



**COMPETITION COMMISSION OF INDIA**  
**Case No. 42 of 2012**

**In Re:**

**Swastik Stevedores Private Limited**

**Informant**

**And**

**1. Dumper Owners Association**

**Opposite Party No. 1**

**2. Paradip Port Trust**

**Opposite Party No. 2**

**CORAM**

**Mr. Devender Kumar Sikri**  
**Chairperson**

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

**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

**Mr. U.C. Nahta**  
**Member**

**Mr. Justice G. P. Mittal**  
**Member**

**Appearances:** Shri Sriman Narayan Mishra, Senior Assistant Traffic Manager of  
Paradip Port Trust.

Shri Surjit Bhaduri, Advocate for Dumper Owners' Association and its  
Office Bearers.



### **Order under Section 42 of the Competition Act, 2002**

1. In the above case, the Commission had passed its final order under Section 27 of the Competition Act, 2002 ('the Act') on 21.01.2015. *Vide* the said order, the Commission had directed the Dumper Owners' Association ('DOA') *inter alia* to cease and desist from indulging in acts/ conducts which were found to be in contravention of the provisions of Section 3 of the Act, as detailed therein.
2. Subsequent to passing of the final order by the Commission, Seaways Shipping and Logistics Limited ('SSL') filed applications dated 21.07.2015 and 23.07.2015 alleging *inter alia* that DOA was not providing dumpers despite repeated requests. Further, Paradip Port Trust ('PPT') also filed an application dated 06.08.2015 under Section 42 of the Act alleging that DOA had contravened the directions issued by the Commission *vide* order dated 21.01.2015. Those applications were registered and numbered as – Section 42 Application No. 1 of 2015 ('PPT Application') and Section 42 Application No. 02 of 2015 ('SSL Application').

### **Facts**

3. Brief facts of the case are that the original information was filed by Swastik Stevedores Private Limited ('SSPL'), which is a licensed stevedore of PPT engaged in handling and transportation of cargo within the port premises. DOA is the sole entity in Paradip Port for sourcing dumpers to carry out *intra* port transportation operations.
4. This information was filed by SSPL in July, 2012 under Section 19 (1) (a) of the Act against DOA and PPT, alleging that DOA was limiting and controlling the supply of dumpers for *intra* port transportation of cargo at Paradip Port and



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thereby was contravening the provisions of the Act. It was further alleged that PPT, being the sole authority for managing the activities within the port premises, had also contravened the provisions of the Act by permitting only the members of DOA to operate within the port premises.

5. The Commission, after forming a *prima facie* opinion, referred the matter to the Office of Director General ('DG') for investigation *vide* order dated 04.10.2012 passed under Section 26 (1) of the Act. The DG, after conducting a detailed investigation, submitted its investigation report to the Commission. Thereafter, the Commission heard the parties on the investigation report of the DG and after considering the material available on record including the submissions of the parties, passed the final order dated 21.01.2015 under Section 27 of the Act directing DOA and its office bearers to *inter alia* 'cease and desist' from indulging in the impugned conduct which was found to be in contravention of the provisions of Section 3 of the Act.
6. Subsequent to the aforesaid order of the Commission, PPT Application and SSSL Application were received.

### **Directions to the DG**

7. The Commission, *vide* its order dated 10.02.2016, directed the DG to examine the veracity of the averments leveled in the SSSL and PPT Applications alleging contravention of the order passed by the Commission. The DG was directed to examine the matter and submit a report to the Commission. The DG submitted its report on 31.08.2016.

### **Inquiry by the DG**

8. After taking into consideration the various submissions and evidence of SSSL, PPT, DOA and third parties, the DG concluded that DOA has continued to defy the order of the Commission dated 21.01.2015 passed in Case No. 42 of 2012 and



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has been continuing with limiting and controlling the provision of dumpers within Paradip Port premises which is in contravention of Section 3 (3) (b) read with Section 3 (1) of the Act. Further, the DG observed that the Office Bearers of DOA were also liable to be proceeded against for continuing non-compliance of the order of the Commission. Lastly, the DG recorded that due to non-compliance of the directions given during inquiry under Section 41 (2) read with Section 36 (2) of the Act, DOA and its President were also liable for being proceeded against in terms of the provisions of Section 43 of the Act.

