purchased the Standard Fire Floater Declaration Policy, effective from 01.12.2015 to 30.11.2016, for its stock lying within the premises of 1549 rice mills of Odisha for an initial sum assured of Rs. 2,000 Crore. The Informant has alleged that neither the terms and conditions of the said policy nor a copy of insurance policy was provided by OP-2 to the Informant, though part of premium was being collected from the Informant by OP-2.
10. In the early hours of 04.08.2016, OP-2's stock lying at the Informant's premises were damaged due to flood/inundation in the mill premises of the Informant. The Informant is stated to have taken all necessary steps for safeguarding the stock and fully cooperated with OP-2 in this regard. As per the copy of Final Survey Report of water damage of stock of OP-2 filed with the information, there were heavy rains in Sambalpur and the rain water entered into the Informant's premises on 04.08.2016 which damaged the stock comprising rice and paddy at the Informant's premises. Final survey report assessed the net adjusted loss at Rs. 87,15,892.76.
11. The Informant has stated that OP-2 accepted the loss of stock which is evident from various documents like copy of paddy stock register, rice stock register, custody and maintenance stock register, physical verification report *etc.* filed with the information.



12. The Informant has also stated that OP-2 did not enlist the Informant as a defaulting custom miller in the list of custom millers at default for the period KMS 2003-04 to 2015-16, uploaded by it on its website.
13. The Informant has alleged that through its letters dated 25.10.2016 and 29.11.2016, OP-2 provided information related to the insurance policy and claim related procedures and changed the entire clauses related to insurance in the custom milling agreement with the millers.
14. The Informant alleged that, after completion of KMS 2015-16, the custom milling dues of the Informant were withheld by OP-2. The Informant was allowed to participate in custom milling for KMS 2016-17, but outstanding payments for 2015-16 were not released and the total custom milling dues payable to it by OP-2 for the KMS 2015-16 and 2016-17 were approximately Rs. 1,20,00,000/-.
15. The Informant is stated to have approached OP-2 several times for releasing its dues. However, as per the Informant, it was verbally communicated by OP-2 that the CMR dues of the Informant could not be released as the claims had not been settled by the insurance company *i.e.* New India Assurance Company Ltd.
16. Thereafter, the Informant filed a consumer complaint being CC No. 96/2017 before the learned State Consumer Disputes Redressal Commission, Cuttack ('**SCDRC**') against the said insurance company and OP-2. In addition to this, it also filed an application being Misc. Case No. 987/2017 against OP-2 before the SCDRC, in CC No. 96/2017, seeking release of all pending dues of the Informant. The Informant stated that after filing of Misc. Case No. 987/2017, OP-2 released certain amount but withheld the balance amount which it stated, was subject to settlement of claim by the insurance company. Further, the insurance company also filed an application being Misc. Case No. 1529/2017 in Case No. 96/2017 before the SCDRC, challenging the maintainability of the consumer complaint. Thereafter, *vide* order dated 27.12.2017, the SCDRC held that the consumer complaint filed by the Informant was maintainable and dismissed the application of the insurance company.



17. The Informant further filed an application Misc. Case No. 1118/2018 (arising out of Complaint Case No. 96/2017) before the SCDRC, which *vide* its order dated 19.02.2019 directed OP-2 to take a decision on the representation filed by the Informant within 10 days. Further details of the said proceedings have not been indicated by the Informant in the Information.
18. The Informant alleged that only after it filed the aforesaid consumer complaint that, OP-2 released an amount of Rs. 33,73,980/- on 03.11.2017, but withheld CMR dues of approximately Rs. 85,00,000/-, as stated by the Informant. As per the Informant, although no written confirmation was given, officials of OP-2 told the Informant that the withheld amount would be released only after settlement of the insurance claim which made it clear that OP-2 admitted its liability but had made only a partial payment towards that liability.
19. The Informant has further informed that in Misc. Case No. 987/2017, the SCDRC directed OP-2 to release the amount Rs. 83,00,000/- as claimed by the Informant and admitted by OP-2, towards custom milling dues, pending adjudication of consumer dispute.
20. The Informant is stated to have filed an application for execution before SCDRC, as OP-2 did not follow the directions of the SCDRC. Thereafter, OP-2 and the insurance company filed appeals before Hon'ble National Consumer Disputes Redressal Commission ('**NCDR**C') against SCDRC's order dated 27.12.2017, passed in CC No. 96/2017, which is still pending. In the meantime, the insurance company repudiated the claim of OP-2 (concerning loss at the Informant's premises) *vide* its letter dated 08.03.2018. The Informant averred that it was not informed about such repudiation, by OP-2.
21. As per the Informant, OP-2 also debarred it from participation in Rabi Paddy procurement and CMR operations for KMS 2017-18, which commenced from 14.05.2018. However, the Informant was not provided any specific document stating the grounds of its debarment. The Informant alleged that there was no prior intimation



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of criteria for selection of Custom Millers for Rabi season for KMS 2017-18 and criteria was only issued on 28.04.2018 with the deadline set at 30.04.2018. The Informant, *inter alia*, made representation, *vide* letter dated 30.04.2018 to OP-2, which was totally ignored, and no reply was given.

