

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Competition Appeal (AT) No. 17 of 2020

IN THE MATTER OF:

**M/s. Sowil Limited
Goodwill Avenue CHS Ltd.
Wing A, Plot No. 01
Sector 40, Nag Devi Road,
Nerul (West), Navi Mumbai
Maharashtra – 400706**

...Appellant

Versus

**1. Competition Commission of India,
9th Floor, Office Block-1, Kidwai Nagar (East)
New Delhi: 110023**

...Respondent No. 1

**2. Hexagon Geosystems India Pvt. Ltd.
2nd Floor, Tower B, Vatika Atrium
Golf Course Road, Sector 54
Gurugram, Haryana – 122022**

...Respondent No. 2

**3. The Executive Director
Track Machines and Monitoring Directorate
Government of India, Ministry of Railways
Research Designs & Standards Organisation
Manak Nagar, Lucknow – 226011**

...Respondent No. 3.

For Appellant: Ms. Sumit Jain, Advocate.

For Respondent: Mr. Navdeep Singh Suhag, Advocate.

ORDER
(Virtual Mode)

04.11.2020 Heard Learned Counsel for the Appellant. This Appeal has been filed under Section 53 B of the Competition Act, 2002 against impugned Order of Respondent No. 1/Competition Commission of India dated 26th August, 2020 passed under Section 26 (2) of the Competition Act, 2002 in Case No. 14 of 2020. The Appellant claims that the Appellant/M/s. Sowil Ltd. is a Public Limited Company. Respondent No. 2/Hexagon Geosystems India Pvt. Ltd. is a Pvt. Ltd. Company. It is classified as subsidiary of Foreign

Company based in Sweden. Ministry of Railways Research Designs & Standards Organisation (RDSO) invited bids for tender released on 26th June, 2019 for the 'Project of monitoring health of ballast bed with the help of GPR Technology for Through Ballast Renewal (TBR) and formation rehabilitation on Indian Railways'. The Appellant claims that it approached Respondent No. 2 for "supply of rolling stock mounted GPR for ballast inspection at high speeds" to compete for the said RDSO Tender. According to the Appellant it has done markets survey and the cost for the said product with foreign players and found out that the same is available at Rs. 1,41,69,824/- at the conversion rate of Rs. 92.20. The Respondent No. 2 however quoted about Rs. 4,86,40,005/- at the conversion rate of Rs. 77.37 Paisa. The Appellant tried to negotiate with the Respondent No. 2 but the Respondent No. 2 did not agree to give a discount more than 17 percent. Even after discount the price quoted was 200 percent higher the cost what Respondent No. 2 was offering to other Players. The Learned Counsel for the Appellant refers to page 38 which was Information filed by the Appellant with CCI in which at Page 46, there is reference to E-mail (in Paragraph 13 (d)) of the Respondent No. 2 to state that it was mentioned that "Spares prices by adding 80 percent on the prices we received from IDS Training cost by doubling....." based on this, the Learned Counsel submits that the Respondent No. 2 was quoting double the price.

2. The Respondent No. 1/Competition Commission of India considered the information submitted by the Appellant under Section 19 (1) (a) of the Act and after collecting necessary further information from RDSO and after hearing the Appellant held that no case of contravention of the provisions of the Act was made out and ordered to close the information.

3. The Learned Counsel for the Appellant is submitting that Respondent No. 1 erred in not getting investigation done from Director General and thus the present Appeal was required to be filed.

4. We have heard the Learned Counsel and gone through the record.

5. In Paragraph 26 of the Order of CCI, the observation is as under:

“Having examined the material available on record, the Commission notes that the Informant has not defined or suggested any relevant market. In the considered opinion of the Commission, it is neither necessary nor feasible to delineate the relevant market in the absence of requisite data on record particularly in light of the market construct emerging out of RDSO’s reply dated 02.06.2020 wherefrom it can be deciphered that besides the OP, there are at least 4 other major global players in the market for rolling stock mounted GPR for ballast inspection in India i.e. ZETICA Ltd. (United Kingdom); Ground Control Geophysik & Consulting GMBH (Germany); SIC Infraconsult GmbH (Germany); and M/s. LORAM (USA). In view of this market structure and the number of global players operating in the market, the OP does not appear to command any market power and it is unnecessary to delve further into the alleged abusive behaviour in terms of the provisions of Section 4 of the Act.”

6. The CCI has found that the Appellant failed to define or suggest relevant market. It found it is neither necessary nor feasible to delineate the relevant market in the absence of requisite data on record particularly in the light of market emerging out of RSDOs reply which CCI received. The CCI deciphered that apart from the Opposite Party (Respondent No. 2) there are at least four other major global players in the market for rolling stock mounted GPR for *Competition Appeal (AT) No. 17 of 2020*

Ballast Inspection in India. The Order as reproduced names of the other players. The Appellant in the Appeal is claiming that when allegation of abuse of dominant position under Section 4 of Act was made the CCI was bound to follow three steps process that is, 1- Delineation of relevant market; 2 – Establishing dominant position in the delineated relevant market; 3 – Establishing prima facie case for abuse of dominant position.

7. We find that the Appellant is trying to put the burden on CCI to find out the relevant market instead of itself defining or suggesting relevant market with prima facie material. Apart from this, the order of CCI shows that there are other players available in the market. There is no material shown that the Appellant had approached the other players. The Learned Counsel for the Appellant has submitted that even Respondent No. 2 was one of the competitor who responded to the Railways for the Tender Notice which Railway floated copy of which is at Page 62. It is apparent that the Appellant approached its own competitor for supply of material and is then making various grievances.

8. Going through the impugned Order passed by CCI, we do not find that there is any reason to interfere. There is no case made out to entertain the Appeal.

9. The Appeal is dismissed without admitting the same.

[Justice A.I.S. Cheema]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

Basant B./kam/