



Suo-Moto Case No.01 of 2012

In Re: Manufacturers of Asbestos Cement Products

CORAM

Mr. Ashok Chawla

Chairperson

Dr. Geeta Gouri

Member

Mr. Anurag Goel

Member

Mr. M. L. Tayal

Member

Justice (Retd.) Mr. S. N. Dhingra

Member

Mr. S. L. Bunker

Member



ORDER UNDER SECTION 26(6) OF THE COMPETITION ACT, 2002

Background

1. This case originated from the reference made by Enforcement Directorate, SFIO (Serious Fraud Investigation Office) on the basis of a complaint received by them. The Competition Commission of India (hereinafter referred to as the „**Commission**“) on suo-moto basis under section 19(1) of the Competition Act, 2002 (hereinafter referred to as the „**Act**“), conducted a preliminary inquiry into the major players in the manufacturing of Asbestos Cement Sheets (hereinafter referred to as „**ACS**“) for cartelized conduct.
2. The preliminary enquiry made by the Commission *inter-alia* indicated that the ACS sector had some characteristics such as high concentration in the market wherein 6 major players constituted 87.3% of the market share, homogeneity of the product, inelastic and seasonality of demand, active association of the manufacturers of ACS by the name of Asbestos Cement Products Manufacturers Association (hereinafter referred to as „**ACPMA**“), lack of countervailing buying power, etc. that provide ample scope of collusion among the players in the market. The Commission found during the preliminary inquiry that prices of the products of the major manufacturers moved in a similar manner, pricing power was primarily held by major four players, there also appeared to be a tendency among players to adjust production and realization through an understanding to maintain margin, presence of very high return on capital employed, the market share of major players remaining stable during the past few years, ACS roof pricing showing an upward trend despite cement prices showing downward trend, prima facie indicated existence of a cartel.



Order under Section 26(1) of the Act

3. The Commission in its order dated 11.10.2012, based on the observations made in the preliminary inquiry of main market players in the Asbestos Cement Sheets Industry, was of the opinion that there exists a *prima facie* case and thus a fit case for investigation by the Director General.
4. In compliance with the Commission's order dated 11.10.2012, the DG investigated the matter and submitted an investigation report dated 07.01.2014 to the Commission.
5. The DG has carried out investigation to find out whether there was any concerted action by the manufacturers of ACS products by entering into an anti-competitive arrangement under Section 3(3) read with Section 3(1) of the Act during the period 2008-09 to 2011-12, under the garb of their association to limit the production or determine the price of ACS products in order to maintain their margins.

6. Findings of the DG Report

For the purpose of investigation into cartelized conduct in the ACS industry, the DG conducted a detailed analysis of market shares in terms of installed capacity, production, sales by value and volume; movement of sale price of ACS products; correlation between cost of production and sale price of ACS; shut downs; profitability; etc for the period 2008-2012. The DG has observed that there are around 15 players in the industry, out of which six are major players, namely, Everest Industries Ltd. (EIL), Hyderabad Industries Ltd. (HIL), Ramco Industries Ltd. (RIL), Sahyadri Industries Ltd. (SIL), UAL Industries Ltd. (UAL), and Visaka Industries Ltd. (VIL). The major players who over the years 2008-12 had a market share of around 80-85% in terms of production, installed capacity, sales in value as well as sales by volume and had moved within limited range. However, in view of the existence of large number of fringe players the ACS market in terms of the



Herfindahl–Hirschman Index (HHI) which depicts market concentration is found to be in the scale of un-concentrated. The entry barriers are also found to be low and in the past years several new players have entered the market which has led to increased competition. The data of the monthly inter-se market share of the top players has shown that the same has varied in different ranges. The yearly market share of top players has been changing within a limited range. The analysis, however, has not revealed any pattern suggestive of sharing of the market in a concerted manner. The findings of DG report are summarized as below:

- 6.1 The analysis of the monthly average sale price movement of the top players has mostly revealed a high correlation amongst top players though the degree of correlation varied in the range of 0.6 to 0.98 between the players, in a given month. There are also, variations in the absolute prices of players, some of which could be on account of the brand values, cost of transportation, excise duties. Further, it is observed that the ASP (Average Sale Price) has not been increasing consistently on year on year basis and there are quarters, when the ASP fell substantially as compared to corresponding quarters in previous years.
- 6.2 The mapping of the cost of production with the average sale price of each player has shown that the same have not always moved in the same direction in case of each entity. In this context it has emerged that seasonal nature of the industry, plays an important role in the ability of the players to increase price. There are quarters of high demand, where the prices have increased despite falling trend in cost, at the same time in quarters of falling demand the players are not always able to pass on the increase in the cost. On account of the seasonal nature of industry, any increase in prices by all players during high demand, can be a logical response to the market conditions and not necessarily be due to concerted action. The correlation coefficient between cost and prices has varied across top players in the range of 0.6-0.9. The extent of increase and decrease in the prices of top players in a given quarter also differed significantly. It has also emerged



that during 2008-12 for all the top players in most of the quarters, the indexed cost of production (and that of key raw materials) is more than the indexed average sale price. These trends indicate increasing competitive conditions in the ACS market.

- 6.3 Taking into account the oligopolistic and seasonal nature of industry, in view of the fact that there was decrease in prices during several quarters and also considering the fact that substantial inter-se variations observed in the extent of increase of prices of top players in a given quarter, the allegation that the top manufacturers consistently increased the prices of ACS in a concerted manner during the period May 2009 to June 2010 was found not established by the DG. Further, the allegation that in June 2011 there was a concerted increase in price by 8% was also not substantiated since the analysis of the monthly average sale price of top manufacturers has shown an increase in the range of 0-3% from previous month and substantial variations have been observed in the extent of increase of ASP of each respective manufacturer (*inter se*).
- 6.4 The DG also examined in detail the issue of alleged concerted shutdown by top players during September to December 2010 to curtail production and limit supply. The analysis has revealed that every year shutdown of various durations take place particularly during the lean period. The analysis of the data of shut downs during alleged period has shown that the dates and period of shutdowns during alleged period differed across top players. It has emerged from the examination of reasons that in case of one company there were prolonged shut down due to flooding in one plant and labour dispute in another plant. The reasons differed from shortage of raw material supply in case of one company to presence of high inventory in case of other. The analysis of production and capacity data has brought out that during this period several top players added installed capacity. The annual production of three top companies did fall marginally during 2010-11, however, that of other three top companies increased. Further, an increase in annual production of several other small players and an overall increase in production of ACS during this year are also observed. The production of the industry as a whole has been consistently



increasing on a year on year basis. The overall capacity utilisation figures do not indicate high under utilisation. Hence, as per the DG, the analysis of available information related to production, shut downs, capacity and inventory position has not revealed any evidence regarding concerted shut down by top players to limit production and supply.

- 6.5 The DG has replied that the Return on Capital Employed (ROCE) of top companies has varied during the years and also amongst themselves. After considering the factors like multiple businesses pursued, impact of book value of capital, presence of large and efficient manufacturing distribution network in case of some players as compared to others, it was observed by the DG that high ROCE of some players does not imply cartelised conduct. The profit margins have also differed across players and have not indicated cartelised conduct.
- 6.6 The DG also observed that some of the top players were regularly communicating regarding the purchase of a mine of chrysotile during 2010-11. The perusal of the voluminous copies of correspondence furnished by these companies did not reveal any evidence of price fixation or production adjustments in concert. The examination of the minutes of the meetings of the companies as well as that of ACPMA, have also not revealed evidence of cartelized conduct by the players.
- 6.7 In view of the examination and analysis of data, information, facts and salient features of the environment in which the industry is functioning, the DG has concluded that the allegation of cartelized conduct by ACPMA along with the major players does not stand established. Hence, the DG has found that no infringement of provisions of Section 3(3) of the Act.

Findings of the Commission

7. The Commission has carefully considered the report of investigation submitted by the Director General and examined all relevant aspects involved in this case.