### **Consideration of the DG Report by the Commission**

9. The Commission considered the inquiry report submitted by the DG in its ordinary meeting held on 22.11.2016 and decided to forward electronic copies of the same to SSSL, PPT and DOA for filing their respective objections/ suggestions thereto by 07.01.2017. Further, the Commission also decided to forward copies of the DG Report to the following Office Bearers of DOA for filing of their objections/ suggestions to the same within stipulated time:

- (i) Shri Bijaya Kumar Nayak, President
- (ii) Shri Bhagaban Swain, Vice-President
- (iii) Shri Sanjaya Kumar Dhal, Secretary
- (iv) Shri Dilip Kumar Behera, Assistant Secretary
- (v) Shri Ajaya Kumar Samal, Treasurer

10. Further, the parties were directed to appear for oral hearing before the Commission in person or through their respective authorised representatives on 08.02.2017.

11. When the matter came up for hearing on the said date, the learned counsel appearing on behalf of DOA and its Office Bearers sought an adjournment to file



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response to the DG Report. In the interest of justice, the Commission deemed it appropriate to grant 4 weeks time to DOA and its Office Bearers to file their respective responses to the DG Report and the matter was fixed for hearing on 28.03.2017.

12. However, despite grant of time, no response was filed on behalf of DOA and its Office Bearers. On the contrary, an application dated 27.03.2017 was moved on behalf of DOA stating that a Writ Petition has been filed by it before the Hon'ble High Court of Odisha at Cuttack challenging the orders dated 10.02.2016 and 22.11.2016 passed by the Commission and the investigation report dated 30.08.2016 submitted by the DG. Accordingly, it was prayed that the proceedings be deferred by 4 weeks.
13. After considering the application moved on behalf of DOA, the Commission, *vide* its order dated 28.03.2017, noted that earlier also, the learned counsel appearing on behalf of DOA had sought adjournment to file response to the DG Report. Even though the Commission had acceded to the said request, no response to the DG Report was filed by DOA. Deprecating such conduct, but in the interest of justice, one more opportunity was granted to DOA and its Office Bearers to file their responses to the DG Report. Accordingly, DOA and its Office Bearers were directed to file their responses to the DG Report by 30.04.2016 failing which it was ordered that it shall be presumed that they have nothing to say in the matter and the Commission shall proceed to decide the matter on the basis of the material available on record. Accordingly, the matter was fixed for hearing on 20.06.2017.
14. On 20.06.2017, the learned counsel appearing on behalf of DOA submitted before the Commission that W.P. (C) No. 5326 of 2017 (*Dumper Owners' Association v. Union of India and Others*) filed by it before the Hon'ble High Court of Odisha at Cuttack came up for hearing on 19.06.2017 whereupon the Hon'ble High Court observed that DOA may file an application before the



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Commission seeking adjournment of the proceedings.

15. The Commission observed that the Hon'ble High Court of Odisha had not granted any stay on the proceedings in the matter. Further, though DOA had not filed any application seeking adjournment of the proceedings before the Commission, the learned counsel appearing on behalf of DOA and its Office Bearers orally prayed that the Commission may adjourn the proceedings in light of the observations made by the Hon'ble Odisha High Court.
16. Having heard the learned counsel appearing on behalf of DOA and its Office Bearers, the Commission decided to adjourn the hearing to 04.07.2017 for hearing the parties on the DG Report. It was, however, made clear that no further adjournment shall be granted by the Commission in the matter.
17. On 04.07.2017, when the matter was listed for hearing of the parties on the DG Report, it was observed that no response had still been filed by DOA and its Office Bearers to the DG Report. In fact, initially, none appeared on behalf of DOA and its office bearers. However, the representatives of PPT and SLL were present. Later on the said date, subsequent to the rising of the Commission, Shri Suryadeep Singh, the learned counsel on behalf of DOA and its Office Bearers appeared and prayed for an adjournment. In the interest of justice, the Commission decided to allow DOA and its Office Bearers one more opportunity to file response to the DG Report by 21.07.2017 and directed them to appear for hearing before the Commission on 12.08.2017. Subsequently, the Commission cancelled the next date of hearing (12.08.2017) and rescheduled the matter ON 22.08.2017.
18. However, again on 22.08.2017, when the matter came up for hearing, an application was moved on behalf of DOA seeking adjournment of the proceedings by eight weeks.



