



**COMPETITION COMMISSION OF INDIA**

**Case No. 33 of 2023**

**In Re:**

**Metallurgical Products India Private Limited (“MPIL”)**  
T-27, MIDC, Taloja, Dist. Raigad, PIN- 410208.

**Informant**

**And**

**Government of India through The Secretary,  
Department of Atomic Energy (“DEA”)**  
Anushakti Bhavan, Chhatrapati Shivaji Maharaj Marg,  
Mumbai – 400 001.

**Opposite Party No.1**

**IREL (India) Ltd. (“IREL”)**  
**(Formerly Indian Rare Earths Ltd.)**  
ECIL Building, Plot No. 1207,  
Veer Savarkar Marg, off. Siddhivinayak Temple,  
Prabhadevi, Mumbai – 400 028.

**Opposite Party No.2**

**CORAM**

**Ms. Ravneet Kaur**  
**Chairperson**

**Mr. Anil Agrawal**  
**Member**

**Ms. Sweta Kakkad**  
**Member**

**Mr. Deepak Anurag**  
**Member**

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

1. The present Information has been filed by Metallurgical Products India Private Limited (“**Informant**”/ “**MPIL**”), alleging contravention of the provisions of Section 4 of the Competition Act, 2002 (“**Act**”) by Government of India through The Secretary, Department of Atomic Energy (“**OP-1**”/ “**DAE**”) and IREL (India) Ltd. (“**OP-2**”/ “**IREL**”).



2. As per the Information, the Informant is a private limited company, engaged in the business of production/processing/conversion of Columbite and Tantalite ores to produce and market Niobium and Tantalum products, from its manufacturing facility located in MIDC-Taloja, Maharashtra.
3. OP-1 is Union of India, through The Secretary, Department of Atomic Energy. OP-2 is a Government of India undertaking which functions under the administrative control of DAE and engaged in mining and chemical processing of mineral sands containing Uranium, Thorium and rare earth minerals and producing minerals such as Ilmenite, Rutile, Monazite, Zircon, Uranium, Thorium, Garnet *etc.*
4. As per the Information, Columbite and Tantalite ores are chemically processed to extract Niobium and Tantalum products which are used in a range of industries including for developing an ecosystem for semi-conductor industry and therefore, are strategically important for the development of new-age technologies in India.
5. It has been stated that while processing the Columbite and Tantalite ores, ‘Slag’ or ‘Leach Residue’ is generated, which is a radioactive substance/prescribed substance/by-product. It has also been stated that under the Atomic Energy Act, 1962 (“**AEA**”) and Atomic Energy (Working of the Mines Minerals and Handling of Prescribed Substances) Rules, 1984 (“**Prescribed Substances Rules**”), DAE is the only competent authority in India entrusted with the task of granting license for importing and processing Columbite and Tantalite ores and also directing and approving a disposal plan for Uranium-bearing Leach Residue generated while processing such prescribed substances.
6. Further, as stated by the Informant, the Atomic Energy Regulatory Board’s (“**AERB**”) Safety Guidelines stipulate separate processes for handling and safe disposal of the radioactive substance (*i.e.*, the Leach Residue) generated during the processing of Columbite and Tantalite. It has been stated by the Informant that only the Central Government itself or any authority or corporation established by it or a government company or any entity permitted by the Central Government can engage in disposal of the



Uranium-bearing Leach Residue. The Informant has cited sections 5 and 6 of the AEA in this regard.