8. It is observed that the present matter pertains to the alleged violation of the provisions of Section 3 of the Act by the manufacturers of ACS. Accordingly, the issue which needs to be examined in order to arrive at a decision in the matter is whether the ACS manufacturers have formed a cartel under the garb of ACPMA and thus contravened the provisions of Section 3 of the Act.
9. The complaint to the SFIO had alleged that the manufacturers of ACS have formed a cartel under the garb of their association and have been able to control production volume and sales price. It was also alleged that the association had also been able to force its members to shut down their plants to control production.
10. The Commission observes that a cartel said to exist when two or more enterprises enter into an explicit or implicit agreement to limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or services. The Commission also observes that the term agreement has been very widely defined in the Act to include any arrangement or understanding or action in concert whether or not such arrangement or understanding or action is formal or in writing or whether or not such arrangement or understanding or action is intended to be enforceable by legal proceedings. The definition of the term agreement is inclusive and not exhaustive. In the present case what needs to be established is whether there was any agreement, implicit or explicit between the manufacturers of ACS products.
11. As already stated above, for the purpose of the present investigation, the DG has conducted a detailed analysis of circumstantial evidence in the ACS market in terms of market shares, price movement of ACS products, co-relation between cost of production and sale price of ACS products, reasons for shut downs, capacity utilization in the ACS industry, profitability and other relevant facts such as the records of the telephonic and electronic communication between the ACS manufacturers, minutes of meetings of the ACPMA, etc,



in order to come to conclusion on existence or otherwise of a cartel under Section 3(3) of the Act.

12. As emerges out from the construct of the provisions of the Act as well as decisions of the Commission in various earlier orders, there is no need for an explicit agreement for existence of an “agreement” within the meaning of the Act. The Commission is aware of the fact that in cases of conspiracy or existence of an anticompetitive agreement proof of formal agreement may not be available and the same may have to be established by circumstantial evidence alone.
13. The DG in the investigation report has gathered the details about the Asbestos Cement Sheet Industry for the period 2008-09 to 2011-12. As per the DG, “ACS” is a corrugated sheet mainly used for roofing in which asbestos fibre is used to reinforce thin rigid cement sheets. Further, ACS is strong, durable, gains strength with age, and can withstand the vagaries of the weather. These sheets are non-combustible, non-corrosive, water proof, heat insulating and act as a good sound insulator. As per the DG, the key raw materials used for manufacture of ACS are chrysotile, ordinary portland cement (OPC), fly ash and wood pulp. The DG report also provided the distribution of raw materials consumed in terms of value and volume in the production are as follows. Chrysotile constitutes 45% to 50% of the total cost of production and accounts for approximately 10% of the total quantity of raw material and is entirely imported by all players. Further, there are limited numbers of sellers of asbestos fibre in the world which increases the dependence of ACS manufacturers on these international suppliers. As per the DG report, the prices of ACS products are directly affected by the imported asbestos fibre which constitutes about 50% of the total cost of the final product. OPC accounts for 20-25% of the cost of production and the share of the quantity of raw material is approximately 55%. Fly ash contributes approximately 30% of the total quantity of raw material and approximately 3% of the total cost. Wood pulp accounts for approximately 1% of the total quantity of raw material and approximately 2% of the total cost.



14. The Commission notes from the DG report that ACPMA was formed in 1985 and is registered with the Registrar of Societies under the Indian Societies Act, 1860 as a non-profit organization. The objective of the ACPMA is to aid, stimulate and advise promotion of Chrysotile / Asbestos Cement Products (Sheets and Pipes) in India. ACPMA advises its members about various technical, scientific and health related issues connected with the safe use of Chrysotile. As per the memorandum of ACPMA the role of ACPMA is to work along with the members to promote the use of ACS and fight against anti-asbestos lobbies. The DG has mentioned that ACPMA also makes representations before the concerned ministries and other government agencies highlighting various issues faced by the ACS manufacturers. The members of the ACPMA are A Infrastructure Ltd, ARL Infratech Ltd., Assam Roofing Ltd., Everest Industries Ltd. (EIL), Hyderabad Industries Ltd. (HIL), Jai Prakash Associates Ltd., North East Roofing P Ltd., Ramco Industries Ltd. (RIL), Sahyadri Industries Ltd. (SIL), Tamil Nadu Cements Corp Ltd., UAL Industries Ltd. (UAL), Uttar Pradesh Asbestos Ltd., Vilsons Roofing Products P Ltd. and Visaka Industries Ltd. (VIL).
15. It is noted that ACS industry in general is oligopolistic in nature and ACS is a homogeneous product in terms of usage and customer choice. The ACS industry is characterized by seasonal nature of demand and the demand is low during monsoons as construction activities are less during this period. The major segments of the market for ACS roofing products are rural and low cost housing, industrial sector, warehouses, railways & government projects, hatcheries, bus shelters etc. The sale of ACS products is highly dependent on rural prosperity and primarily targeted at lower income group and as such this group is price sensitive. In case of steep increase in prices, consumers may switch to other alternatives such as galvanized iron sheets, thatch roofing, stainless steel corrugated sheets, bare and colored galvalume, country made clay tiles, fibre glass corrugated roof sheeting, aluminum corrugated sheets, color coated corrugated sheets,



Polyvinyl Chloride (PVC) corrugated sheets, poly carbonate corrugated sheets, non asbestos sheets and pre painted galvanized iron sheets.

