COMPETITION COMMISSION OF INDIA

Case No. 26 of 2022

In Re:

Beach Mineral Producers Association
Ittamozhi Road, Mahadevankulam (Post)
Tirunelveli District – 627657 **Informant**

And

IREL (India) Ltd.
Plot No. 1207, ECIL Building,
Veer Savarkar Marg, Opp. Siddhivinayak Temple
Prabhadevi, Mumbai – 400028 Maharashtra **Opposite Party**

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by Beach Mineral Producers Association (the **Informant**) under Section 19(1)(a) of the Competition Act, 2002 ('the **Act**') against IREL (India) Ltd. (**Opposite Party**/**OP**) alleging contravention of the provisions of Section 4 of the Act.

2. The Informant is a society registered under the Tamil Nadu Societies Registration Act, 1975, which was formed with the object of protecting the beach mineral industry in general and its members in particular.

3. As per the Informant, IREL (India) Ltd. (**OP**), a Miniratna Category-I Central Public Sector Undertaking, is engaged in mining and production of the following products:

- *Minerals*, such as ilmenite, rutile, zircon, garnet and sillimanite;
- *Rare Earths*, such as cerous carbonate 2N, lanthanum carbonate and Nd-Pr oxalate (dry)/oxide;
- *Chemicals*, such as rare-earth chloride, trisodium phosphate and thorium nitrate.

4. The Informant has stated that the beach sand deposits and dunes in the States of Tamil Nadu, Kerala, Andhra Pradesh, Odisha and a few parts of Maharashtra contain heavy minerals like ilmenite, rutile, garnet, monazite, zircon, sillimanite, leucoxene, etc. The source of these minerals is the gradual erosion of hard rocks by the action of rivers. The river water carries the minerals along with the sand and silt and deposits these sediments into the ocean/sea. These beach sand minerals (**BSM Ore**) have various applications.

5. The present Information relates only to the activities/actions of the OP *vis-à-vis* beach sand minerals such as ilmenite. It is stated that ilmenite ($FeO.TiO_2$) is a natural sand-based product generated during the extraction of rare-earth compounds from beach sand and has a unique chemical property and composition. About 90% of the world's ilmenite production is used in the manufacturing of white titanium dioxide pigment/synthetic rutile. The properties of titanium dioxide/synthetic rutile, such as high refractive index, low specific gravity, high hiding power, opacity and non-toxicity, enable its application in the manufacture of all types of white and pastel shades of paints, white-walled tyres, glazed papers, plastics, printed fabrics, flooring materials like linoleum, pharmaceuticals, toothpastes, soaps, face powders and other cosmetic products.

6. It is stated that Section 4(b) of the Offshore Areas Mineral (Development and Regulation) Act, 2002 defines 'atomic minerals' as minerals included in the atomic minerals specified in Part B of the First Schedule to the Mines and Minerals (Development and Regulation) Act, 1957 (**MMDR Act**). Since 2016, ilmenite and other beach sand minerals have been included in the category of atomic minerals by

virtue of the Central Government Notification No. S.O. 2356(E) dated 11.07.2016. By virtue of the said Notification, the First Schedule of the MMDR Act, 1957 was amended to include:

> "*…12. Beach sand minerals, that is, economic heavy minerals- found in the teri or beach sands, which include ilmenite, rutile, leucoxene, garnet, monazite, zircon and sillimanite…*"

7. The Informant has further stated that it was legally permissible to undertake beach sand mining operations by both the public as well as private sector until 2018. The public sector operation was undertaken by IREL, i.e., OP and Kerala Metals and Minerals Ltd. Some of the leading private companies engaged in the beach sand mineral operation till 2018 were Trimex Sands Private Limited and VV Mineral Pvt. Ltd.

8. The Informant averred that beach sand minerals such as ilmenite have specific uses and cannot be replaced by other minerals. There are no economical, cost-effective, qualitative and locally available substitutes for beach sand ilmenite. On the basis of factors such as physical characteristics, end-use of goods, price of goods, consumer preferences, classification of industrial products, etc., the Informant has stated that *'beach sand ilmenite'* is a separate relevant product. OP supplies beach sand ilmenite mined by it throughout the country. Accordingly, as per the Informant, the relevant market in the present matter can be delineated as '*mining and supply of beach sand Ilmenite in India*'.

