



COMPETITION COMMISSION OF INDIA

Case No. 48 of 2018

In Re:

**Oil Country Tubular Ltd.
9, Kanchanjunga, King Kothi Road
Hyderabad-500001
Telangana, India**

Informant

And

**Maharashtra Seamless Limited
Pipe Nagar, Village Sukeli
N. H.-17, B. K. G. Road
Distt. Raigad
Maharashtra – 402126**

Opposite Party

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

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

**Ms. Sangeeta Verma
Member**

Present:

For the Informant

Mr. Balbir Singh, Senior Advocate with Ms. Monika Benjamin, Mr. Gaurav Desai and Mr. Vijay Pratap Singh Chauhan, Advocates.

For the Opposite Party

Mr. Amar Dave, Mr. Abhinav Goyal and Mr. Tushar Bhardwaj, Advocates alongwith Mr. Manish Khandelwal, Director, Maharashtra Seamless Limited.



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

1. The present Information has been filed by Oil Country Tubular Ltd. ('the Informant'/ OCTL) under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Maharashtra Seamless Limited (OP/ MSL) alleging *inter alia* contravention of the provisions of Sections 3(4) and 4 of the Act.
2. The Informant is a public limited company duly registered/ incorporated under the Companies Act, 1956 and is part of the Kamineni Group of companies. It is engaged in the business of processing of a wide range of Oil Country Tubular Goods (OCTG) and Drilling Products required for the Oil Drilling and Exploration Industry in the Oil and Gas sector in India.
3. The Informant manufactures/ processes various products *viz.* Drill Pipe, Casing and Tubing required for Oil and Gas Exploration and Exploitation according to the customer specific application requirements. These products are processed and finished to relevant American Petroleum Institute (API) specifications.
4. The Informant has an integrated processing facility which takes non-processed and non-treated Plain End Seamless Pipes also known as "green pipes", and subjects them to various extensive processes such as upsetting, heat treatment, non-destructive testing, tool joint and coupling manufacturing, hard-facing, threading of Casing and Tubing, friction welding of Drill Pipe, internal plastic coating of Drill Pipe, *etc.* Once the green pipes are processed and converted into finished products of Casing, Tubing and Drill Pipe conforming to relevant API specifications, OCTL supplies the same to oil exploration companies such as Oil and Natural Gas Corporation Limited (ONGC) and Oil India Limited (OIL) and private companies in India.



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5. It is stated that the green pipes are essential raw material for OCTL's processing facility to function. It is also stated that OCTL is a listed company and is a preferred customer of United Seamless Tubular Pvt. Ltd. (USTPL). USTPL is a hot roll seamless pipe manufacturing mill which was established by the Kamineni Group and the UMW Group. USTPL does not have a processing and finishing facility and manufactures only green pipes in the size range of 5" outer diameter (OD) to 13-3/8" OD.
6. It is further averred in the Information that in India, there are only four manufacturers of finished casing and tubing namely, MSL, OCTL, Jindal Saw Limited and ISMT Limited. Out of these four manufacturers, MSL has the complete size range till 13 3/8" OD for manufacturing the green pipes and processing to Casing and Tubing. Jindal Saw Limited has the manufacturing and processing till 7" OD size. ISMT Limited has the manufacturing and processing till 9 5/8" OD. OCTL does not have a manufacturing facility for the green pipes and only has a processing facility till 13 3/8" OD. ISMT Limited has not been participating in the tenders floated by ONGC and OIL since 2016, thus, it is no longer a supplier. Therefore, effectively, there are only two functioning market participants *i.e.* MSL and OCTL which supply seamless casing pipes sizes above 7" OD including 9 5/8" OD and 13 3/8" OD.
7. MSL has both, a manufacturing facility for producing green pipes, and a processing and finishing facility for turning those green pipes into finished products. Therefore, it does not have to procure green pipes separately. On the other hand, OCTL has only processing facility and has to procure green pipes for this purpose.
8. It is stated that in order to participate in the tenders floated by ONGC and OIL, one has to be a registered bidder with ONGC and OIL. The procedure for becoming a registered bidder is complex and time



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consuming. MSL, OCTL, ISMT Limited and Jindal Saw Limited are the only registered domestic bidders with ONGC and OIL for supply of seamless casing pipes. Since May 2017, only MSL and OCTL, among the domestic bidders, have competed with each other for supply of seamless casing pipes of sizes above 7” OD including 9 5/8” OD and 13 3/8” OD in tenders floated by ONGC and OIL.