22. The Informant also stated that it filed grievance petition dated 14.02.2018 and a written representation dated 30.04.2018 with OP-1 but to no avail.
23. Further, according to the Informant, All Odisha Rice Millers Association ('AORMA') wrote a letter dated 06.11.2018, highlighting issues of non-payment of arrears, lack of framing of suitable policy *etc.* and all the millers refused to enter into any agreement for KMS 2018-19 with OP-2. The Informant alleged that there were verbal threats from OPs and OP-2 issued a letter dated 22.11.2018, threatening the millers that differential custody and maintenance charges arising out of revised duration pertaining to KMS 2017-18 would not be paid unless they executed an agreement for KMS 2018-19 to participate in procurement.
24. Thereafter, the Informant was forced to enter into an agreement with OP-2 for custom milling for KMS 2018-19. According to the Informant, while the said agreement safeguards the interests of OP-2, it is silent on rates of custom milling and payment conditions *etc.* The Informant has alleged that the said action of OP-2 is an abuse of dominant position and the letter dated 22.11.2018 created an anti-competitive environment resulting in ousting of players from the market.
25. Based on the above facts and circumstances, the Informant alleged that OP-2 directly and/or indirectly imposed unfair and discriminatory conditions in purchase of service from the Informant and it could be deduced that OP-2 acted in an exploitative and exclusionary manner. The Informant also alleged that it is being subjected to high handedness, arbitrariness and complete abuse of dominant position by the OPs, which is not tenable in the eyes of law. It has also been asserted that OP-2 had failed to maintain the "*essential facilities*" in an efficient manner.



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26. In sum and substance, the Informant has alleged that it suffered huge economic hardship owing to the high handed approach adopted by OP-2 by delaying the settlement of the CMR dues and also not settling the claim with the insurance company and paying off the legitimate dues of the Informant.
27. Based on the basis of the above facts and circumstances, the Informant has prayed that an enquiry be instituted and it be held and declared that OP-2 has indulged in anti-competitive practice and that the policy and the actions of OP-2 are opposed to the freedom of trade; OP-1 and OP-2 be further directed to discontinue and stop such practice and OP-2 may be directed to discontinue the abuse of dominant position.
28. The Informant has also sought compensation under various heads, apart from seeking interim relief under Section 33 of the Act, though no separate application has been filed in this regard.
29. The matter was taken up by the Commission in its ordinary meeting held on 04.06.2019. On 25.07.2019, the Commission decided to have a preliminary conference with the Informant and OP-2 on 03.09.2019.
30. On 03.09.2019, the Informant appeared along with its learned counsel and explained the case in support of the information filed. However, despite due service, no one appeared on behalf of OP-2.
31. The Commission has carefully perused the information, material available on record and other information available in public domain.
32. The Commission observes that the broad objectives of the government policy for procurement of food grains is to ensure MSP to the farmers and availability of food grains to the weaker sections at affordable prices. It also ensures effective market intervention, thereby keeping the prices under check and also adding to the overall food security of the country.



33. FCI, the nodal central agency of Government of India, along with other State Agencies undertakes procurement of wheat and paddy under price support scheme. The procurement under price support scheme is taken up mainly to ensure remunerative prices to the farmers for their produce which works as an incentive for achieving better production¹.
34. For Rabi / Kharif Crop season harvest, the Government of India announces the MSP for procurement of various crops based on the recommendation of the Commission of Agricultural Costs and Prices ('CACP')².
35. To facilitate procurement of food grains, FCI and various State agencies, in consultation with the State Government, establish purchase centres at various *mandis* and key points. The number of centres and their locations are decided by the State Governments, based on various parameters, so as to maximize the MSP operations. The stocks which are brought to the purchase centres are, as per specifications of Government of India, purchased at the support price. If the farmers get prices better than the support price from other buyers such as traders/millers *etc.*, the farmers are free to sell their produce to such traders/millers.
36. The Commission notes based on the information available in public domain that there is a list of Procuring Agencies which are, mainly, FCI, Odisha State Civil Supplies Corporation Limited (OP-2), National Agricultural Cooperative Marketing Federation of India Ltd. ('NAFED'), MARKFED, TDCCOL and National Federation of Farmers' Procurement, Processing and Retailing Cooperatives of India Ltd. ('NACOF') or any other Corporation or Co-operative Society appointed by the Government of Odisha (OP-1) to purchase stock of paddy from the farmers directly or otherwise through their sub-agency.
37. The Commission notes that there is a regulated procedure for purchase of paddy and delivery of paddy for custom milling, timelines for milling of paddy into rice, restriction