9. It is stated that the Ministry of Mines, *vide* Central Government Notification bearing G.S.R. 134 (E) dated 20.02.2019, amended Schedule A of Atomic Minerals Concession Rules, 2016 as follows: "*when the atomic mineral (monazite) [the ore of Ilmenite] is more than the threshold value (0.00%), the State Government cannot permit private companies to mine it*". As a consequence of the aforesaid amendment, private companies cannot mine ilmenite. Moreover, the Department of Atomic Energy, *vide* Central Government Notification S.O. 2685 (E) dated 27.07.2019 prohibited the grant of operating rights in respect of atomic minerals in any offshore

areas in the country to any person except the government or a government company or a corporation owned or controlled by the government. The relevant portion of this notification is extracted below:

> "*...Now, therefore, in exercise of the power conferred under sections 3 and 14 of the Atomic Energy Act, 1962 (33 of 1962), the Central Government hereby prohibits grant of operating rights in respect of atomic minerals in any offshore areas in the country, including said sixty-two blocks, to any person, except the Government or a Government Company or a Corporation owned or controlled by the Government, under the Offshore Areas Mineral (Development and Regulation) Act, 2002; and declares that any action taken in this behalf by the Central Government under the Offshore Areas Mineral (Development and Regulation) Act, 2002 prior to the date of this notification shall stand rescinded...*"

10. The Informant has alleged that, in view of the above, OP is the only entity owned/controlled by the government which is engaged in the production/mining/manufacture or supply of beach sand ilmenite in India. OP, being the sole entity entitled to undertake mining of beach sand ilmenite in India, enjoys immense market power and is in a dominant position in the defined relevant market.

11. The Informant also alleged that OP is abusing its dominant position through various acts and policies. The members of the Informant who are dependent on the OP for ilmenite and other beach sand minerals are facing a major crisis in the form of shortage of supply of ilmenite. Due to inadequate supply of ilmenite, local manufacturing units are on the verge of shutdown, and the same has been communicated to the OP through various emails to no avail.

12. It is alleged that OP often does not respond to the Expression of Interest issued by domestic consumers of ilmenite. OP responds with a Standard Quantity Sales Contract which contains a predetermined quantity (often lower than demanded), and domestic consumers have no choice but to accept the same. Moreover, in the absence of any

choice, local consumers are forced to accept the extraneous conditions mentioned in the Standard Quantity Sales Contract. Furthermore, it is alleged that OP supplies adequate quantity to foreign companies/MNCs, which also contributes to the inadequate supply of ilmenite for domestic consumers.

13. It is alleged that such practices of the OP amount to imposition of unfair or discriminatory conditions in the sale of ilmenite, thereby violating the provisions of Section 4(2)(a)(i) of the Act. Further, the act/policy of the OP in the form of restricted supply or limited supply of ilmenite contravenes the provisions of Section 4(2)(b)(i) of the Act. Apart from the above, the discriminatory and arbitrary policy/act of the OP in the supply of ilmenite also amounts to denial of market access in violation of the provisions of Section 4(2)(c) of the Act.

14. Additionally, it is alleged that OP charges discriminatory and differential prices to its consumers. OP is willing to export ilmenite rather than supply adequate quantities to domestic customers at the price at which it supplies to foreign customers/companies. Accordingly, OP has given dissimilar treatment to similarly placed consumers, i.e., domestic MSMEs and foreign companies/multinationals. Such discriminatory practice adopted by the OP causes distortion of competition in the downstream market, since foreign companies/multinational consumers and domestic consumers, which are MSMEs, are direct competitors. Such abusive practices in the form of discriminatory pricing followed by the OP are alleged to be in violation of the provisions of Section 4(2)(a)(ii) of the Act.

15. Lastly, it is alleged that, as OP is the sole producer/miner of beach sand ilmenite, it has made an arbitrary and exorbitant increase in the price of beach sand ilmenite with the intention of exploiting and abusing its dominant position. Such random and arbitrary increases are causing grave harm to downstream industries such as paints, tyres, glazed papers, plastics and cosmetic products, which are the main consumers of beach sand ilmenite. It is submitted that excessive pricing is an element of ‘unfair price’ in terms of Section 4 of the Act. Imposition of such exploitative, excessive price is in violation of the provisions of Section 4(2)(a)(ii) of the Act.

16. Based on the above, the Informant has sought the Commission to declare the above practice of the OP to be in violation of the provisions of Section 4 of the Act and direct the OP to ensure adequate supply of beach sand ilmenite for consumers. The Informant also prayed the Commission to direct the OP to not impose exorbitant prices of beach sand ilmenite on consumers and follow fair and uniform price for the same.