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19. Having perused the application and hearing the learned counsel for DOA, the Commission was of the considered opinion that pendency of the Writ Petition before the Hon'ble High Court of Odisha cannot be a ground for adjournment when DOA has already been accommodated more than once. However, in the interest of justice, the Commission decided to grant a final opportunity to DOA to file its objections/ suggestions to the DG Report and to address arguments. It was also directed that objections, if any, may be filed within four weeks from the receipt of the order dated 22.08.2017. Accordingly, the matter was directed to be listed for hearing on the DG Report on 31.10.2017.
20. On 31.10.2017 when the matter came up for hearing the parties, again an oral request was made on behalf of the learned counsel Shri Surjit Bhaduri appearing on behalf of DOA and its Office Bearers seeking adjournment of the proceedings. Having heard the learned counsel and on perusal of the last order, the Commission was of the considered opinion that no case has been made out for grant of adjournment as sufficient opportunity had already been granted to DOA and its Office Bearers. Accordingly, the adjournment request was declined.
21. After disposing of the adjournment request, the Commission called upon the learned counsel appearing on behalf of DOA to make oral submissions and to address the Commission. The learned counsel submitted that he has no submissions to make. Shri Sriman Narayan Mishra, Senior Assistant Traffic Manager of PPT present that day supported the findings of the DG as contained in the DG Report.
22. Hence, despite grant of sufficient opportunities, DOA and its Office Bearers did not file any response to the DG Report nor did they address any arguments thereupon. Consequently, the Commission decided to pass an appropriate order in due course.



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### **Issues**

23. On a careful perusal of the PPT and SSSL Applications and the Report of the DG, the following issue arises for consideration and determination in the matter:

***Whether DOA and its Office Bearers have contravened the Commission's order dated 21.01.2015 passed under Section 27 of the Act and thereby have rendered themselves liable to be punished under Section 42 of the Act?***

### **Findings of the Commission**

24. During investigation, the DG examined various documents and evidence placed on record by SSSL, PPT and DOA as well as third parties. A summary of the same is noted below:

- a) JSPL, *vide* its letter dated 11.05.2016 to the DG, gave certain information regarding its stevedoring operations at Paradip Port. It was stated that prior to 2013-14, all stevedoring operations for JSPL were managed by Orissa Stevedores Limited (OSL) whose Managing Director was the President of Paradip Port Stevedores Association (PPSA). In 2014-15, OSL handled most of the dry bulk cargo handling work for Jindal Steel and Power Limited (JSPL) as sub-contractor. However, in 2015-16, SSSL and SSPL were appointed by JSPL as its stevedores. Later, due to occurrence of multiple incidents (as detailed below), OSL was also appointed as the stevedore by JSPL at Paradip Port.
- b) As per the DG, from the data furnished by PPT, it is clear that OSL was the single largest party handling dry bulk cargo at Paradip Port during 2012-15 and the major income of DOA was received from OSL.



