

COMPETITION COMMISSION OF INDIA

Case No. 20 of 2010

Dated:14.6.2011

Pawan Kumar Agarwal

Informant

v.

Rashtriya Ispat Nigam Limited

Opposite Party

Final Order

The present information has been filed under section 19(1) (a) of the Competition Act, 2002 ('the Act') by Shri Pawan Kumar Agarwal ('the informant') on 13.05.2010 against M/s Rashtriya Ispat Nigam Limited ('the opposite party') alleging, *inter alia*, abuse of dominant position by imposing unfair and discriminatory conditions in the *Policy Guidelines for Sale of Materials* during 2010-11 for the sale of its products to Small Scale Industries(SSIs) in contravention of the provisions of section 4 of the Act.

2. The facts as stated in the information, in brief, are as under :

2.1 It is stated in the information that the opposite party is a public sector undertaking having its head office at Visakhapatnam in the State of Andhra Pradesh and is engaged in manufacturing of steel TMT, rounds, wire rod structures and billets in different sizes and grades for industrial and other users in India.

2.2 It is further stated in the information that the opposite party sells its manufactured steel products such as TMT, rounds, wire rod structures and billets to SSIs directly as well as through the State Small Scale Industries Corporations ('SSICs') and the National Small Industrial Corporation ('NSIC') in accordance with the directions of the Ministry of Steel.

2.3 It is alleged in the information that being the sole supplier of plain round steel and value added steel having specifications EN-8 and EN-8D in South India with market share of more than 90% in the relevant product, the opposite party is abusing its dominant position by imposing unilateral, unfair and discriminatory condition, as stated in its sale guidelines, in the sale of the above products to SSIs (including the informant) and to the actual small buyers.

2.4 It is also stated in the information that the SSIs located in South India as well as the actual small buyers/direct consumers

depend upon the opposite party for plain round wire rods. It is further alleged that in Coimbatore, the opposite party is the only supplier of plain wire rods to SSIs and to the actual small buyers or direct consumers.

2.5 It is stated in the information that the opposite party, for the first time issued its policy for sale of materials during 2010-11 whereby it prescribed certain conditions in relation to sale of its products. According to the informant, some of the clauses of the sale guidelines are unilateral, unfair and discriminatory as the same have been framed in such a manner so as to favour the buyers who are purchasing through NSIC or SSICs as against the interests of the other buyers/users.

2.6 In particular, the informant is aggrieved by the following clauses of the sale guidelines which are stated to be unilateral, unfair and discriminatory having been imposed by the opposite party in abuse of its dominant position and hence the same are alleged to be in contravention of the provisions contained in the section 4 of the Act:

- i) The buyer/actual user has to pay a security deposit of Rs. 500/- per metric ton whereas buyers purchasing through NSIC/SSICs are not required to pay any security deposit.
- ii) The actual buyer is supposed to give booking quantity for a period of 45 days. Sometimes, the opposite party offers a major quantity to the buyer in one day. The buyer is required to pay full amount within a week from the day the

material offered which becomes very difficult for the small buyer/SSIs to arrange funds in one week and if the buyer does not lift the material, he loses his security deposit and is also declared ineligible to book the materials for the next 2 months or end of quarter, whichever is later.

- iii) The policy of the opposite party permits spot sales on first come first serve basis. In such situation, a big trader/buyer can book 100 percent quantity it requires in one go whereas a small scale industry or actual buyer/user may not be comfortable with such advance booking.
- iv) The opposite party is giving discount to buyers on the basis of quantity purchased , which generally goes to a big buyer and the small buyer hardly gets any benefit of such discount offered by the opposite party.

2.7 The informant also filed additional information on 15.06.2010 containing some documents in support of his allegations.

3. The Commission, on consideration of the facts and circumstances of the case and the material available on record, formed an opinion that there exists a *prima facie* case for making a reference to the Director General (DG) to conduct an investigation into the matter and accordingly, the Commission passed an order under section 26 (1) of the Act on 15.06.2010 directing the DG to conduct investigation into the matter and submit his report.

4. In pursuance of the order passed by the Commission, the DG conducted the investigation and after completing the investigation submitted his report on 15.11.2010 to the Commission.