17. The Commission considered the Information in its ordinary meeting held on 26.07.2022 and decided to seek a response from OP. The Informant was also allowed, thereafter, to file its rejoinder, if any, to such response, with an advance copy to OP.

18. OP and the Informant have since filed their respective responses and rejoinders. The Commission, in its ordinary meeting held on 14.09.2022, considered the Information and other material available on record and decided to pass an appropriate order in due course.

19. In its response, OP has submitted that ilmenite is a processed mineral under the free list as per the Foreign Trade Policy of India and no restrictions are imposed on its import. OP's production during 2021–22 has been above 350KT, and OP's market share in the world market of ilmenite is estimated to be around 2–3% only. Prior to 2018–19, there were a few companies engaged in mining beach sand mineral ore and extracting various minerals, including ilmenite, in India. In relation to the market share, the Informant has tried to mislead the Commission stating that OP's market share in ilmenite is more than 80%, whereas the market share of OP with respect to ilmenite is only 3%.

20. It is submitted that OP caters to the supply of key strategic minerals, chemicals, etc., meant for the atomic energy program in the country. Further, OP is involved in supporting and implementing national programs of strategic importance to India. Given the sensitive and strategic nature, several of the activities undertaken by OP are not known to the public and shall not be disclosed from the perspective of national security. In view of the above, OP, while performing its operations with respect to ilmenite, cannot be considered to be acting as an 'enterprise', as such operations are

incidental to the sovereign functions of the Indian government and thus, fall squarely outside the jurisdiction of the Commission.

21. OP submitted that IREL is not the only entity dealing in mining and supply of ilmenite. It may be noted that the Kerala Mineral and Metal Limited (KMML), a Kerala government company, is also carrying out mining of beach sand. Recently, an Andhra State PSU, APMDC, was also nominated as a prospective lessee to carry out beach sand mining. These facts indicate that not only does OP have competitors operating currently in the market, i.e., KMML, it also has competitors such as APMDC which have recently been granted the lease for BSM mining activities. Considering the above, there are adequate competition constraints on OP from current and future competitors, and therefore, based on the past decisions above, it can be concluded that OP does not hold dominant position in the market as alleged in the Information. Additionally, in India, ilmenite has also been imported by various industries and enterprises.

22. It is submitted that the private players operating in this segment were mostly exporting their ilmenite with hardly any supply in the domestic market. It is submitted that members of the Informant are not customers of OP, and hence, there is no contractual relationship of customer and supplier. Before the policy change, the Informant's members were carrying out activities of mining beach sand minerals and extracting minerals therefrom, which is an activity akin to the one carried out by OP in the beach sand mineral value chain before cracking of monazite, one of the minerals extracted in the beach sand mineral separation process but which is not allowed to private players due to its strategic uses. Accordingly, in the absence of any relationship between OP and the members of the Informant, the allegation that OP acted in an anti-competitive manner with members of the Informant does not arise.

23. With regard to the question as to whether the prices at which OP supplies ilmenite are excessive or not, the prices are based on various legitimate and relevant considerations and factors. The Informant has not placed sufficient and credible material on record to prove that the prices offered by OP are excessive. The Information provided is

insufficient, does not properly explain the factors or considerations/reasons for differences in pricing and is read out of context by the Informant.

24. The OP further submitted that the objective of filing the Information is to exert illegitimate pressure on OP and use this case as a tool to bring about policy change in India so that the member of the Informant can benefit from possible policy changes by reopening the mining of ilmenite and other non-strategic minerals by private players. The series of litigation filed by private players, including the Informant, have questioned the policy of the Government of India in this regard.

25. It is further submitted that, in September 2021, M/s V. V. Titanium had approached OP for the supply of ilmenite, which was responded to affirmatively after curtailing some part of supply to a few existing long-standing industrial buyers. It is submitted that the operations of the members of the Informant were stopped due to reported illegal mining by private players and a consequent ban by the State Government of Tamil Nadu on the mining of beach sand minerals by private players.

26. It is submitted that the prices of ilmenite are set as per global average sales prices, and the prices are dynamic and subject to periodic revision during a year. For the revision of price of ilmenite, changes in price in dollar terms and change in exchange rate are factored in. Further, the purity concerning TiO2 content, impurities logistic cost, payment terms, etc., also need to be factored in. Pricing for both domestic and export material is based on these factors, which takes care of demand-supply dynamics. It is submitted that OP only exports surplus material available with it after earmarking the estimated requirements of domestic customers. With regard to price discrimination, OP has submitted that the price is set specific to a market segment. For instance, the price for all customers in the market segment of the TiO2 value chain is the same.

