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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA
Case No. 63 of 2014

In Re:

Shri Saurabh Tripathy

Informant

And

M/s Great Eastern Energy Corporation Ltd.

M-10, ADDA Industrial Estate,

Asansol, West Bengal

Opposite Party

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U. C. Nahta

Member

Appearances: Shri Sharad Gupta, Advocate for the Informant.



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

1. The present information has been filed by Shri Saurabh Tripathy (**‘the Informant’**) under section 19(1) (a) of the Competition Act, 2002 (**‘the Act’**) against M/s Great Eastern Energy Corporation Ltd. (**‘the Opposite Party’/‘GEECL’**) alleging *inter alia* contravention of the provisions of section 4 of the Act.
2. Facts, as gathered from the information, may be briefly noted:
3. The Informant is an employee of M/s SRMB Srijan Ltd. (**‘SRMB’**), a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 7, Khetra Das Lane, Kolkata, West Bengal. SRMB is stated to be a leading steel rolling mill having two rolling units at Sagar Bhangra, Durgapur in Bardhaman district of West Bengal. It is stated that the process of rolling comprises reheating of raw material such as billets, slab *etc.* through re-heating furnace at temperature in the range of 1000 degree celsius to 1200 degree celsius. The re-heated material is then channeled through various rolling stands divided into three zones *viz.* roughing zone, intermediate zone and convenient zone. Thereafter, the finished material reaches the cooling bed and final packaging happens after the cooling of the finished product. The fuels used in the re-heating furnace are furnace oil, coal, gas *etc.*
4. It is stated in the information that SRMB is an intensive user of energy for its activities. Earlier, coal was used as the source of energy by it however, keeping in view the polluting nature of coal and various problems associated with its use, SRMB shifted to the comparatively much cleaner fuel *viz.* CBM.
5. The Opposite Party *i.e.*, GEECL is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in exploration, development, production, distribution and sale of Coal Bed Methane (**‘CBM’**) gas. It is stated to be the first commercial producer of CBM gas in India and



currently owns 100% stake in two CBM gas blocks in Raniganj (South), West Bengal and Mannargudi, Tamil Nadu. In addition, GEECL has 25% participating stake in Raniganj (North) block along with Oil and Natural Gas Corporation (ONGC). GEECL started producing CBM gas commercially at Raniganj (South) block in 2007. It is stated that GEECL has an estimated 2.4 trillion cubic feet (tcf) of original gas reserve in Raniganj (South) block spread over 210 square kilometres and produced 88.02 million metric standard cubic meter (mmscm) gas in the financial year 2013. It delivers CBM gas to more than 31 industrial consumers including steel plants, steel rolling mills, glass, chemical and food industries through its own pipeline network in Asansol-Durgapur industrial belt.

6. The Informant averred that GEECL is in dominant position in the relevant market of supply and distribution of CBM gas in Asansol- Raniganj- Durgapur belt and by abusing its dominant position in the relevant market, GEECL has imposed unconscionable terms and conditions in Gas Sale and Purchase Agreement ('GSPA'); executed between GEECL and the buyers of CBM gas such as SRMB. It has been alleged that GEECL has imposed unfair conditions upon the CBM gas buyers besides charging unfair and discriminatory prices.
7. Following are the some of the clauses of GSPA which are allegedly abusive in terms of section 4 of the Act:

(i) Clause 2.0: "This CONTRACT shall remain in force till twenty five (25) years subject to revision of terms and conditions including price as mentioned in clause 10.1. The SELLER reserves the right to review and may revise the terms and conditions contained herein including price of the GAS after expiry of fixed price period as defined in clause 10.2"

(ii) Clause 4.0: "The Buyer shall make all proper and adequate arrangements for receiving GAS at the outlet of Gas Metering cum Regulating Station at his own risk and cost. Should any defect in the BUYER'S Intake Arrangements or gas using equipments arise, the same shall be rectified by



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*the BUYER. The SELLER shall have an option to stop supply of GAS to the BUYER without any notice to the BUYER when an emergency **and/or safety issue** arises otherwise a week notice shall be given by SELLER to **BUYER** to rectify the defects in arrangement or gas using equipments, the decision with respect to which shall be that of the SELLER alone and the same shall be absolute and binding upon the BUYER. The BUYER shall also make provision for DUAL FUEL intake arrangement at his own risk and cost.*

Notwithstanding the stoppage of supply as aforesaid the BUYER shall continue to be liable to pay for the Minimum Guaranteed Offtake (MGO) of GAS in accordance with Clause 5.2 hereof irrespective of the fact of stopping of supply of GAS by the SELLER on account of defect or unsafe operation in the BUYER'S intake arrangements or gas using equipment.”