¹ <http://fci.gov.in/procurements.php>

² *supra*



on custom milling, restriction on sale and movement of paddy, delivery of rice stocks *etc.* Further, the State Government and State Procuring Agencies also prescribe special guidelines for timely purchase of paddy, its delivery to the mills, custom milling, delivery of rice, agreement procedures, security, penalty *etc.* for smooth procurement. OP-1 issues Food and Procurement Policy for every KMS wherein it lays down modalities for procurement of paddy by procuring agency, custom milling of rice and other allied activities and in consonance with the Food and Procurement policy, the procuring agency issues Operational Guidelines for the KMS.

38. After considering the Food and Procurement Policy and the Operational Guidelines for the KMS issued by the procuring agency, the Commission observes that OP-2 is one of the identified procuring agencies for procurement of paddy and custom milling.
39. As observed above, the activities of procurement of paddy and its custom milling are regulated activities in the State of Odisha. In order to facilitate such activities, OP-2 enters into agreements with the custom millers under which OP-2 delivers paddy to the custom miller at the Paddy Purchase Centre (PPC), which is transported and kept under joint custody and maintenance of miller and OP-2 for storing, and milling of the paddy & delivery of the CMR to OP-2/FCI at designated places.
40. Thus, it is evident that OP-1 lays down procurement policy and passes orders *etc.* and OP-2 carries out the activities related to procurement in the State. In the present matter, OP-2 appears to be engaged in economic activities of procurement of paddy, custom milling of rice and distribution of rice and thus, qualifies as an enterprise within the meaning of Section 2(h) of the Act.
41. According to the partnership deed of the Informant, the object of partnership business is to mainly do rice milling business in milling of paddy, producing Rice, Broken Rice, Bran, *etc.* and sale thereof and to act as milling agent of Civil Supply authorities for the purpose and custom milling for FCI, NCMSL and other agencies. The facts gathered from the information suggest that the Informant's business is dependent on the work supplied by the state procuring agencies.



42. In light of the above discussion, the Commission observes that the allegation of the Informant relates to the conduct of the agency responsible for engaging custom milling services. As discussed in foregoing paragraphs, Custom Millers and their activities are apparently defined in the policy of State of Odisha, which makes it a specialised activity and the persons undertaking such activities provide their custom milling services to the State/Government procuring agencies. The Commission notes that obtaining custom milling services is a procurer's market. The State procuring agencies are on the demand side and suppliers of custom milling services are on the supply side. Thus, the relevant product market in the case is "*Market for procurement of custom milling services for Rice*".
43. Further, while appointing and tagging custom millers to the Purchase Price Centres (PPCs) or Rice Receiving Centres (RRCs) as per the Food and Procurement Policy, various factors are considered such as distance from the mill, capacity of the RRC and requirement of rice for PDS in the area, mill capacity for minimising overall cost of transportation from paddy receipt to rice delivery for PDS, continuous monitoring of the receipt of paddy from PPCs and delivery of CMR by mills to RRCs/FCI etc. Further, OP-1 may assign millers from other districts with surplus capacity. However, one custom miller is not allowed to participate in more than two revenue districts including the district where rice mill is located. Thus, in light of the above, relevant geographic market is delineated as "*State of Odisha*".
44. Accordingly, the relevant market in the present case is "*Market for procurement of custom milling services for Rice in State of Odisha*". The next step is assessment of dominance of enterprise in the relevant market.
45. Under the Food and Procurement Policy for KMS 2017-18 and 2018-19, OP-2 is identified as the primary government procuring agency by OP-1. OP-2 procures paddy in all districts whereas other State agencies are mostly assigned surplus districts to procure paddy. From the available documents, the Commission has relied on the table as stated in the document filed alongwith the information "*Proceedings of the Weekly Paddy Procurement Review Meeting held on 12.04.2016 at 4.30 PM in the Conference*



