



COMPETITION COMMISSION OF INDIA

Case No. 72 of 2016

In Re:

M/s Shah Associates

Informant

And

Timken India Limited

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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

Appearances during the preliminary conference held on 22nd November, 2016:

For the Informant: None

For the Opposite Party Mr. S. P. Deo, Advocate
Ms. Radhika Seth, Advocate
Mr. Tanveer Verma, Advocate



Mr. Kaushik Laik, Advocate
Mr. Aditya Roy, GM (Sales)
Mr. Vinit Mangrulkar, Head (Sales)

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

1. M/s Shah Associates (“**Informant**”) has filed the present information under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against Timken India Limited (“**Opposite Party**”), *inter-alia*, alleging abuse of dominant position by the Opposite Party.
2. As per the information, the Informant is a proprietary concern engaged in the business of trading in bearings, gear boxes and chains. It was a distributor of products manufactured by the Opposite Party. The Informant has claimed that it imports/purchases bearings from the Opposite Party and supplies them to Oil and Natural Gas Corporation Limited (“**ONGC**”) and other parties.
3. The Opposite Party is stated to be a multinational company and a global leader in manufacturing of bearings and other related products. It has its manufacturing facilities all over the world. It also has branches and sales offices in India.
4. The primary concern of the Informant relates to refusal by the Opposite Party to authorise the Informant to participate in the tenders floated by ONGC. The brief details of the facts and allegations are as hereunder:
 - 4.1. With effect from May, 2009, the Informant was appointed as the authorised distributor of the Opposite Party to sell its products.



Vide letter dated 14th May, 2009, the Opposite Party further appointed the Informant, having offices in Maharashtra and Gujarat, as its sole channel partner for oil and gas segment, including ONGC, in the Western and Eastern parts of India. The Informant has claimed that it always brought minimum fifty percent of orders for any given tender floated by ONGC. The Informant is stated to have imported bearings from the Opposite Party specifically for oil and gas industry and to have stocked the same for immediate supply to customers as and when required.

- 4.2. The Informant has alleged that after a change in the Management of Opposite Party's Marketing Division, the Informant was asked not to participate in the tenders floated by ONGC. It has been further stated in the information that a distributor cannot participate in the tenders floated by ONGC in the absence of authorisation by the manufacturer.
- 4.3. Whenever the Informant requested for authorisation to participate in the tenders of ONGC, the Opposite Party refused. *Vide* email dated 1st June, 2015 to the Opposite Party, the Informant asked for authorisation to participate in the tender floated by ONGC, Mumbai but the Opposite Party refused the same. Similarly, *vide* email dated 26th June, 2015, the Informant approached the Opposite Party for authorisation to participate in the tender of ONGC, Baroda. However, the same was also denied by the Opposite Party without assigning any reason. Nevertheless, the Informant participated in the tender by submitting its bid online. When this fact was brought to the notice of the Opposite Party by



the Informant, *vide* another e-mail dated 29th June, 2015, the Opposite Party objected to such participation and asked the Informant not to send the hard copy of the offer to ONGC. As a result, the Informant could not submit the necessary documents to ONGC.

4.4. The Informant has alleged that the Opposite Party, in collaboration with the competitors of the Informant, has quoted higher prices for the ONGC tenders. The Informant has also submitted a comparative table containing price quoted by it for items procured alongwith the quotes of other bidders to show that higher prices were quoted by newly authorised bidders in the tenders floated by ONGC.

4.5. In view of the above, the Informant has alleged that the Opposite Party is preventing competition in the market by misusing and abusing its dominant position.

5. The Commission considered the information in its Ordinary Meeting held on 6th October, 2016 and decided to have a preliminary conference with the parties on 22nd November, 2016. On the said day, the Commission heard the Opposite Party but none appeared for the Informant despite due service of advance notice. The Opposite Party, *inter alia*, submitted that: (a) there are many manufacturers supplying bearings in India, including prominent players like SKF, FAG and NEI; (b) considering the prominent presence of other players, the Opposite Party cannot be considered to enjoy dominant position; (c) the requirement of authorisation to participate in ONGC tenders is a



condition stipulated on the bidders in the tender document; and (d) the Opposite Party has concerns regarding supply of spurious products by the Informant and the same was the reason to restrict it from participating in the ONGC tenders. Upon hearing the Opposite Party, the Commission directed it to file the details of market share in India of different manufacturers of bearings and a copy of ONGC tender document. Accordingly, the Opposite Party filed the said data on 25th November 2016.