### CARGO OF VESSEL M.V. PRABHU GOPAL

- c) Apprehending an attack from its competitor stevedores upon its office, vehicles and equipments in executing the assignment received from vessel 'M.V. Prabhu Gopal', SSSL sought police protection *vide* letter dated 26.06.2015 written to the Supdt. of Police and Senior Commandant, CISF. Yet, on 28.06.2015, some unidentified persons forcibly entered into SSSL's office and threatened its staff, FIR against which was lodged by SSSL on 29.06.2015.
- d) SSSL requested DOA on several occasions *vide* letters dated 30.06.2015, 02.07.2015 and 03.07.2015 to provide dumpers to it for unloading the cargo arriving on vessel 'M.V. Prabhu Gopal'. Even an advance payment of Rs. 5.22 lacs was made by SSSL to DOA on 03.07.2015. However, to no avail.
- e) Upon receiving no confirmation from DOA, SSSL wrote a letter dated 04.07.2015 to PPT to make alternative arrangement of dumpers for SSSL.
- f) On 06.07.2015, while SSSL's discharge work from vessel 'M.V. Prabhu Gopal' was in progress, a dumper reversing at a high speed deliberately hit SSSL's pay-loader causing huge damage and thereafter, a large number of unidentified persons joined the helpers and drivers of other dumpers standing at the accident site and broke the windshield of several dumpers standing at the site.
- g) SSSL, on 09.07.2015, requested Addl. Supdt. of Police, Paradip to investigate into this incident urgently and sought police protection for its men and machinery till completion of the operations from vessel 'M.V. Prabhu Gopal'.



- h) Internal inquiry held by PPT officials into this incident revealed that DOA and its members were behind this entire incident and they were neither giving dumpers to SSLL nor were allowing SSLL to use dumpers of third parties. Also, the drivers and helpers of other dumpers standing at the site were found to be primarily responsible for the damage caused to the windshield of the dumpers standing at the site.
- i) PPT lodged an FIR against this incident in which chargesheet was filed on 17.11.2015 under Sections 279, 341, 427 and 34 of the Indian Penal Code, 1860 against the driver of the dumper which deliberately collided with pay-loader of SSLL and helpers and drivers of other dumpers standing at the site.
- j) Being unhappy with PPT reporting such incident to police and SSLL seeking police protection, PPSA wrote a letter dated 06.07.2015 to the Chairman of PPT alleging that SSLL itself had indulged in such vandalism and its license should be cancelled else work would be suspended at Paradip Port from 14:00 hours on 07.07.2015.
- k) In view of such *impasse i.e.* suspension of work by PPSA, the Chairman of PPT convened several meetings with DOA, PPSA and the Union representing drivers and helpers of dumpers wherein PPSA stated that it is willing to undertake work if importer JSPL appoints a stevedore other than SSLL for its work. However, it was concluded in such meetings that DOA is duty bound to supply dumpers to all stevedores without any discrimination, as per their requirements.
- l) Consequently, on 08.07.2015, SSLL again requested the President of DOA to deploy 30 dumpers to SSLL to enable it to resume its *intra port*



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transportation work and to avail vessel demurrage. However, no work could be done as though a few dumpers were provided, their drivers and helpers refused to work citing that no instructions have been received by them from DOA. Further requests of SSSL to DOA in this regard on 10.07.2015, 12.07.2015, 13.07.2015 and 15.07.2015 were again of no avail.

- m) On 22.07.2015, PPT even warned DOA that strict action would be taken against it for its continuous non-performance of duties by refusing to provide dumpers to SSSL. Further, intention to report the matter to the Commission for such restrictive practices was also clearly informed to DOA. However, no fruitful result could be seen.
- n) Hence, SSSL decided to resume its work of *intra* port transportation of cargo from 2<sup>nd</sup> shift of 23.07.2015 by engaging dumpers from independent sources. However, 70-80 dumpers of DOA were indiscriminately parked at Paradip Port thereby blocking the roads to restrict the movement of cargo discharged by vessel 'M.V. Prabhu Gopal' and other port operations. A letter informing about the same was written by the Deputy Commandant, CISF to the Inspector In-charge, Paradip Police Station.
- o) Due to likelihood of emergence of a law and order situation at Paradip Port because of such blockage of roads, a meeting was convened by the Addl. District Magistrate (ADM) on 23.07.2015 with SSSL, DOA and PPT. In order to maintain law and order and ensure safety, ADM asked JSPL to consider availing services of another stevedore than SSSL for removal of its cargo. Thus, SSSL was ultimately constrained to forego the execution of the cargo handling service of JSPL and surrender the same in favour of Sahara Engineering Private Limited (one of the three stevedores of JSPL) due to actions of DOA.