9. It has been pointed out that Government of India *vide* G.S.R. 451 (E) dated 8 May, 2017 announced the policy for providing preference to domestically manufactured iron and steel products in Government procurement ('the Steel Policy'). The Steel Policy as it stands today for government procurement of iron and steel products is such that preference will be given to domestically manufactured products by entities which are registered and established in India. Furthermore, import is permitted only for certain inputs such as Billets/ Blooms provided that value addition by domestic bidders in producing the finished product should be more than 15%. In the case of manufacturing of seamless casing pipes, while the value addition is far more than 15% but input material *i.e.* green pipes are not included as an input that could be imported for further processing. Accordingly, the bidders such as OCTL, who produce seamless casing pipes using green pipes as an input cannot use imported green pipes for supply of seamless casing pipes to Government entities such as ONGC/OIL under the Steel Policy. The only way for OCTL to be qualified as a domestic manufacturer for the purposes of its supplies to Government entities is to procure green pipes from domestic sources. Therefore, for a bidder to effectively compete in any tender floated by a government entity (ONGC and OIL) for procurement of iron and steel products, it must manufacture or procure the same domestically, unless a specific exemption of the Steel Policy for the Tender is taken from the Ministry of Steel.
10. It has been further pointed out that since 2015, USTPL has not been operating its manufacturing facility for green pipes as it has become



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insolvent. The corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 was initiated on 20 July 2017. As a result, OCTL has been struggling to source green pipes and has not been able to participate in tenders floated by ONGC and OIL for seamless casing pipes. Accordingly, OCTL has to source green pipes from either MSL/ Jindal Saw Limited/ ISMT Limited to be considered as a domestic manufacturer. ISMT Limited is not active in manufacturing seamless pipes. Jindal Saw Limited manufactures pipes till 7” OD size only. This makes MSL as the only domestic manufacturer from whom green pipes can be sourced for sizes above 7” OD including 9 5/8” OD and 13 3/8” OD. Therefore, this will result in MSL becoming monopoly supplier of seamless Casing Pipes above 7” OD size by killing the competition from OCTL.

11. In the aforesaid backdrop, the Informant has filed the instant Information alleging that MSL will not supply green pipes to it in respect of the tender floated by ONGC for procurement of seamless casing pipes. It has been pointed out that MSL has not responded to the e-mails of the Informant in respect of its requirement for procurement of green pipes. Accordingly, the Informant has alleged contravention of Section 4(2)(c) and Section 4(2)(a)(i) read with Section 4(1) of the Act. Contravention of Section 3(4)(d) read with Section 3(1) of the Act is also alleged.
12. The Commission has perused the information and the documents filed therewith besides holding preliminary conference with the parties. The parties have also filed their respective written submissions.
13. From the material on record, the Commission notes that the Informant is engaged in the business of processing a wide range of oil country tubular goods and drilling products required for the oil drilling and exploration industry in the oil and gas sector in India. It takes unprocessed, plain end seamless pipes, also known as ‘green pipes’, and processes them into



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‘seamless casing pipes’. The final product *i.e.* seamless casing pipes needs to meet the specifications of the American Petroleum Institute. Once the green pipes are processed and converted into seamless casing pipes conforming to the API specifications, the Informant supplies them to ONGC and OIL. The Informant has pointed out that it does not have any manufacturing facility for green pipes as it has only processing facility for converting green pipes into seamless casing pipes. It has been further highlighted by the Informant that the Government of India came out with its steel policy providing for a preference to domestically manufactured iron and steel products in government procurements having the value of more than INR 50 crores. Accordingly, for ONGC/ OIL tenders having the value of more than INR 50 crores, green pipes are required to be procured only from the Indian green pipes manufacturers, and import of green pipes is not allowed for such tenders.