Hall of FS&CW Department”. The relevant information from the same is reproduced for reference hereinbelow:

Procurement of Paddy and Delivery of Rice for KMS 2015-16

(Figures in MT)

S. No.	Name of the agencies	Paddy procured	Equivalent Rice	Delivery of Rice in RRC	Delivery of Rice in FCI	Total Rice Delivery
1	2	5	6	7	8	9
1	OSCSC Ltd. (OP-2)	38,72,587	26,33,359	3,17,216	4,88,924	8,06,140
2	MARKFED	1,62,056	1,10,198	---	74,092	74,092
3	TDCC	64,265	43,700	---	25,585	25,585
4	FCI	397	270	---	270	270
5	NACOF	70,082	47,656	---	35,718	35,718
	TOTAL	41,69,387	28,35,183	3,17,216	6,24,589	9,41,805

46. It is clear from the above that OP-2 holds a significant market share in the total rice delivery, indicating it to be an equally significant player in the procurement of rice milling services. Though market share is not the sole or conclusive factor for determination of dominance, it nevertheless is a good indicator of dominance. Though the above details pertain to KMS 2015-16, given that OP-2 continues to be identified as the primary government agency procuring for subsequent KMS as per the policy, it can be safely inferred that OP-2 continues to enjoy a dominant position in the relevant market in the later years also *i.e.* 2016-17, 2017-18 and 2018-19. In view of the above, the Commission is, *prima facie*, of the view that OP-2 is dominant in the relevant market.

47. The main allegations of abuse in the relevant market, *inter alia*, pertain to the conduct of OP-2 in non-settlement of CMR dues of the Informant and imposition of unfair condition by it upon millers for entering into agreement for Custom Milling for KMS 2018-19. With regard to the former allegation, the Commission perused the order dated 27.12.2017 (Annexure 16 to the information filed) passed by the SCDRC in Misc. Case No. 987 of 2017. Further, the Commission notes that as per the letter dated 18.04.2018, filed with the information, the Informant stated that the custom milling charges for the



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KMS 2015-16 and 2016-17 had been withheld on account of non-settlement of insurance claim between the insurance company and OP-2. From the documents placed on record, it appears there is high-handedness on the part of OP-2. The Commission, at this stage, without delving into the specifics of the abuse, as alleged, is of the *prima facie* opinion that the issue requires investigation.

48. Further, the Commission notes that the Informant has also alleged that OP-2 issued a letter dated 22.11.2018, allegedly threatening the millers by dictating that the differential custody and maintenance charges arising out of revised duration pertaining to KMS 2017-18, would not be paid to the millers unless they executed the agreement for KMS 2018-19, in order to participate in procurement.
49. The Commission further notes that AORMA's letter dated 06.11.2018 addressed to all District Collectors contained issues like no timely disclosure of charges for KMS, no proper reimbursement of the charges incurred by millers in providing various services since last several years and rates of some services being unilaterally reduced from what was being paid for the same services during earlier years. It was further stated in the said letter that this was a common problem in all the districts of the State of Odisha. Based on this, the millers demanded that they would participate during current KMS 2018-19 subject to, (i) release of arrears due after finalization of rates, (ii) incorporating full details about scope of work and rates payable thereof in the agreement before execution and (iii) formulation of a suitable policy to ensure functioning of Rice Milling Industry of both Single and Double Crop districts for 10 to 11 months during a year for economically viability.
50. The Commission notes that the aforesaid issues raised in the letter dated 06.11.2018 of AORMA pertaining to alleged non-clearance of dues/arrears, incorporating details about scope of work and rates payable thereof in the Agreement before execution and formulation of a suitable policy and the facts contained in the letter dated 22.11.2018 are issues which *prima facie* require an investigation under Section 4 of the Act.



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51. Apart from the above, the allegation of the arbitrary disclosure of criteria for selection of Custom Millers for participation in Rabi Season KMS 2017-18, *vide* letter dated 28.04.2018 of OP-2, also requires to be investigated by the Director General ('DG').
52. Accordingly, the DG is directed to investigate into the matter and submit its report within a period of 60 days from receipt of this order.
53. It is made clear that, if during the course of the investigation, the DG comes across anti-competitive conduct of any other entity/person in addition to those mentioned in the information, the DG shall be at liberty to investigate the same.
54. It is however, made clear that nothing stated in this order shall tantamount to final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner, whatsoever by the observations made herein.
55. The Secretary is directed to send a copy of this order along with the information and other documents received in relation to this matter to the Office of the DG.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 01/11/2019