### CARGO OF VESSEL M.V. DENSA TIGER

- p) Another incident relied upon by the DG is with regard to SSSL contract with JSPL relating to vessel 'M.V. Densa Tiger' which was scheduled to berth at Paradip Port on 16.08.2015. A meeting was convened on 14.08.2015 by the Chairman of PPT wherein the President of PPSA alleged that SSSL has not complied with the required norms as a stevedore. SSSL responded saying that it had abided by the suggestions of ADM by entrusting its port operations in favour of another stevedore hoping that it would be allowed to operate freely in the forthcoming vessels. After detailed discussions, SSSL and PPSA were advised to co-ordinate with other stakeholders in order to maintain peace in the port premises. The representatives of various stakeholders assured that they shall not create any disturbances during the handling of cargo by SSSL pertaining to vessel 'M.V. Densa Tiger' and would try to come to an amicable solution.
- q) Yet, apprehending trouble from PPSA, two additional companies of CISF personnel had to be deployed by SSSL for a period of one week.

### CARGO OF VESSEL M.V. HARM

- r) *Vide* its letter dated 14.09.2015, SSSL was yet again appointed by JSPL for cargo handling of Vessel 'M.V. Harm'. Instead of facilitating cargo handling operations of vessel 'M.V. Harm', DOA Stopped all *intra port* transportation operations at Paradip Port at 09:45 hours on 16.09.2015. PPT even wrote a letter dated 16.09.2015 to resume its work by 18:00 hours failing which its port entry permits would be cancelled, but to no avail.



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- s) PPT even issued directions to DOA vide letter dated 19.09.2015 to provide dumpers to all licensed stevedores at Paradip Port irrespective of their membership with PPSA from the 2<sup>nd</sup> shift of 20.09.2015. However, despite such notice and several meetings held, dumpers of DOA did not resume work as is evident from the Office Order dated 21.09.2015.
- t) Hence, the Chairman of PPT wrote a letter dated 20.09.2015 to the Joint Secretary (Ports), Ministry of Shipping, informing about the permission granted by PPT to SSSL to bring in 108 dumpers from external sources and resumption of its *intra* port operations from 18.09.2015 under the protection of the police and CISF personnel.

#### CARGO OF VESSEL M.V. FANTASTIC

- u) Another similar incident of denial of dumpers happened when Orissa Motors Private Limited was appointed by JSPL for *intra* port transportation of cargo brought by vessel 'M.V. Fantastic' and it had to engage private dumpers for its work, which was reported to the Commission *vide* letter dated 19.01.2016.

25. After taking into consideration the above-mentioned incidents noted by the DG alongwith evidences collected by the DG which remain uncontroverted and unrebutted as DOA did not file any response to the DG Report despite grant of several opportunities, the Commission agrees with the finding of the DG that DOA is blatantly defying the order of the Commission dated 21.01.2015 passed in Case No. 42 of 2012 and has continued with limiting and controlling the provision of dumpers within Paradip Port premises.

26. Thus, the Commission has no hesitation in holding that DOA and its Office Bearers have defied the order of the Commission dated 21.01.2015 and have rendered themselves liable to be penalised by the Commission for non-



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compliance of its orders as provided under Section 42 of the Act.