(iii)Clause 4.4: “The BUYER shall pay the penalty and losses occurred or occurring to the SELLER before resumption of the supply. If the amount is not paid by the BUYER within 7(seven) days from the receipt of Debit Note from the SELLER, this contract shall be liable to be terminated at the absolute discretion of the SELLER and the equivalent amount shall be deducted from the deposit given to the SELLER by the BUYER”

8. Based on the above averments, the Informant has filed the instant information seeking *inter alia* an investigation into the matter.
9. The Commission has perused the material available on record besides hearing the counsel for the Informant.
10. The Informant who is an employee of SRMB has filed the instant information against GEECL alleging abuse of dominant position in the relevant market of supply and distribution of CBM gas in Asansol- Raniganj- Durgapur region. It is the case of the Informant that GEECL by abusing its dominant position in the relevant market has put unconscionable terms and conditions in GSPA



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executed with the buyers such as SRMB. The Informant has alleged that GEECL has imposed unfair conditions upon the buyers besides charging unfair and discriminatory prices.

11. To examine the allegations, it would be necessary to delineate the relevant market. The allegations in the present case pertain to sale of CBM gas in Asansol- Raniganj- Durgapur region of the State of West Bengal. It is averred in the information that the industrial consumers in the region do not regard CMB gas either interchangeable or substitutable with other sources of energy by reason of the unique characteristics of CBM, peculiar to it and not associated with other hydro carbon fuels such as coal, furnace oil, High Speed Diesel (HSD) or Light Diesel Oil (LDO) *etc.*
12. In this connection, it may be noted that previously also the Commission has in the case of *Faridabad Industries Association (FIA) v. M/s Adani Gas Limited*, Case No. 71 of 2012 considered natural gas as distinct and distinguishable from other sources of energy. Furthermore, a classification of consumers, based upon the intended use and price of natural gas for each of the categories of consumers (industrial consumers, domestic consumers, commercial consumers and transportation consumers), may be made and accordingly, for the purposes of the present case, industrial consumers may be taken as a distinct group. In view of the above, the Commission is of opinion that relevant product market in the present case may be taken as ‘the market of supply and distribution of natural gas to the industrial consumers’.
13. So far as the relevant geographic market is concerned, it may be noticed from the averments made in the information that Asansol-Raniganj- Durgapur region, in itself, is a unit, isolated from any other CBM market, so far as CBM supplies are concerned. The conditions of competition for supply of CBM are stated to be homogeneous for all consumers within the region and are further stated to be distinguishable from the conditions prevailing in the neighbouring areas in as much as in all the neighbouring areas, the supply of CBM gas



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through pipelines is not available. In this regard, it may also be seen from the information that gas availability in the Asansol-Raniganj-Durgapur belt is currently low as the development of awarded fields (to players such as ONGC, Essar Oil and RIL) has been slow. Thus, for the past five years, GEECL's Raniganj (South) block has remained the only commercially producing CBM block catering to almost all CBM consumers in this industrial belt. Even the supply of natural gas from other gas producers such as - RIL (KG basin-AP and Sohagpur-MP); ONGC (KG basin-AP, Cambay basin-Gujarat, Bombay High, Cauvery basin -TN), GSPC (Cambay basin-Gujarat), CAIRN India (KG basin-AP, Rajasthan); OIL (Assam) *etc.* – is expected to be minimal because: a) These players have minimal surplus gas to sell and b) There is no existing pipeline grid network that can serve the Asansol-Raniganj-Durgapur belt. In view of the above, Asansol-Raniganj-Durgapur region in the State of West Bengal may be taken as the relevant geographic market.

14. Resultantly, the market for 'the supply and distribution of natural gas to industrial consumers in Asansol-Raniganj-Durgapur region in the State of West Bengal' may be *prima facie* taken as the relevant market.

15. In the afore-delineated relevant market, the issue of dominance of the Opposite Party *i.e.* GEECL needs to be examined. From the information filed, it appears that GEECL is the first company in India to start CBM gas production and is, therefore, ahead of other Indian players in exploration, development and production. It has a track record in commercializing gas production from its first CBM block in Raniganj (South), West Bengal. The block has an estimated reserve of 2.4 Trillion Cubic Feet (tcf) of original gas in place. The company is already in production phase; 157 wells have been drilled as of December 2013, and 50% produce gas, while the rest are in the dewatering stage. More wells are expected to move past the dewatering stage, which would increase the gas production significantly. The company has put in place its own pipeline infrastructure in Raniganj, which includes a MDPE pipeline network of about 119 kilometres, which helps it to reach customers in a region devoid of an extensive gas pipeline grid. The industrial belt of



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Asansol - Raniganj - Durgapur, served by GEECL, has a high gas deficit. GEECL started producing CBM commercially at the Raniganj (South) block in 2007. It produced 88.02 Million Metric Standard Cubic Meter in the financial year 2013. The company delivers gas to more than 31 industrial customers through its own pipeline network in Asansol - Raniganj - Durgapur belt, which includes steel plants, steel rolling mills, glass, chemical and food industries. Further, as noted *supra*, gas availability in the Asansol-Raniganj-Durgapur belt appears to be currently low as the development of awarded fields (to players such as ONGC, Essar Oil and RIL) has been slow.