27. It is also the submission of OP that the ilmenite produced in the States of Kerala and Tamil Nadu are locally consumed in the country. The entire ilmenite exported is a surplus, primarily from the State of Odisha. It is stated that ilmenite produced at the Odisha unit was not preferred by the industry in the titanium dioxide value chain, and hence, OP decided to export this surplus quantity. Furthermore, as per an MoU entered

into between OP and the Government of India, OP has been given the target to achieve 50% of the sales turnover from exports.

28. Presently, OP is supplying more ilmenite to the domestic industry from the Odisha unit and OP has neither underutilised its installed capacity nor discriminated its customers for providing ilmenite.

29. In the rejoinder, the Informant clarified that the Information nowhere questions ‘sovereign activity’ carried on by the OP, the reason being that marketing or sale of ilmenite is a purely commercial activity and has no link to ‘atomic energy’. Thus, any exception to the provision of Section 2(h) of the Act is not applicable to the instant case. Further, there is evidence on record which *prima facie* indicates that the product in question, i.e., ilmenite, is being extracted and sold both in the country and abroad. Even if some of the minerals forming part of the suite of beach sand minerals are or can be used in nuclear/atomic energy, this is inconsequential to the sale and supply of beach sand ilmenite. Thus, according to the Informant, the logical conclusion that can be drawn is that OP is an ‘enterprise’ within the meaning of Section 2(h) of the Act.

30. The Informant has contended that OP has neither addressed the allegation of abuse of its dominant position nor submitted anywhere in its response that ilmenite has any nuclear/atomic use or is supplied by the OP to the government for any atomic use, the reason being that ilmenite is mainly a titanium bearing mineral and has no direct connection with atomic energy.

31. Ilmenite, as extracted/mined by OP, is sold independent of other minerals and is a completely separate product from other beach sand minerals, including monazite and sillimanite. Thus, the overlap sought to be portrayed by OP with monazite is fallacious and unfounded.

32. The Informant stated that it has not challenged the policy decision of the government communicated through its various circulars, orders and Notification and is well aware of the extant legal position that the Commission’s time is not meant for undertaking

roving and fishing inquiry or adjudicating unsubstantiated flaws or shortcomings in policy matters of the government.

33. The Informant further submitted that OP has repeatedly obfuscated the issue pertaining to the abuse of its dominant position in the relevant market of 'mining and supply of beach sand ilmenite in India' and alleged that OP continued to harp on the issue pertaining to an altogether different relevant product, i.e., monazite, and raised issues such as conservation of atomic minerals, larger national interest, etc. Moreover, ilmenite as extracted/mined by OP is sold independent of other minerals and is a completely 'separate product' from other beach sand minerals, including monazite and sillimanite. Thus, the overlap sought to be portrayed by the OP with monazite is fallacious. The Informant submitted that even the OP has not opposed the assertion made by the Informant that there is no cost-effective substitute of beach sand ilmenite. The Informant has also submitted that the indirect enunciation by the OP that, in the present case, the relevant geographic market is whole world/globe (since OP stated that rock ilmenite are available in Canada, Russia and Norway) is incorrect, the reason being that the price of imported ilmenite will be higher than that of locally available beach sand ilmenite. Thus, imported ilmenite will not be cost-effective for consumers in India, making it commercially unviable. Thus, the relevant product in the present case should be delineated as '*mining and supply of beach sand ilmenite in India*'.

34. The Informant averred, based on the annual reports of the OP, that "it is a monopoly for handling prescribed material in India". The Informant reiterated that OP has continued to focus on exports to the utter neglect of domestic MSME, as evidenced from its annual report of 2018–19. In relation to the other players operating in the market, the Informant has contended that KMML uses ilmenite from their own titanium factory mostly for their own value-added product(s) rather than selling the same in the open market. Moreover, APMDC did not get any mining lease until today. The OP alone has mining leases in Tamil Nadu, Kerala and Orissa. In relation to the dominant position of the OP in the delineated relevant market, the Informant has placed on record some portions of various annual reports of OP. For example, the relevant portions of the annual reports of 2020–21 and 2018–19 are as under:

Annual Report 2020–21

"Only entity in the Country in the field of Rare Earth extraction and processing."