27. The Commission also notes with dismay the contumacious conduct of DOA and its Office Bearers not only before it but also before the DG during inquiry. It may be observed that during inquiry before the DG, DOA and its Office Bearers did not co-operate which led the DG to recommend action against them under Section 43 of the Act. The Commission, however, *vide* its order dated 28.07.2016, noted that there was no need to proceed against DOA in terms of the provisions contained in Section 43 of the Act as recommended by the DG by holding as under:

*“The Commission has carefully examined the matter. It may be observed that the investigation ordered by the Commission in the present proceedings is confined to ascertain the contravention of the order dated 21.10.2015 of the Commission by DOA. This is not an investigation which relates to examination of any anti-competitive conduct. Thus, in such investigation, if the party investigated has not responded despite grant of sufficient opportunities, the DG would be entitled to prepare the report based upon the information supplied by the Applicants and other third parties besides material available on record. Needless to add, such conduct of the party would be taken into consideration by the Commission while passing the final order in the present proceedings.”*

28. The Commission is further constrained to note that DOA and its Office Bearers continued with their dilatory tactics to procrastinate the matter before the Commission as well and this is borne out from the chronology of events which has already been detailed out in the preceding paras.
29. In view of the aforesaid brazen conduct of DOA and its Office Bearers, and after considering the uncontroverted material on record as detailed hereinabove, the Commission has no hesitation in holding that DOA and its Office Bearers have



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continued to defy the order of the Commission dated 21.01.2015 passed in Case No. 42 of 2012 and continued with limiting and controlling the provision of dumpers within the port premises.

30. It may be noted that in terms of the provisions contained in Section 42 (1) of the Act, the Commission may cause an inquiry to be made into compliance of its orders or directions passed in exercise of its powers under the Act. Further, as per the provisions contained in Section 42 (2) of the Act, if any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under Sections 27, 28, 31, 32, 33, 42A or 43A of the Act, he shall be punishable with fine which may extend to Rupees One Lac for each day during which such non-compliance occurs, subject to a maximum of Rupees Ten Crores, as the Commission may determine.
31. Accordingly, the Commission holds DOA and its Office Bearers liable to be punished in terms of the provisions contained in Section 42 (2) of the Act. The Commission hereby imposes a fine of Rs. 20,000/- upon DOA for each day of non-compliance of the order of the Commission for a period starting from the date of the main order passed by the Commission *i.e.* 21.01.2015 to 30.08.2016 *i.e.* the date of completion of investigation by the DG. Accordingly, DOA is directed to deposit a sum of Rs. 1,17,40,000/- (Rupees One Crore Seventeen Lacs and Forty Thousand Only) which has been calculated for a period of 587 days starting from 22.01.2015 to 30.08.2016 @ Rs. 20,000 for each day of non-compliance (excluding one day *i.e.* 21.01.2015 the day on which the order was passed by the Commission).
32. Similarly, the Commission hereby imposes a fine of Rs. 5,000/- upon each of the two of the Office Bearers of DOA *viz.* Shri Bijaya Kumar Nayak, President and Shri Sanjaya Kumar Dhal, Secretary for each day of non-compliance of the order of the Commission for a period starting from the date of the main order passed by the Commission *i.e.* 21.01.2015 to 30.08.2016 *i.e.* the date on which the DG



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completed the investigation. Accordingly, Shri Bijaya Kumar Nayak, President, DOA and Shri Sanjaya Kumar Dhal, Secretary, DOA are each directed to deposit a sum of Rs. 29,35,000/- (Rupees Twenty Nine Lacs and Thirty Five Thousand Only) which has been calculated for a period of 587 days starting from 22.01.2015 to 30.08.2016 @ Rs. 5,000/- for each day of non-compliance (excluding one day *i.e.* 21.01.2015 the day on which the order was passed by the Commission).

33. The Commission directs DOA and its aforesaid Office Bearers to deposit the fine within 60 days of receipt of this order.
34. The Secretary is directed to communicate to the parties accordingly.

**Sd/-  
(Devender Kumar Sikri)  
Chairperson**

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

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

**Sd/-  
(Augustine Peter)  
Member**

**Sd/-  
(U.C. Nahta)  
Member**

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

New Delhi  
Date: 04/01/2018