5. Findings of DG Report

5.2 The DG has defined the *relevant product market as the steel bars and rods produced by the integrated producers and South India as the relevant geographic market* and accordingly, has concluded that the relevant market in the present case is steel bars and rods produced and sold by the integrated producers in South India.

5.2 Further, the DG found the opposite party as enjoying the dominant position in the relevant market in the light of the following factors :

5.2.1 The DG in its report has stated that RINL is the largest producer of steel in the bars and rods segment in India having 12.02% of the total production. In terms of production by integrated producers, the share of RINL in India is 47.73% which is equal to joint capacity of production of two major steel producers in the country *i.e.* Steel Authority of India Limited (SAIL) and Tata Steel.

5.2.2 Relying on the media release of RINL on 24.07.2010, the DG has stated that the total production of value added steel by RINL during 2009-10 was 2.403 MM Tones and the gross sale during 2009-10 was Rs.10, 635 crores. The media release dated 1.10.2010 of the RINL, mentioned that the

production of value added steel during the first half of the year 2010-2011 was 1.5 million tones. Further, it has been observed by DG that the presence of SAIL and Tata Steel in South India is almost negligible and small steel producers mainly cater to the local needs or specific orders and also do not have significant presence in the relevant market.

- 5.2.3 The RINL has market power to affect the prices as well as production in the relevant market and has substantial edge over rest of the players to operate independently in the relevant market. The turnover of RINL is more than Rs. 10,000 crores and it is net worth of more than Rs. 13,000/- crores. The RINL faces negligible competition from the small players in the relevant market and in terms of size and resources it has huge advantages over competitors.
- 5.2.4 Since the plant of the RINL is situated at Vishakhapatnam in Andhra Pradesh and has stock yard in the major cities of South India, it enjoys locational advantages compared to its competitors. Also, the competitors of RINL do not have the distribution net work matching to that of RINL in south India.
- 5.2.5 It has also been reported by the DG that apart from RINL, there are also other three major producers of steel in the relevant market. But, presence of other two major players in the relevant market is insignificant. The small players scattered in South India have no economic strength to compete with the RINL.
- 5.2.6 The consumers are entirely dependent on RINL for their needs. Taking advantage of this, the RINL dictates its own terms and conditions to the consumers and chooses to produce a particular size of the product with a view to create artificial scarcity to earn handsome profits.

5.2.7 There is entry barrier in the relevant market because of several factors such as; requirement of huge amount of capital for investment to enter into the industry, non-availability of raw material in the proximity, etc. Thus, the RINL has advantage of entry barrier in the relevant market.

5.2.8 Relying on the all the above mentioned factors, the DG report has concluded that the RINL is in a dominant position in the relevant market.

5.3 The DG has concluded that the opposite party is abusing its dominant position in the relevant market by imposing unfair and discriminatory conditions in sale and supply of the goods. The DG has also noted that the opposite party has restricted its production in order to injure the actual users and consumers. Further, it was observed by the DG that the discriminatory pricing was resorted to by the opposite party to benefit certain class of customers causing harm to actual consumers. The DG has also found that the opposite party indulged in predatory pricing to maintain its dominance. Lastly, the DG concluded by finding that the sale policy was heavily loaded in favour of the opposite party as the terms and conditions thereof allowed the opposite party to dictate terms in the relevant market. The investigation, therefore, concluded that the opposite party has abused its dominant position in contravention of sections 4 (2) (a) and 4 (2) (b) of the Act.

6. The Commission considered the report submitted by DG in its meeting held on 22.12.2010 and decided to send the copies of investigation report to the parties to file their replies/objections. The Commission also directed the informant as well as the Opposite Party to appear for oral hearing, if they so desire, either personally or through their authorized representatives.

7. The Opposite Party filed its reply to the DG report on 04.4.2011 and informant filed its reply on 13.04.2011. Thereafter the Opposite Party filed rejoinder on 26.4.2011 to the reply of the informant. In the meeting of the Commission held on 27.4.2011 Shri A.N.Haksar, Senior Advocate appeared for Opposite Party and made oral submissions.