7. It has been stated that the Informant was permitted by DAE to set up its plant/factory to process Columbite and Tantalite ores to produce Niobium and Tantalum products in India during 2002-03.
8. As per the Informant, without approval of DAE, a Columbite and Tantalite processing plant cannot function in India. It has been stated that a disposal plan comprises of a person appointed by DAE who is required to regularly collect such Uranium bearing Leach Residue from such Columbite/Tantalite plants, process it to recover contained Uranium and dispose of the final spent material.
9. It has also been stated by the Informant that AERB, granted Registration Certificate to the Informant, which is “Consent to Operate” the Informant’s facility for processing Columbite and Tantalite ores. The concerned certificate was renewed continually till 30.04.2023. The Informant has further stated that DAE granted the necessary approval for the concerned disposal plan dated 04.04.2003 by entrusting the responsibility of its execution to OP-2.
10. It has been stated that through the disposal plan, IREL will periodically collect and dispose the Uranium bearing Leach Residue produced in the Informant’s plant. To give effect to the concerned plan, IREL entered into agreements (“**off-take agreement**”) (required to be periodically renewed) with the Informant. As per the terms of the off-take agreement, if the Leach Residue yields REO > 1% (Uranium Oxide), DAE and IREL would compensate the Informant for Uranium Oxide content. This arrangement regarding monetary compensation, which was decided by DAE/IREL exclusively, was the subject matter of 2-year contracts executed on largely identical terms between the Informant and IREL and subsisted for 15 years.
11. It has further been stated that the disposal plan does not have a sunset clause under the stated legal framework and consequently, the two-year off-take agreement also do not have any termination clause. Further, citing an RTI reply dated 01.12.2020 from AERB, the



Informant has stated that AERB has not received any directives regarding termination of the disposal plan by DAE.

12. It has been stated that the Informant had applied for renewal of the said agreement on 28.02.2017, exactly one month prior to the expiration of the last agreement; however, by a letter dated 12.01.2018, IREL refused to renew the agreement: (a) without stating any reasons for non-renewal, (b) applying the non-renewal retrospectively from 27.03.2017 (after a lapse of 10 months) and (c) without any fault of the Informant. As per the Information, IREL in its letter to the Informant dated 27.02.2018, stated the following:  
*“.....If MPIL residue is made fluoride-free, it may be useful for further processing. However, no such process is available at IREL for removal of such impurities. MPIL may contact State/Central research laboratories or BARC for development of process for removal of such impurities and contact DAE for lifting of such residue (without fluoride) for recovery of strategic material, if any.”*
13. It is also stated that *vide* its letter dated 03.01.2019, DAE stopped the issuance of import licenses to the Informant citing the absence of the off-take agreement and called upon the Informant to submit an alternative disposal plan. As per the Informant, providing a disposal plan for a Columbite and Tantalite processing plant is the exclusive responsibility of DAE and the same cannot be passed onto any other person.
14. It has further been stated that while it was not for the Informant to create a disposal plan, by virtue of letter dated 16.01.2019, the Informant requested DAE to provide directions to the Uranium Corporation India Limited (“UCIL”) to finalize an off-take agreement as an alternative to IREL, if required. In that regard, the Informant informed the DAE that it had developed a process to make the Leach Residue fluoride free so that it could be processed by UCIL or any other suitable DAE unit for recovery of Uranium and its final disposal.
15. The Informant stated that a technical presentation was made by it to AERB on 27.02.2019, explaining the process to make the Leach Residue fluoride free, which was attended by experts from AERB, along with senior technical people from IREL and UCIL. On the advice of AERB dated 04.04.2019, this was forwarded to DAE *vide* Informant’s letter dated



08.04.2019 for necessary favourable action. However, no response was received from the DAE and IREL. It is stated that by keeping quiet on the Informant's presentation of making the Leach Residue fluoride-free, DAE and IREL have demonstrated their ulterior motives of not being willing to process the Informant's Leach Residue to the detriment of its survival.