Annual Report 2018–19

"Only producer of Rare earths in the country."

"Monopoly for handling prescribed material in India."

35. In relation to the dominant position of OP in India, even after inclusion of KMML, the share of OP in the production of beach sand ilmenite is more than 80%. The same is valid indicia of the fact that the OP is dominant, which enables it to operate independently of the competitive forces prevailing in the relevant market and affect its competitors, consumers or the delineated relevant market in its favour.

36. In relation to allegations of abuse of dominance, the Informant has submitted that, following the restrictions on private players from mining and supply, OP increased the price of ilmenite, resulting in substantial increase in OP's revenue during the same period. Also, the Informant reiterates that OP supplied ilmenite to foreign entities at a lower rate, while the same was sold to domestic MSMEs at a higher rate. These facts have not been denied by the OP in its response. Thus, in the absence of such denial of abusive practices, it can be safely presumed that OP is definitely engaging in abusive practices in violation of the provisions of Section 4 of the Act.

37. The Informant has submitted that OP has not responded to the Expression of Interest (EoI) issued by domestic MSME consumers and has supplied lower amounts of ilmenite to domestic MSMEs, whereas OP is stated to have supplied adequate quantity to foreign companies/MNCs, which was significantly higher than what was being supplied to domestic MSME consumers, resulting in restricted supply of ilmenite to domestic MSMEs. OP has not refuted the said alleged conduct in its response other than merely stating that it is not an enterprise and this is more of a policy matter involving strategic interest.

38. The Informant also submitted that OP has refused to supply material from Manavalakuruchi unit (MK) to VV Minerals. However, it had supplied the material from MK unit to DCW Limited by transporting at its own cost. For the other users, the supply was made at ex-factory/base price, and the transportation cost was to be borne by the end user.

39. The Commission has considered the Information and the material available on record as well as responses and rejoinders filed by the Parties. On perusal of the allegations, the Commission notes that the Informant is primarily aggrieved by the conduct of OP in supply of beach mineral ilmenite to consumers in India.

40. In this regard, the Commission observes that, as per Section 2(h) of the Act, an 'enterprise' is defined as:

> *Section 2(h) 'Enterprise' means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space*".

41. The definition is very wide in its amplitude and covers all activities of a specified nature of any kind. The thrust of the definition of the term 'enterprise' is on the economic nature of the activities discharged by the entity concerned. Further, there is no notification issued under Section 54 of the Act exempting the OP from the application of the Act. This clearly shows that the Central Government does not

consider any of the activities of OP as relatable to sovereign functions. Previously, in Case No. 22 of 2021, the Commission had held OP to be an enterprise under Section 2(h) of the Act and observed as follows:

> *"Sillimanite is sold by OP to its customers for a consideration. The OP has not given any credible argument to show that it is not an enterprise, when there is evidence on record which prima facie indicates that the product in question i.e. Sillimanite is being extracted and sold, both in the country and abroad. Also, the Commission notes from the submission of Informant as well as from the website of OP that Sillimanite is used in production of refractories that is used in metal and alloy making industry as well as in ceramic and foundry industry. In view of the statutory framework defining 'enterprise' as detailed above and keeping in view the nature of functions performed by OPs, as adumbrated supra, OP prima facie is found to be an 'enterprise' under Section 2(h) of the Act."*

42. In the instant matter, the Commission notes that the product under consideration is ilmenite, which is one of the atomic minerals categorised under the Mines and Minerals (Development and Regulation) Act, 1957. Ilmenite is one of the prescribed substances for use in the production of atomic energy and related R&D activities under the Atomic Energy Act, 1962. It is sold by OP in India and abroad. Ilmenite is used for production of titanium dioxide, titanium metal, synthetic rutile, titanium slag, welding electrode and ferro titanium. In view of the statutory framework defining 'enterprise' as detailed above, the Commission notes that the OP is an 'enterprise' and performs commercial activities, as observed by the Commission previously also.

43. Having held OP to be 'enterprise', the Commission proceeds to assess the relevant market in the present case. However, before delving into the relevant market, the Commission notes that the allegations raised against the OP are similar to the allegations raised against it in Case No. 22 of 2021. The Commission notes that the product alleged in the instant matter is different from the product investigated in Case No. 22 of 2021 (i.e., sillimanite, derived from beach sand mineral), which is pending

inquiry before the Commission. Likewise, the product in the instant matter is ilmenite, which is also derived from beach sand mineral. Ilmenite and sillimanite are two by-products of beach sand minerals, with different physical and chemical properties and end-use applications.

