



COMPETITION COMMISSION OF INDIA

Case No. 09 of 2014

In Re:

**R & R Tech Mach Limited
Address: A-16, Sector - 62,
Institutional Area, Noida - 201309,
Uttar Pradesh.**

Informant

And

- 1) **Chief Executive Officer,
New Okhla Industrial Development Authority
Main Administrative Building,
Sector - 6, Noida, Uttar Pradesh.** **Opposite Party No.1**
- 2) **The Chairman,
National Association of Software and Services Companies,
International Youth Centre,
Teen Murti Marg,
Chanakyapuri, New Delhi - 110021** **Opposite Party No.2**
- 3) **The Managing Director,
Bharat Heavy Electricals Limited,
BHEL House, Sirifort,
New Delhi - 110049.** **Opposite Party No.3**

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. S. L. Bunker
Member

Present: Mr. R. K. Agarwal, Advocate for the informant



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

The present information is filed by M/s R and R Tech Mach Limited (hereinafter referred to as “Informant”) on 17.02.2014 under section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as “the Act”) against Shri Rama Raman, CEO of New Okhla Industrial Development Authority (hereinafter referred to as “OP 1”), Shri Krishnakumar Natarajan, Chairman of the National Association of Software and Services Company (hereinafter referred to as “OP 2”) and Shri B. Prasada Rao, Managing Director of Bharat Heavy Electricals Limited (hereinafter referred to as “OP 3”) alleging *inter alia* contravention of the provisions of the Act.

2. The Informant has stated itself to be a company, with its registered office at 13 & 14 Prakash Apartments 5, Ansari Road, Darya Ganj, New Delhi. Informant is one of the allottees of the plots allotted for its corporate office by New Okhla Industrial Development Authority (OP 1), which it had purchased during an auction from OP 1.

3. OP 1 was constituted under the Uttar Pradesh Industrial Area Development Act, 1976, for the purpose of acquiring land in the notified area by Government of UP under the Land Acquisition Act 1894 or by way of agreement, to prepare Master Plan for development of the area, to demarcate and develop sites for various land uses, to allot plot/properties as per regulations, to regulate the erection of buildings and setting up industries and to provide infrastructure and amenities. OP 2 is the industry association for the Information Technology - Business Process Management (IT-BPM) sector in India. OP 2’s objective is to build a growth led and sustainable technology and business services sector in the country. OP 3 is a Public Sector Undertaking engaged in the design, engineering, manufacture, construction, testing, commissioning and servicing of a wide range of products and services for the core sectors of the economy, viz. Power, Transmission, Industry, Transportation (Railway), Renewable Energy, Oil & Gas and Defence.



4. The Informant has alleged that OP 1 has abused its dominant position affecting the interest of corporate plot holders by granting approval to IT plot holder to rent out plot for corporate functions for OP 3. The Informant alleged that such act deprives them from '*level playing field*' on the grounds.

5. The informant submitted that OP 1 allotted lands/plots for different purposes through auction to be used for corporate purposes and Information Technology/Information Technology enabled services (IT/ITES) industries etc. The terms, conditions and sale price of plots for corporate offices were different compared to plots which were allotted for IT purposes. While the corporate office plots were auctioned at much higher rates, the IT/ITES plots were allotted at subsidized rates.

6. As per the Informant, OP 3 floated a tender for hiring of fully furnished office space of 65200 sq ft for shifting various departments of its Corporate Office. In response to the tender, informant offered its building known as "Money Tower" located at A-16, Institutional Area, Sector 62, NOIDA (U.P.) with a plot area of 8000 sq mtr and super built up area of 1,85,000 sq ft. An additional double basement of around 1,16,000 sq ft for parking around 300 cars was also offered. One of the essential conditions of the tender was that bidder was required to submit a proof of ownership of the land with 'No Objection Certificate' from OP 1, stating that the property could be used for the purposes prescribed in the tender i.e. for Corporate Office. The informant satisfied all the conditions of the tender documents in all other respects.

7. The informant stated that in response to the above tender, four other bidders namely, M/s Mothersons Auto Limited ('Mothersons') The Corenthum ('Corenthum'), M/s Fortune Builders Pvt Limited ('Fortune Builders') and M/s Advant IT Park Private Limited ('Advant') having their plots in Noida, Uttar Pradesh participated. Informant also stated that M/s Advant IT Park, a regular bidder in all earlier bids, was ineligible to participate in the bids as its plot use of is restricted to IT/ITES purposes.



8. It is stated that the tenders were negotiated on 25.02.2013 through the process of e-bidding. Only the Informant and Advant participated and the latter was declared the lowest successful bidder. Informant alleged that as per para 2.2 of the qualifying requirement of the tender, it was essential for the successful bidder to submit the 'Rent Permission' from OP 1 for leasing out the premises for the purpose for which the land has been allotted. Advant approached OP 1 vide letter dated 10.06.2013 to seek rent permission for the purpose of the tender. OP 1 appointed a Committee to examine the request of Advant and verify if the functions of OP 3 as explained in the Project Report of Tender Document can be construed as IT functions.