8. Reply of the Opposite Party

8.1 The opposite party filed its reply /objections to the report of the DG denying and disputing all the findings made in the report. The opposite party also challenged the findings of the DG on relevant geographic market. It was stated in the reply that the DG has wrongly concluded South India as relevant geographic market. It was pointed out that the relevant geographic market comprises the area in which the conditions of competition for supply of goods or provision of services are sufficiently homogeneous and can be distinguished from the conditions prevailing in the neighborhood areas. It was asserted that conditions in South India cannot be distinguished from the conditions prevailing in the neighborhood, viz., West India.

8.2 It was also stated by the opposite party in the reply that an enterprise which is dominant in a particular industry or market, does not, by virtue of that fact alone, run afoul of the Act. The emergence of a dominant firm is often the natural result of competitive forces and can represent, from the perspective of the economy at large, an efficient outcome. This is stated to be based on the fact that large firms can be efficient, and need not be antithetical to innovation.

8.3 The opposite party, however, stated that though it has a fairly good share of market of Rounds and Wire rods in South India, it cannot be called to be in a dominant position by any stretch of imagination. It was pointed out that there are other players also in the market, viz., SAIL, JSWL, Sunflag, RL Steel, Adhunik and Mukand. It was also pointed out that the DG ignored and failed to consider other secondary players while settling the issue of dominant position when these secondary players are also producing similar quality products and selling them at very competitive prices and commercial terms. It was also submitted by the opposite party that the DG had erroneously concluded that the steel manufactured by Integrated Steel Plants is better than the steel produced by other players/producers. It was specifically denied by the opposite party that it is in a dominant position in South India. It was also pointed out that the opposite party had only 12% of the market share in the product group of bars and rods and the DG has grossly erred in ignoring the presence of other major players while considering the issue of dominant position. It was sought to be canvassed that steel is a

buyers' market rather than being a sellers' market which is the basic requirement for dominance.

8.4 It was submitted by the opposite party that the informant has misled the Commission by showing invoices where discount has been allowed in the invoice itself. It was pointed out that the discount appearing in the invoice is the delivery order discount stage, which is an IT system related necessity in the opposite party's pricing structure and in spite of the confusing nomenclature, is actually a means of general price correction and is applicable on each and every invoice irrespective of large or small quantity. Further, it was contended that the quantity based discounts are designed in such a fashion that the interests of the consumers and actual users are fully protected. It was sought to be argued that while discounts to retailers are based on absolute quantity, the discounts to actual users are based on MoUs. Thus, the opposite party has denied any discrimination against actual users and any favour to the retailers.

8.5 Further justifying the rationale of the sale guidelines, it was argued by the opposite party that the introduction of advance booking system was based on customer feedback. It was sought to be suggested by the opposite party that the system was introduced to protect the interests of actual users/consumers. It was stated that many actual users/consumers suggested the system of advance booking to ensure assured and timely supplies. The system was sought to be justified as a

step towards total customer satisfaction and in the direction of order based manufacturing.

8.6 It was stated by the opposite party that as it agreed to the overwhelming customer demand for such a facility and thus an advance booking system was introduced in FY10-11, enabling the opposite party to service the really needy actual users/consumers and other customers. It was further averred that with the introduction of advance booking system to produce and supply customers' requirements, there was always the risk of customers first asking the opposite party to produce a particular product and not turning up later. It is stated that such a situation would have led to serious inventory related issues and would have hampered the production itself. Therefore, it is contended by the opposite party that it was decided to collect a Security Deposit of Rs.500 pmt from the customers booking products in advance to have a balance of seriousness of intent from both the sides. It was further argued that the opposite party gets bound to its commitment to the customer by producing the specific product booked by the customer out of the 1000 odd products it is capable of manufacturing. It was suggested that in the absence of security deposit, non-serious customers may also ask the opposite party to manufacture certain products in certain quantity and when the same are produced, such customers may not turn up to buy. Accordingly, the opposite party sought to submit that the scheme of advance booking of material through payment of security deposit was introduced only to overcome the above problem. The opposite party further submitted that the scheme has found wide acceptance among all

sections of customers and especially among actual users who have lauded the scheme in almost every customer meeting held in this year. The opposite party also submitted that an incentive of Rs.100 pmt is paid to the customers on the quantities bought against advance booking system.