6. The Commission has carefully considered the information, the material available on record and the submissions made by the learned counsel of the Opposite Party during the preliminary conference.
7. The Informant has alleged abuse of dominant position by the Opposite Party, in contravention of the provisions of Section 4 of the Act. For the purposes of examining the allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to determine the relevant market at the first instance. Thereafter, it is required to assess whether the Opposite Party enjoys a position of strength required to operate independently of the market forces in the relevant market. Only when such a position is enjoyed by the Opposite Party, it is imperative to examine whether the impugned conduct amounts to an abuse.
8. The Commission observes that the Informant has not made any submission regarding the relevant market nor has provided any description regarding the products manufactured by the Opposite Party except claiming that the Opposite Party is a global leader in the manufacture of bearings and other related products. Since the ONGC



tenders were for procurement of different categories of industrial bearings, the same is taken as the focal product in the instant case. Bearings, also known as anti-friction components are used in a variety of applications in automobiles, pumps, gearboxes, heavy earth-moving equipments and other industrial sectors. All the aforementioned sectors, other than automotive sector, can be broadly categorized as industrial. Further, as per the submissions made during the preliminary conference, all the prominent players in India appear to manufacture different types of industrial bearings supplied/used in India. Thus, in the absence of any difference brought out by the Informant regarding the different kinds of bearings and the fact that a number of players are engaged in the manufacture and/or sale of various types of industrial bearings, the Commission does not find it necessary to narrow down the relevant product market to any particular type or class of industrial bearings. Accordingly, the relevant product market is taken as the '*market for industrial bearings*'. As regards the relevant geographic market, it is observed that the manufacturers of bearings can supply the same to all customers located across India. As per the details provided with the information, even the bidders who participated in the tenders floated by ONGC are from different locations *i.e.* Mumbai, Kolkata and Baroda. Further, as per the data on bearings compiled by Centre for Monitoring Indian Economy Pvt. Ltd. (CMIE) Industrial Outlook, more than 40% of the demand for bearings in India is met through imports. These factors suggest that the geographic market for industrial bearings is not limited to any region/(s) but the whole of India. Therefore, the relevant geographic market in the instant case is taken as '*India*'. In view of the above, the relevant market in the instant matter is defined as '*market for industrial bearings in India*'.



9. It is further observed that as per the data compiled by CMIE Industrial Outlook, there are several players in the market for industrial bearings in India. As per the said data, there are 84 firms manufacturing and/or supplying bearings in India out of which market share details for 2014-15 were provided only for 18 firms and the rest of the players appear to be smaller in size and scale. The said data further provides that import of bearings into India during 2014-15 constituted 46.72% of the total domestic consumption. As per the details provided by the Opposite Party pursuant to the directions of the Commission during the preliminary conference, NRB, ABC, SKF India, FAG Bearings, Timken India, NEI and Bimetal are the prominent players manufacturing/supplying bearings in India. Timken enjoys less than 10% of the market share in the overall bearings market with some of the other players having higher market shares. Considering these factors, the Opposite Party does not appear to enjoy a position of the strength required to operate independently of the market forces. Hence, the Commission is of the view that the Opposite Party does not enjoy dominant position in the relevant market.
10. In the absence of the Opposite Party enjoying dominant position in the relevant market, the question of abuse does not arise. Notwithstanding this, it is observed that the requirement of authorising dealers to participate in the ONGC tenders arise out of the tender conditions, in which case it is open for the manufacturers to select the dealers based on their performance and other credentials. In the absence of any material suggesting dominance of the Opposite Party or its abuse or any other



conduct culpable under the provisions of the Act, the Commission does not find it necessary to examine the matter further.

11. In view of the foregoing, the Commission is of the view that there exists no *prima facie* case of contravention of the provisions of Section 4 of the Act. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.
12. The Secretary is directed to inform all concerned accordingly.

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

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

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

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

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

**New Delhi
Date: 31/01/2017**