16. As per the Information, the Informant was constrained to file a Writ Petition (WP) No. 2093 of 2021 in the Hon'ble High Court of Bombay challenging the actions of DAE and IREL as arbitrary and in violation of the legal framework. It is stated that the Bombay High Court, in dismissing the Informant's petition by way of judgement dated 11.04.2023, has overlooked the statutory framework governing DAE's responsibilities under the AEA and AERB Guidelines.
17. It has also been stated that there were periods during 10.08.2004 to 27.03.2017 when a particular off-take agreement had expired and was awaiting renewal, but the same did not affect the obligation or assurance of DAE acting in this case through IREL to dispose of the Leach Residue as stated above. IREL continued to lift the Leach Residue from the Informant's premises even during periods when the off-take agreement had expired and was pending renewal. Further, DAE also issued import licenses to the Informant during such periods. It has been stated that since IREL used to routinely delay the renewal of the off-take agreement, the Informant presumed renewal of the next two-yearly off-take agreement up to 26.03.2019. It was stated that intimating discontinuance 10 months after expiry of the off-take agreement, which was not preceded by any communication or show cause notice, is unlawful.
18. It has also been stated that while IREL, in its letter dated 12.01.2018, had stated that DAE asked it to discontinue the off-take agreement, DAE in its letter dated 03.01.2019 had stated that IREL intimated them about their inability to process the Informant's Leach Residue as there is no valid agreement between IREL and the Informant.
19. It has been stated that despite bringing to the notice of IREL and DAE that sizable quantity of residue is lying uncontrolled at the Informant's facility and the same needs to be



transported to IREL for recovering Uranium and subsequent disposal, IREL has been negligent in picking up the said Leach Residue which gradually accumulated to 147 MT in the Informant's premises over the years. It has also been stated that Hon'ble Bombay High Court while disposing of the Writ Petition (WP) No. 10263 of 2019, *vide* its order dated 24.02.2020, has recorded that IREL shall collect, process and dispose of the accumulated 147 MT of Leach Residue, generated when the contract was in existence with the Informant, by 10.03.2020. However, the Informant has alleged that IREL has violated the Court order by not collecting the said Leach Residue till date. It is also stated that IREL is refusing to pay for the Leach Residue (being a taxable commodity under the GST Act) by refusing to accept the Informant's GST invoice, which shows that IREL is trying to coerce the Informant to hand over the Uranium-bearing Leach Residue free of cost and commit tax evasion.

20. As per the Information, DAE having control over the operations and administrative decisions of IREL, has brought the operations and activities of the Informant to a halt. It has been stated that processing of Columbite and Tantalite minerals is a highly regulated space. Earlier, not many entities were engaged in the processing of these specific ores and thereby the license and disposal plan for Uranium-bearing Leach Residue was granted without any hindrance to the Informant. However, with the increase in the public sector units in the field of processing these ores, it appears that DAE is ensuring that private players like the Informant cannot operate in this space.
21. As per the Informant, the Commission has the jurisdiction to entertain the present Information as DAE and IREL enjoy a position of dominance in the relevant market and are abusing their dominant position to drive the Informant out of the market to benefit certain public sector entities processing Columbite and Tantalite. It also has been stated that both DAE and IREL fall under the definition of 'enterprise' as stated under Section 2(h) of the Act.
22. Based on the above-mentioned facts, the Informant has proposed the relevant product market as "*the market for disposal of Uranium bearing Leach Residue generated during the processing of Columbite and Tantalite ores*". With regard to the geographical market,



it has been stated that the import and processing conditions of disposal of the Uranium-bearing Leach Residue are homogenous across the country. Based on the foregoing, it has been proposed by the Informant that the relevant market for assessing the DAE's and IREL's conduct can be defined as the "*market for disposal of Uranium-bearing Leach Residue produced during the processing of Columbite and Tantalite ores in India*".

23. As per the Informant, both DAE and IREL, based on its analysis of several factors such as market share, dependence of consumers on the enterprise, entry barriers and countervailing buying power, are dominant in the proposed market in their respective functions. It has been stated that by virtue of the dominance in their respective functions, DAE and IREL have abused their position by:

- a. Arbitrarily refusing to renew the off-take agreement after 2017, rejecting import licenses applications and subsequently refusing to approve an alternate disposal plan without any reasons or for any fault of the Informant.
- b. Arbitrarily foreclosing the market for the Informant on account of no fault of the same.
- c. Following discriminatory practices by not granting import license to the Informant when other similarly placed enterprises have been granted import licenses.
- d. Following discriminatory practices by foreclosing the market for the Informant but allowing public sector units to carry out the same activities.