14. Thus, the Informant has contended that effectively, the bidders such as OCTL who manufacture their seamless casing pipes using green pipes as an input cannot use imported green pipes. As per the Informant, considering that no entity other than MSL is currently manufacturing green pipes of above 7” OD size in India, if OCTL wants to participate in ONGC/ OIL tenders for sizes above 7” OD, it is completely dependent on MSL for the procurement of green pipes. Under these circumstances, it was alleged that the Steel Policy creates the absolute monopoly of MSL in respect of seamless casing pipes of sizes above 7" OD which is around 67% (2015), 73% (2016) and 71% (2017) of the yearly requirement of ONGC/ OIL.
15. The Commission notes that green-pipes are non-heated treated, non-upsetted, non-threaded & coupled plain and seamless pipes which the Informant requires for processing and converting into Casing, Tubing and Drill pipe conforming to relevant standards and supplying to oil exploration companies which include both private companies and



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government companies such as ONGC and OIL. It also appears that the Informant does not manufacture green-pipes and was sourcing its raw material, green-pipes, for processing casing pipes primarily from USTPL and through imports. However, the Steel Policy appears to restrict imports of certain inputs which included green-pipes in government procurements due to the preference provided thereunder for domestically manufactured products by entities which are registered and established in India.

16. It is the case of the Informant that in respect of a tender floated by ONGC (Tender No. ZNCVC18004), it approached to MSL by way of e-mail dated 17.10.2018 stating its requirement therein in detail for procurement of green pipes and had also requested for a price quote. The Informant has alleged that MSL did not respond to its said e-mail. Further, the Informant has alleged that it also sent 3 more e-mails on 25.10.2018, 26.10.2018 and 01.11.2018 to obtain competitive prices for green pipes. However, it was submitted by the Informant that MSL did not respond to these e-mails as well.
17. In this regard, it is observed that though the Informant has stated in the Information that it approached to MSL by way of an e-mail on 17.10.2018 in respect of the tender floated by ONGC, from the tender documents, it appears that the original date for submission of tenders was 17.10.2018 itself. Thus, it is evident that the Informant kept on waiting till the last date of submission of tenders to write an e-mail to MSL. Even thereafter, when the last date for submission of tenders was extended upto 31.10.2018, the Informant sent its reminders on 25.10.2018 and 26.10.2018 only. In fact, the Informant's reminder sent on 01.11.2018 was post the extended date of submission of bid *i.e.* 31.10.2018.
18. In the aforesaid backdrop, having perused the material on record and after hearing the learned counsel for the parties, the Commission notes that the conduct of the Informant in approaching MSL at such a belated stage for



supply of green-pipes, does not seem to be diligent. Such a conduct does not appear to be consistent with the ordinary course of business behavior. Accordingly, the Commission is of the view that the conduct of the Informant in writing e-mails to MSL lacked *bonafide*. MSL categorically pointed out that the Informant never approached it for supply of green-pipes before October, 2018.

19. Moreover, MSL has sought to explain non-response to such e-mails of the Informant by referring to the Integrity Pact which prohibits such discreet arrangements between the bidders. It is not in dispute that both the Informant and MSL were potential competitors in respect of the tender floated by ONGC.
20. Be that as it may, the Commission is of the opinion that the claim of the Informant that the conduct of MSL amounted to refusal to deal besides denial of market access, stands falsified from the sequence of events as adumbrated above and material available on record.
21. From the submissions made by MSL, the Commission also notes that the Steel Policy of 2017 which restricts import of green pipes, itself provides for waivers where supply requirement in the government procurement cannot be met through domestic sources. In fact, MSL has pointed out that an exemption from restriction under the Steel Policy was granted for one of the ONGC's tenders bearing No. ZNCKC16005 and a copy of the minutes dated 22.08.2017 of the second meeting of Grievance Committee on Domestically Manufactured Iron & Steel Products containing details of such exemptions has been annexed in support of the contention.
22. The Commission also takes on record the submission made by MSL that it has no market presence in the upstream market which has been defined by the Informant as the relevant market in as much as it manufactures green pipes only for its captive consumption as raw material required for



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processing casing pipes. It has been categorically pointed out by MSL that it does not supply green pipes to any other entity in India, neither does it export any green pipes, as claimed by the Informant during the hearing. It has also been highlighted that contrary to the oral submissions made on behalf of the Informant, MSL usually does not have any surplus green-pipes which can be supplied to other entities.

23. In view of the foregoing, the Commission is of the opinion that it is unnecessary to dilate anything further on the other issues raised by the parties regarding the delineation of the relevant market and dominant position. No case of contravention of the provisions of Section 4 or Section 3 of the Act is made out against the Opposite Party and the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.

24. The Secretary is directed to communicate to the parties, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U. C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 23/05/2019