



COMPETITION COMMISSION OF INDIA

Case No. 18 of 2017

In Re:

**Bijay Poddar
9 Old China Bazaar Street
Room Nos. 79, 99 & 100
5 & 6th Floor, Kolkata-700001**

Informant

And

**1. Coal India Limited
Coal Bhawan, Premises No. 04
MAR, Plot No. AF-III
Action Area-1 A, New Town
Rajarhat, Kolkata
West Bengal-700156**

Opposite Party No. 1

**2. Central Coalfields Limited
Darbhanga House
Ranchi, Jharkhand**

Opposite Party No. 2

CORAM

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Justice G. P. Mittal
Member**

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

1. The present information has been filed by Shri Bijay Poddar ('the Informant') against Coal India Limited ('CIL'/ 'OP-1') and Central Coalfields Ltd. ('OP-2'/ 'CCL') (collectively, 'OPs') alleging



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contravention of the provisions of Sections 3 and 4 of the Competition Act, 2002 ('the Act'). Essentially, the Informant has alleged contravention in respect of sale of non-coking coal through 'Spot E-auction Scheme 2007' by CIL and its subsidiaries. Specifically, auctions under the said Scheme by CIL *vide* notice dated 29.09.2016 'Modalities for Special spot E-auction 2016-17' and by CCL *vide* notice dated 27.02.2017 'Sale of Coal Through Spot E-auction from High Stock Mines' have been impugned.

2. The Informant states that "Spot E-auction Scheme 2007" formulated under The New Coal Distribution Policy, 2007 (NCDP) dated 18.10.2007 is in force for the last 10 years. The Informant is aggrieved of the fact that CIL and its subsidiaries have floated the aforesaid notices for sale of coal through spot e-auction with new terms and conditions without there being any corresponding amendments/ modifications in the "Spot E-auction Scheme 2007". Hence, CIL has overruled NCDP through such conduct.
3. The Informant has challenged various clauses of the notice dated 29.09.2016 issued by CIL which prescribes modalities for special spot e-auction. Similarly, the Informant has also challenged various terms and conditions of the notice dated 27.02.2017 issued by CCL for sale of coal through spot e-auction from high stock mines.
4. Further, it is stated that 4-5% of the total estimated production of coal was e-auctioned under the special spot e-auction for 2016-17 once every month instead of being auctioned twice every month from November 2016 to March 2017, which benefitted traders cartel/ industrial consumers cartel. Further, various clauses of the special spot e-auction 2016-17 are alleged to be in violation of the Spot E-auction Scheme 2007.



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5. It is also alleged that for the first time since coming into force of the NCDP in 2007, CIL extended the time for payment of coal value on three occasions *vide* circulars dated 10.11.2016, 29.12.2016 and 07.02.2017, which is stated to be beyond the terms and conditions of the Spot E-auction Scheme 2007. It is alleged that prior to this, in case of failure to make payment for coal value beyond 7 days from the closure of e-auction, Earnest Money Deposit (EMD) used to be forfeited.
6. With respect to spot e-auction from high stock mines by CCL, it has been submitted that CCL added/ amended three special conditions violating the Spot E-auction Scheme 2007.
7. Lastly, it is stated that CIL has not adhered to the Spot E-auction Scheme, 2007 by making special spot e-auctions beyond the terms and conditions thereof. This is stated to have caused not only huge disadvantages and monetary losses to the participants of regular spot e-auction, but also resulted in accrual of undue benefits to the participants of such special spot e-auctions.
8. Based on the above averments and allegations, the Informant has made the following prayers :
 - a) No new spot e-auctions should be allowed to be conducted by CIL and its subsidiaries by circumventing the terms and conditions of the Spot E-Auction Scheme 2007.
 - b) The auctions held under the 'Modalities for Special spot E-auction 2016-17' and "Sale of Coal Through Spot E-auction from High Stock Mines", be declared illegal and penalties be imposed on CIL and its subsidiaries including its officials in personal capacity.
9. The Commission has perused the information and the documents filed therewith.



10. At the outset, it may be pointed out that the Spot e-Auction Scheme, 2007 also came up for consideration before the Commission in the case of *Bijay Poddar v. Coal India Limited & Ors.*, Case No. 59 of 2013 (which was also incidentally instituted by the Informant in the present case) wherein the Commission *vide* its order dated 27.10.2014 *inter alia* ordered the terms and conditions of the Spot E-auction Scheme 2007 as specified therein to be modified in light of the findings recorded in the said order.
11. It may be mentioned that in the said case, “sale of non-coking coal to the bidders under Spot e-auction in India” was determined as the relevant market wherein the Opposite Parties (CIL and its subsidiaries) were found to be dominant. Further, the abusive instance therein primarily related to the alleged one sided penalty in the form of forfeiture of EMD for non-performance by the successful bidder under clause 9.2 of the Scheme whereby a buyer was saddled with this penalty for non-lifting of coal after successful participation in the e-Auction. However, no corresponding penalty was provided thereunder, if despite acceptance of the bid, CIL and its subsidiaries failed to deliver the coal. Such stipulation in the Scheme was noted by the Commission as resulting from the market power exercised by the Opposite Parties and held as falling foul of the provisions of Section 4(2)(a)(i) of the Act being *ex facie* unfair. It was also noted that there was a clearly lack of mutuality and reciprocity in the contractual obligations which was due to market power of the Opposite Parties in the relevant market.
12. Subsequently, another information (*DB Power Limited v. CIL & Anr.*, Case No. 72 of 2015) was filed challenging *inter alia* various terms and conditions of Spot E-auction Scheme, 2007. This information was clubbed with another information (*Bijay Poddar v. CIL & Ors.*, Case No. 76 of 2015) - which was again filed by the present Informant (Bijay Poddar) - wherein the Informant impugned clause 4.4 of the said scheme. Both the informations came to be dismissed by a common order of the Commission



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dated 17.11.2015 whereby it was held that no case was made out for contravention of the provisions of Section 4 of the Act and the same were closed in terms of the provisions contained in Section 26(2) of the Act.