8.7 Citing figures and data relating to production of steel, the opposite party sought to urge that it has registered increased production and this is contrary to the findings given by the DG that the opposite party is restricting production.

8.8 The opposite party has disputed the conclusions of the DG and denied that the informant and other small scale industries/small buyers have been affected by the alleged unfair and discriminatory pricing of the opposite party. It was submitted that the Government of India has provided for special facilities to encourage the small scale industries and the opposite party being a public sector undertaking is obliged to provide those facilities. In this connection, it was submitted that the Government of India has established National Small Industries Corporation (NSIC) and State Small Scale Industries Corporations (SSICs) to service SSIs and other micro units. It was stated that SSIs units are normally expected to approach the concerned SSICs/NSIC to have the required support in respect of raw material supply, pricing/credit terms etc. It was also stated that both NSIC and SSICs are given a special rebate called JPC rebate by main producers (SAIL,

TATA and the opposite party) to service these small scale industries. Further, since NSIC and SSICs purchase the raw material in bulk quantities from the main producers, the price benefit on account of large volume purchase can be passed on to the individual units. It was alleged that the Informant even though being an SSI unit has opted not to make purchases through NSIC or SSICs for the reasons best known to it. The opposite party further submitted that when the individual units approach the producers on their own choice, it is clear that they are making the choice after understanding and comparing various options available to them. It was alleged that the Informant knowing very well that specific benefits are available to NSIC/SSICs has opted to purchase material directly from the opposite party and thus, it is obvious that the informant was never subjected to any discrimination by the opposite party as a customer.

8.9 It was further submitted by the opposite party that although it was forced to sell its products below the cost on some occasions, this cannot from any angle be classified as predatory pricing. Referring to the definition of 'predatory price', the opposite party submitted that the term means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors. It was explained by the opposite party that whenever it was forced to sell its products at levels less than total cost of production, there were genuine reasons, e.g., inventory control etc. It was also submitted by the opposite party that there is no evidence that a

competing enterprise has gone out of business or has been deterred from entering or is no longer in a position to remain in the relevant market because of the opposite party's prices. Further, it was intended that there is no evidence to show that the opposite party has priced its products with the intent to reduce or eliminate competition from the market. It was sought to be canvassed by the opposite party that mere offer of a price lower than the cost of production cannot automatically lead to a conclusion of predatory pricing and the *malafide* intent to drive competitors out of business or to eliminate competition is required to be established. It has been stated that because of this pricing, it is the customer who has been benefited. It was also urged that the question of predatory pricing can be raised by a fellow competitor and not by a consumer who has been benefited from the lower prices.

8.10 The opposite party has also given a para wise reply to the report of the DG and has stated that the conclusions are based on conjectures and surmises and has thus prayed to the Commission to reject the report.

9. Comments of the informant

The gist of submissions made in the comments of the informant is as under:

9.1 The informant in its reply has repeated all the allegations that are already made in the information submitted by it and has agreed with all the findings in the DG investigation report.

9.2 The informant has submitted that RINL is dominant in the market and is abusing its dominant position by forcing the consumers to book

the quantity with security deposits without declaring the price and discounts.

9.3 Agreeing with the DG's findings on the issue of restriction of production by RINL, the informant has submitted that in order to help some other producers RINL limited the production of many sizes of wire rods and other products. This may be treated as cartel of big manufacturers.

9.4 The informant has submitted that the RINL has been giving different types of discounts such as delivery stage discount, quantity based discount etc. to the SSIs those who are purchasing through NSIC or SSIC with a view to misguide steel consumers and to help big traders. Thus, the discount policy as stated in the sale guidelines is incorrect and anti-competitive.

9.5 The informant has requested the Commission to accept the DG's findings and pass an order to protect the interest of small scale and tiny industries in the country.

10. The informant also filed his reply to the objections/reply filed by the opposite party and reiterated the allegations and averments made in the information.