9. The informant submitted that OP 1 through its Assistant General Manager wrote a letter to OP 2 on 18.06.2013, requesting OP 2 to depute an officer for guidance on whether business functions of OP 3 can be treated at par with Advant of IT/ITEs and whether these functions are covered under NASSCOM Glossary for IT/ITES. It is also alleged that this letter was issued without any approval from the competent authority.

10. Informant has alleged that OP 1 has manipulated the policy of land use and cited a recent incident when OP 1, in order to enforce the land use policy, had evicted 118 banks from residential areas.

11. Informant further alleged that the Committee appointed by OP 1 was legally bound to interpret the functions of OP 3 according to the U.P. Information Technology Policy - 2004 and inviting representatives of OP 2 without an approval from a competent authority, was illegal and decision to grant rent permission based on their recommendation was also illegal. The manipulative practices adopted by OP 1 to accommodate corporate offices in IT plots has caused prejudice and that it amounts to unfair treatment to the Corporate Office plot holders. Further, Advant was given a rent permission to let out the premises to OP 3 despite its own declaration in an RTI query that OP 3 is an "Engineering and manufacturing organization and not an IT /ITES company in any way..."



12. The Informant alleged that the act of OP 1 amounts to abuse of dominant position and that if continued, corporate offices plot holders will never be able to compete with IT plot holders for letting out their premises.

13. The Informant has filed the case alleging abuse of dominance by OP 1 in giving rent permission to M/s Advant IT Park Private Limited to rent out its premises to OP 3 despite the fact that OP 3's business operations are not in the nature of IT or IT related services and the said premises have been allotted to Advant specifically under land use of IT.

14. The Commission considered all the material on record and the arguments addressed by the Advocates for both the Parties.

15. The relevant product market, in the present case would be market for development and allotment of land according to its land use. With rapid economic growth, there is a considerable demand for land especially in the satellite areas surrounding metros like Delhi as new businesses and industries are looking for suitable locations to set up their business premises and accompanying residential areas are required for accommodation purposes. As such, land is usually allotted by the land authority which is authorised under state legislation to first demarcate parcels of land under various uses – industrial, commercial or residential and then to allocate such land to entities as per the appropriate allocation policies.

16. The relevant geographical market would be the region of NOIDA as it carries a unique position in attracting considerable investment by MNCs, IT companies and residential developers. Owing to its proximity and easy connectivity to Delhi, it offers a unique proposition to the demand side of land in providing the necessary infrastructure for smooth business and quality of life. Although, there are other comparable regions in the NCR region like Faridabad, Ghaziabad etc, but NOIDA's unique offerings makes demand substitution unlikely in case of a significant increase in price.



17. From the facts and circumstances of the case it appears that the relevant market is the market for allotment of land in NOIDA according to its land use.

18. The informant being one of the allottees of corporate office plots allotted by OP 1 appears to be aggrieved by the alleged abusive conduct of the Opposite parties in the process of awarding the tender floated by OP 3.

19. Under U.P. Industrial Area Development Act, 1976, OP 1 was constituted to - apart from other objectives - demarcate and develop sites for various land uses, to allot plot/properties as per regulations. Therefore, OP 1 has the sole authority under law to identify and develop sites for varied land uses and then to allocate plots/properties in accordance with regulations and policies of the state government. This makes OP 1 dominant in the sphere of relevant market for allotment of land in NOIDA according to its land use.

20. In the present case, from the documents submitted by the Informant, it is clear that the land has been allotted to the Informant for corporate use and to M/s Advant IT Park Private Limited for IT use as per the IT policy of the Government of Uttar Pradesh.

21. With regard to the question of allowing OP 3 the rent permission to operate on the land acquired by Advant as a tenant, it is noted that NOIDA had consulted OP 2, the expert IT body, on the issue whether the business operations of OP 3 fall under the category of IT services. OP 2, through its representative identified the business operations of OP 3 as IT and related services, following which OP 1 gave the required rent permission to OP 3.

22. *Prima facie*, the conduct of OP 1 does not violate any provisions of section 4 of the Act. Any dispute as to the validity of OP 2's certification of OP 3's business operations as IT and related services is technical in nature and needs to be dealt with in appropriate for a and does not raise any competitive concerns in the relevant market.



23. In view of the above discussion, there does not exist a *prima facie* case for causing an investigation to be made by the Director General under section 26(1) of the Act. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.

24. The Secretary is directed to inform the parties accordingly.

New Delhi
Date:29/04/2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Anurag Goel)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. L. Bunker)
Member