24. In view of the foregoing, the Informant has alleged that the conduct of DAE, with regards to its arbitrary decision to not renew the off-take agreement and reject Informant's import license application, as well as not approve an alternative disposal plan proposed by the Informant, is in contravention of Section 4(2)(a) of the Act. It has also been alleged that the conduct of both DAE and IREL, is resulting in limiting the business and operations of the Informant as well as restricting its entry in the relevant market, thus contravening Section 4(2)(b)(i) and 4(2)(c) of the Act. The Informant has sought relief by way of:

- (i) Passing an order under Section 26(1) of the Act to cause an investigation into the abusive conduct of DAE and IREL in contravention of Section 4 of the Act.



- (ii) Passing an order under Section 27 of the Act upon finding that DAE and IREL have abused their dominant position in contravention of Section 4 of the Act by indulging in imposition of unfair conditions, discriminatory treatment and conduct resulting in denial of market access.
- (iii) Imposing the highest penalty on DAE and IREL, and their officers for having acted arbitrarily against the provision of the law, government policies, national interest, and in blatant contravention of the Act.
- (iv) Passing an order directing DAE and IREL to cease and desist from indulging in anti-competitive conduct listed above.

25. The Informant has also sought interim relief under Section 33 of the Act, on the following grounds: (i) the facts provided in the Information makes for a clear *prima facie* case of contravention by both DAE and IREL, (ii) the conduct of the DAE and IREL is the cause of Informant losing out on market access and its source of income, while also stating that if interim relief is not granted, then the industry as a whole will be impacted by the restricted supply of Niobium and Tantalum, (iii) balance of convenience lies squarely in favour of the Informant as no harm would be caused to the DAE and IREL if the interim relief sought below is granted.

26. Based on the above grounds, the Informant has sought interim relief by way of:

- (i) Directing DAE to withdraw directions contained in its letter dated 16.05.2019 requiring the Informant to stop processing ores, which are the Informant's basic raw materials.
- (ii) Directing DAE to issue pending import licenses and future licenses as was done in past and quash DAE's letter to the Informant dated 03.01.2019.
- (iii) Directing DAE to order IREL to execute and enforce fresh off-take agreement with the Informant for disposal of Uranium-bearing Leach Residue generated at the Informant's plant and ensure IREL's continual compliance with the said agreements. Alternatively, it was stated that DAE may appoint any other DAE unit in lieu of IREL, keeping the off-take agreements alive at all times which would also cover the accumulated 147 MT of Uranium-bearing Leach Residue, which is till date awaiting collection in a legitimate manner by IREL and as per the Bombay





High Court order. The terms of such off-take agreements should be fair to both parties in compliance with fair business practices such as transparency and reasonableness *etc.*

27. The Commission considered the matter in its ordinary meeting held on 27.03.2024 and decided to pass an appropriate order in due course.
28. The Commission has perused the Information and material available in public domain. The Commission notes that the primary grievance of the Informant pertains to: (i) refusal to renew the off-take agreement after 2017 for processing of Uranium contained Leach Residue; (ii) rejection of import licenses applications for Columbite and Tantalite; and (iii) refusal/non- approval of an alternate disposal plan.
29. At the outset, the Commission observes that the processing of products in question (*i.e.*, Columbite and Tantalite) generate radioactive substance (*i.e.*, Uranium) which is governed under AEA and that the subject of atomic energy finds special mention under Section 2(h) of the Act.
30. The Commission notes that the grievance of the Informant with respect to import license and alternate disposal plan lies against the DAE as both these activities are under the domain of the DAE only. With regard to the grievance relating to refusal to renew the off-take agreement by IREL, the Commission notes that the said agreement was entered into on the direction of DAE *vide* its letter dated 04.04.2003. The said agreement was not renewed on the direction of DAE as communicated *vide* its letter dated 05.01.2018. The Commission also notes that Informant, *vide* letter dated 16.01.2019, requested DAE to advise UCIL for finalizing an off-take agreement in place of IREL indicating the fact that such off take agreements are entered into only on the direction of DAE. Thus, all the allegations are essentially against DAE.
31. The Informant has alleged violation of Section 4 of the Act against OPs which deals with abuse of dominant position by an ‘enterprise’ in the relevant market. As per the scheme of Section 4, any anti-competitive conduct would be analyzed only if it is done by an