44. The Commission notes that ilmenite, (FeO.TiO2) is one of seven economically important strategic rare-earth minerals mined and processed from beach sand. Ilmenite, along with the other six beach sand minerals, viz., rutile, leucoxene, monazite, zircon, garnet and sillimanite, are popularly known as beach sand minerals. Ilmenite is processed to derive products such as titanium dioxide and titanium metal.

45. The Commission notes that, in Case No. 22 of 2021, the Commission has delineated on *prima facie* basis the relevant market as '*mining and supply of beach sand sillimanite in India*'. In this case, the product involved is ilmenite, which has unique physical, chemical properties, uses and its own demand and supply dynamics, and resultantly, is a separate market in India. In light of the above, the Commission is of the *prima facie* opinion that the relevant market may be delineated as '*mining and supply of beach sand ilmenite in India*'.

46. Upon delineating the relevant market, the Commission now proceeds to examine the dominance of OP in the delineated market. The Commission notes that, until 1988, beach sand mining was restricted to the public sector owing to coexistence of monazite, a heavy mineral used for the production of thorium. Realising the untapped potential in the beach sand minerals sector, the Department of Atomic Energy (DAE) opened up the sector to the private sector with some conditions. In this regard, the Commission notes that the prospecting and mining rights of offshore minerals under the Offshore Areas Minerals (Development and Regulation) Act, 2002 was reserved exclusively for the government and government-owned companies to curb illegal mining of atomic minerals by private parties.

47. Thus, the policy change by the Central Government has made OP the sole producer/miner of ilmenite, and it is a monopoly, which is also evident from the statements in the annual reports of the OP. Based on the above, the Commission is of

prima facie opinion that the OP is dominant in the relevant market of '*mining and supply of beach sand ilmenite in India*' and has the ability to operate independently of market forces.

48. As OP is *prima facie* found to be a dominant entity involved in the mining of beach sand mineral ilmenite, the allegations made by the Informant need to be examined in this perspective. In this regard, the Commission notes that the Informant is aggrieved by the following three conducts: (a) *Inadequate supply or refusal to supply or restricted supply of beach sand ilmenite; (b) Discriminatory pricing among domestic and foreign consumers;* and *(c) Unfair/excessive prices of ilmenite.*

49. The Commission notes that the Informant, in its rejoinder, has placed on record that the OP refused to supply material from its MK unit to VV Minerals, but it supplied the same from MK unit to DCW Limited by bearing transporting costs, whereas other customers were supplied at ex-factory/base price, and the transportation cost was to be borne by the end-user. Further, it is alleged that OP had given preference in the supply of ilmenite to foreign customers/exports over Indian consumers, and the allocation of beach sand ilmenite by OP is not *vide* a transparent mechanism. Furthermore, the cost of production of beach sand ilmenite has more or less remained constant for last 3–4 years, but the price charged by OP for ilmenite has increased exponentially. The Commission noted that the sale of ilmenite contributes significantly to the turnover of OP, and during the years 2017–18 to 2018–19, the profit before tax of the OP has increased from Rs. 12,385 lakhs to Rs. 20,062 lakhs and the revenue of the OP also increased from Rs 61,549 lakhs to Rs 81,663 lakhs for the respective period. Further, local consumers are apparently forced to accept the extraneous conditions mentioned in the Standard Quantity Sales Contract. The conduct of OP seems to have resulted in unfair/discriminatory conditions as well as pricing for domestic consumers and are *prima facie* in violation of the provisions of Section 4(2)(a)(i) and 4(2)(a)(ii) of the Act. Further, the conduct also appears to be *prima facie* in contravention of the provisions of Section 4(2)(c) of the Act due to denial of input to the Informant's members. On the basis of the material available on record, there appears to be substance in the allegations levelled by the Informant and

the allegations *prima facie* violate the provisions of Section 4 of the Act, as detailed above and the same merit investigation by the Director General (DG).

50. Accordingly, the Commission directs the DG to cause an investigation to be made into the matter and submit an investigation report within a period of 60 days from the date of receipt of this order.

51. It is also made clear that nothing stated in this order shall be tantamount to final expression of opinion on the merits of the case, and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

52. The Secretary is directed to send a copy of this order alongwith the materials available on record to the DG forthwith.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 18/10/2022

New Delhi