13. While dismissing the aforesaid informations, the Commission expressed its displeasure about the piecemeal manner in which the Informant in Case No. 76 of 2015 (*i.e.* the Informant in the present case) was laying challenge to the scheme in a selective and convenient manner. Furthermore, the Commission observed as follows:

Before concluding, the Commission is constrained to note that the e-Auction Scheme has come up in challenge in various cases where buyers have alleged lack of reciprocity and mutuality of obligations in the terms and conditions thereof. Though, in the present cases, the Commission has not recorded any finding of contravention yet it is apparent that the parties are either aggrieved of the terms per se or the conduct emanating therefrom. The Commission, therefore, believes that it would be appropriate that CIL examines the entire Scheme afresh after inviting suggestions from the stakeholders. Such participatory and consultative process would not only inspire confidence of the stakeholders but such exercise would also make the Scheme more acceptable besides obviating any possible violation of the provisions of the Act and challenge thereto. Let such exercise be completed preferably within a period of 60 days from receipt of this order.

14. Be that as it may, the Informant has again challenged the special spot e-auctions conducted under the Spot E-auction Scheme 2007 by CIL and its subsidiaries, as noted *supra*.



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15. On a careful perusal of the information in the present case, it is observed that the Informant is principally aggrieved of the fact that CIL and its subsidiaries are conducting special spot e-auctions by inserting new terms and conditions in the notices circumventing the terms and conditions of original Spot E-auction Scheme 2007 “to cause undue benefits to certain favoured participants”. The Informant has thus, challenged the special spot e-auctions as being inconsistent with the Spot E-auction Scheme 2007 and NCDP.

16. It can be seen that non-adherence, if any, of the terms and conditions of special spot e-auctions with the original scheme of 2007 is taken as the ground by the Informant to challenge the same. Further, the Informant has argued that such deviations are not authorised under the NCDP. The Commission notes that such conduct does not disclose any competition issue *per se* and the remedies of the Informant would lie elsewhere if indeed there is any deviation from the original scheme or any violation of the NCDP in the process. Even otherwise, the Commission notes that the Informant has challenged the following terms of the notice dated 29.09.2016 issued by CIL detailing modalities for special spot e-auction which do not reveal any competition concern:

3. *Bidders will have to bid for source wise grade wise mode wise quantity. The total validity of period of lifting of coal under the Special spot auction would be up to March 17.*
4. *The successful bidder and the coal company would be mutually deciding the Monthly lifting schedule.*
5. *Successful bidder would be required to make the payment for monthly schedule quantity by the last day of the preceding month.....*



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6. *For each value paid order separate sale/ delivery order shall be issued by the coal company. Validity period for completing lifting shall be 45 days with extension till 31st March '2017 in case of road dispatch.*
7. *In case of rail despatch, rail programme shall be submitted by the successful bidder in sync with the mutually agreeable delivery schedule, by the last day of the preceding month. The last such programme would be submitted on or before 7th February, 2017, upon which coal companies shall be issuing consents to Railways.*
8. *Validity period for making payment to seek allotment of rake/ rakes is 45 days from the date of issuance of consent by the coal companies.*
10. *In case of forfeiture in respect of lifting, the account would be reckoned at the end of 31st March, 2017.*
13. *participants will have the option of submission of EMD in the form of Bank Guarantee (BG) also.*

14. *As long as EMD is available in the registered consumers account with the service providers, the consumer can participate in the auction conducted by any coal company of CIL through the particular service provider. In other words, it may be a global EMD for participating in e-auction conducted by a service provider. However, such option will not be available in case of company wise BG is submitted by*



the bidder in place of cash EMD.....

15. *The bidders, who will submit EMD in terms of BG for participating in special spot e-auction, after being successful in auction will have to deposit coal value in full to the respective coal company for the quantity to be lifted in each month, in another cases, EMD as converted to security deposit will be adjusted with coal value to be paid as per schedule by buyers.*
17. As stated earlier, the Informant has not pointed out or otherwise challenged the impugned terms of the special spot e-auctions conducted by CIL and its subsidiary *i.e.* CCL as being contrary to the provisions of Section 4 of the Act. Rather, it is alleged that the same are contrary to the Spot E-auction Scheme 2007 and NCDP. On a careful examination of the impugned terms, the Commission notes that such broadside omnibus challenge to the terms of the special spot e-auction scheme without specifying in any manner as to how the same are contrary to the provisions of Section 4 of the Act, cannot be sustained. None of the terms cited above appears to be unfair or discriminatory.
18. For the reasons noted above, the three conditions mentioned in the notice dated 27.02.2017 issued by CCL and impugned by the Informant in the present information also cannot be said to be contrary to the provisions of Section 4 of the Act. For ready reference, the same are quoted below:
1. *Coal would be offered at notified price applicable for non-power sector i.e. without 'zero' premium.*
 2. *Payment of coal value has to be deposited in 5 working days after the e-auction. Any general amnesty regarding*



extension of date for deposition of coal value would not be applicable for this e-auction.

3. Lifting validity under the scheme would be till 31st March '17 irrespective of date of issuing of sale order.

19. In view of the above, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the Opposite Parties and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
20. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-
(S. L. Bunker)
Member**

**Sd/-
(Sudhir Mital)
Member**

**Sd/-
(Justice G. P. Mittal)
Member**

New Delhi
Date: 02/06/2017