‘enterprise’, as defined under Section 2(h) of the Act. As alluded earlier, since alleged grievances relate to the activities of DAE, the Commission shall delve into the issue whether DAE is an ‘enterprise’ in terms of Section 2(h) of the Act in the present matter. Section 2(h) of the Act is reproduced as under:

*“ “enterprise” means a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic 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, 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;”*

32. The Commission has also perused the Government of India (Allocation of Business) Rules-1961, which provides that the following business, among others, of Government of India is the responsibility of DAE:

*“1. All matters relating to –*

- (a) Atomic Energy Commission (AEC);*
- (b) Atomic Energy Regulatory Board (AERB).*

*2. All matters relating to Atomic Energy in India, e.g. -*

- (a) administration of the Atomic Energy Act, 1962 (33 of 1962), including control of radioactive substances and regulation of their possession, use, disposal and transport;*
- (b) research, including fundamental research in matters connected with atomic energy and the development of its uses in agriculture, biology, industry and medicine;*
- (c) atomic minerals-Survey, prospecting, drilling, development, mining, acquisition and control;*
- (d) all activities connected with the development and use of atomic energy, including -*



*(i) projects and industries concerned with substances and minerals prescribed under the Atomic Energy Act, 1962 (33 of 1962); their products and by-products;*

*(ii) generation of electricity through the use of atomic energy;*

*(iii) design, construction and operation of research and power reactors; and*

*(iv) establishment and operation of facilities and plants, including diversification -*

*(A) for the production of materials and equipment required for research in and the use of atomic energy and for research in the nuclear sciences; and*

*(B) for the separation of isotopes, including plants adaptable to the separation of isotopes as by-product and the production of heavy water as a main or subsidiary product.*

*(e) supervision of State undertakings concerned with prescribed or radio-active substances, including –*

*(i) Indian Rare Earths Limited (IREL);*

*(ii) Electronics Corporation of India Limited (ECIL);*

*(iii) Uranium Corporation of India Limited (UCIL);*

*(iv) Nuclear Power Corporation of India Limited (NPCIL);*

*(v) National Fertilizers Limited, in so far as production of heavy water is concerned.”*

33. Thus, from a conjoint reading of Section 2(h) of the Act and the relevant Allocation of Business Rules, it is amply clear that DAE is exempted from the purview of ‘enterprise’ in terms of the provisions of the Act. Accordingly, conduct of DAE does not invite scrutiny under the provisions of the Act.

34. Furthermore, based on the above, the Commission notes that the IREL has no role to play in renewal of the off-take agreement, rejection of import licenses, and non-approval of an alternate disposal plan.



35. Based on the facts and circumstance of the instant case and analysis carried out in preceding paragraphs, since no *prima facie* case is made out either against DAE or IREL, the matter may be closed under Section 26(2) of the Act forthwith. Consequently, no case for grant of relief(s) as sought under Section 33 of the Act arises.

36. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-**  
**(Ravneet Kaur)**  
**Chairperson**

**Sd/-**  
**(Anil Agrawal)**  
**Member**

**Sd/-**  
**(Sweta Kakkad)**  
**Member**

**Sd/-**  
**(Deepak Anurag)**  
**Member**

**New Delhi**  
**Date: 29/05/2024**