11. The opposite party filed its rejoinder to the above reply of the informant and submitted that the informant has sought to misrepresent and distort the information submitted before the Commission and has also raised fresh pleas and allegations which were not part of the investigation conducted by the DG. It was submitted that the opposite party is fulfilling its responsibility towards tiny and small scale industries and has also been following the directions of the Government of India. The opposite party has essentially repeated its stand taken in its earlier

reply/objections to the DG report. Additionally, the opposite party denied the allegations made by the informant in the reply.

12. The Commission has carefully examined the information, the report of the DG and the reply/objections of the parties to the DG report. The Commission has also examined the other material available on record.

13. It is noted that the activities being performed by the RINL and the informant is covered in the definition of 'enterprise' under section 2(h) of the Act.

14. On perusal of the report of the DG and the replies of the parties thereto, the Commission agrees with the findings of the DG that considering the market share, size of capital, turnover, geographical advantages, insignificant presence of competitors, the RINL is in a dominant position in the relevant market of steel bars and rods produced and sold by the integrated producers in South India. However, the issue which merits consideration by the Commission is whether the opposite party has abused its dominant position in the relevant market.

15. It is seen that the DG has concluded in his report that RINL is abusing its dominant position in the relevant market by incorporating one sided, unfair and discriminatory clauses in its *Policy Guidelines for Sale of Materials*, by adopting unfair and discriminatory pricing policy and restricting the production. Thus, the DG has come to the conclusion that RINL has contravened provisions of section 4(2)(a) and 4(2)(b) of the Act.

16. When the conclusions drawn by the DG are examined in the backdrop of rationale given by RINL, it becomes evident that the set of impugned actions cannot be said to have constituted abuse in terms of section 4(2)(a) and 4(2)(b) of the Act.

17. It is apparent that the opposite party is following the directions of the Government of India in respect of allocation of its products. In this regard, the Commission cannot lose the sight of the fact that the Government of India in order to ensure that SSIs obtain raw materials at reasonable prices has issued a circular which deals with distribution of iron and steel items to SSI sector for the year 2010-11. For this purpose, the Government provides nominal handling charges of approximately Rs.500-550 per ton to the Corporations, viz., NSIC and SSICs so that they can supply the steel material at the door step of the SSI units. Keeping this in mind the *Policy Guidelines for Sale of Materials* of RINL appears to have been framed in tandem with the broad policy objectives of the Government of India to encourage the SSIs for more production and profit so that they can substantially contribute to the growth of the nation and therefore the impugned clauses do not seem to be unilateral, unfair or discriminatory.

18. Additionally, it is generally seen that volume discounts are often driven by the economic strength of the large buyers who can negotiate discounts because they buy a large amount of product and this practice *per se* cannot be treated as unfair or discriminatory pricing/condition in

purchase or sale of goods. Further, it is noted that although the informant is a SSI Unit, it is not purchasing the products through NSIC or SSIC and on the contrary it has preferred purchase of products directly from the RINL. The informant would have reaped the benefit of discount offered by RINL if it had chosen to purchase through NISC or SSIC. Regarding the allegation relating to advance booking, the RINL has argued that the system of advance booking was introduced as a result of customer feedback to ensure assured and timely supplies. The RINL in order to hedge its risks against default by the buyers in the advanced booking system decided to collect security deposit. The Commission do not find any infirmity or unreasonableness in the said policy of the opposite party leave alone any contravention of the provisions of section 4 of the Act. Similarly, in absence of any material to the contrary the Commission finds no reason to disagree with the explanation offered by RINL that sometimes because of genuine reasons, e.g., inventory control etc it is forced to sell its products below the cost of production.

19. Therefore, after analysing the entire material available on record the Commission comes to the conclusion that no violation of section 4 of the Act is established against RINL. In view of the above findings the matter relating to this information is disposed off accordingly and the proceedings are closed forthwith.

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

sd/-
Member (G)

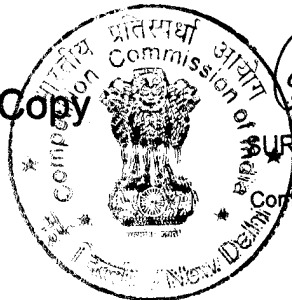
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25/6/2011
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