16. From the information, it further appears that GEECL was the only feasible supplier of CBM gas till 2011- 2012 within the geographical limits of Asansol-Raniganj-Durgapur belt. M/s Essar Oil Limited was not operative during 2010-11, during which period, the production of CBM gas by GEECL was 0.11 MMSCMD. During 2011-12, while the production of CBM gas by GEECL was 0.19 MMSCMD, the production of Essar Oil Limited was only 0.025 MMSCMD. Thus, the share of GEECL in the CBM gas produced in the relevant geographical market during 2010-11 was 100% and during 2011-12 was 88%.
17. It appears that GEECL was having 100% market share during 2010-11, 88% during 2011-12 and more than 70% market share during 2012-13 in the relevant market and as such the consumers seem to depend upon it as the industrial units like SRMB have converted their plants to CBM gas use.
18. In view of the above market construct and absence of any countervailing buyer power, GEECL *prima facie* appears to be in a dominant position in the above defined relevant market.
19. The Informant has alleged that GEECL has abused its dominant position in the relevant market by imposing unfair conditions upon the buyers in GSPA besides charging unfair and discriminatory prices from them, in contravention



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of the provisions of section 4 of the Act. The Informant has cited various clauses of GSPA to demonstrate the abusive conduct.

20. The Commission has gone through the various clauses of GSPA to examine any abusive term, if any, therein. Grievance has been made with respect to clause 2 which empowers the seller to revise the terms and conditions contained in GSPA as per its discretion alone without any role of the buyer. Clause 4.2 is also alleged to be abusive in as much as it bestows on the seller the absolute power to decide on the defects in intake arrangement or gas using equipments at the buyer's end and also to decide whether the defects have been properly rectified or not. It is alleged that the seller, on his judgment, has been given the right to stop the supply of gas and on the other hand the buyer is made liable to pay for Minimum Guaranteed Offtake (MGO) of gas. Objection is also taken to clause 4.3 which absolves the seller of its responsibility for production losses or other kind of losses attributable to the equipments/ installations which even include Gas Metering-cum-Regulating Station, which remains under the ownership, control, supervision and maintenance of the seller. Lack of joint inspection for examining the cases of tampering with the gas metering equipment in clause 4.4 is also alleged to be abusive in as much as the finding about the culpability of the buyer in tampering with the gas metering equipment is to be arrived at by the seller alone and in the event of buyer disagreeing therewith, the buyer may ask for third party inspection, yet such third party is to be appointed by the seller alone and not jointly alongwith the buyer. Furthermore, it is alleged that the seller is given arbitrary power to impose penalty upon the buyer without any methodology to quantify and determine the same. It is further alleged that if the buyer fails to pay the same within 7 days, the amount of penalty is to be deducted by the seller from the deposit given to him by the buyer. Absence of provision in the clause for course of action in the event of buyer complaining tampering of gas metering equipment by the seller is also alleged to be abusive.



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21. The Informant has also alleged the clauses relating to quantity and quality of gas besides other stipulations in GSPA through various other clauses on similar grounds *i.e.* lack of level playing field between the buyer and the seller. It is not necessary to detail the same herein.
22. Lastly, it may be pointed out that the Informant has also alleged that the price charged by the seller is both unfair and discriminatory. Based on the cost of production data, it is argued that while the cost of production to GEECL during 2013-14 is only 46.78% of the cost of production during 2011-12, the price being charged from SRMB during 2013-14 is 135% of the price charged from it during 2011-12. Coupled with the fact that GEECL itself produces the gas and does not buy the same from other entity and thereby the sale price is not depended upon any procurement price, it is alleged that clause 10 of GSPA dealing with prices of gas is unfair. The Informant has also submitted a list of buyers alongwith the prices charged by GEECL to demonstrate the discriminatory pricing resorted to by the dominant player.
23. On a careful perusal of the allegations and the terms of GSPA and as discussed and detailed above, the Commission is *prima facie* of the opinion that the impugned terms appear to be tilted in favour of the seller and against the buyer. Thus, *prima facie* the Opposite Party appears to have contravened the provisions of section 4 of the Act.
24. In view of the above discussion, *prima facie* a case of contravention of the provisions of section 4 of the Act, as detailed above, is made out against the Opposite Party. Accordingly, the Commission u/s 26(1) of the Act directs the DG to investigate into the matter and to complete the investigation within a period of 60 days from receipt of this order.
25. Nothing stated in this order shall tantamount to a final expression of opinion on merit of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.



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26. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.

Sd/-

(Ashok Chawla)

Chairperson

Sd/-

(S. L. Bunker)

Member

Sd/-

(Sudhir Mital)

Member

Sd/-

(Augustine Peter)

Member

Sd/-

(U. C. Nahta)

Member

New Delhi

Date: 29-12-2014