16. The Commission notes that in order to determine the level of market concentration in ACS industry the DG also calculated HHI. Based on the calculated concentration figures for ACS industry during the period 2008-09 to 2011-12, the DG observed that the ACS industry falls in to the un-concentrated category. The Commission observes from the analysis of market share done by DG that though top players hold substantial market share in the industry, at the same time, individually the market shares of major players in terms of installed capacity, production, sales in volume and value reveal that none of the players have a significant share. Further, the Commission observes that the major players are also geographically scattered. In view of the above, Commission is of the view that there is no evidence of any specific pattern indicative of sharing of market amongst the top players in concerted manner.

17. The Commission observes that the DG, based on the average sale price per MT for ACS products, has examined as to whether there was any similar trend in the movement of sale price of ACS products sold by different players and found that there was month to month variation in the average sale price across the major players. The DG has further analyzed as to whether the prices of ACS products have been consistently increasing over the years. It is noted that to conduct the analysis, the DG compared the movements in quarter wise average sale price of the major players from one quarter to another and has observed that in average sale prices have not consistently increased for each major player on year to year basis. On this aspect, the Commission observes that as the ACS industry has an oligopolistic form of market structure, it is amenable to price parallelism, as is evident from the DG's detailed analysis. The Commission also notes that the ACS industry is characterized by seasonal nature of demand owing to which there is high demand in some quarters correlated with higher prices. Thus, the Commission observes that the quarterly



movement in the ACS product prices is due to seasonal demand and not due to concerted action amongst the players of the ACS industry.

18. While considering the correlation between cost of production and sales price of ACS, the Commission observes that the DG, taking into account the seasonal nature of demand in the ACS industry, has conducted an analysis and examined into the inter-relationship as well as movements in the quarter wise average sale price index of ACS products per MT with the movements in quarter wise average cost of production index and quarter wise average cost of raw materials index as the allegation pertained to dissimilarity in the price movements between the raw materials and the prices of ACS products. The Commission notes from the DG report that during the period, the indexed cost has been more than the indexed selling price in most of the quarters in case of the top ACS manufacturers. Having given thoughtful consideration into the detailed analysis on the aspect, the Commission is of the view that the movements in the cost figures and price figures do not indicate any concerted action amongst the players.

19. On the aspect of mention in the preliminary inquiry report that the cement prices have seen a downward trend during May 2009 (Q1 2009-10) to June 2010 (Q1 2010-11) but the prices of ACS roofing increased during that period, the Commission notes from the DG report that the demand of ACS is seasonal in nature which plays an important role in determining the price movement of the product. Under such a scenario while in high demand periods the prices may increase despite fall in cost, in low demand quarters the producers may not be able to pass on the increases in cost to the users. The Commission, in view of the analysis done by DG, and the fact that there was decrease in prices during several quarters and also that substantial *inter se* variations observed in the extent of increase in prices of top players in a given quarter, is in agreement with the DG's findings that the allegation that the top manufacturers consistently increased the prices of ACS in a concerted manner during the period May-2009 to June 2010 does not stand established.



20. It is further noted that DG has also observed that the allegation that in June 2011 there was a concerted increase in price by 8% is also not substantiated. In this regard, the Commission observes that at the company level for each of the major six manufacturers, the variation in average sales price during June, 2011-December, 2011 was in the range of 0-3 %. Further, the Commission also observes that the variation in monthly average sales prices at the plant level for the major six players spread across different regions generally ranged between 0-4 % and only at few locations, it was observed that the extent of increase was 5 to 6 %. Moreover, it can be seen from the DG report that there are several instances where the average sale price for June 2011 was less than the previous month. The Commission also notes the huge variations in the extent of changes in prices during June 2011 across players. Thus, the Commission is of the opinion that during the alleged period, the observed variation in price does not indicate any steep increase either at the plant level or at the company level and on the contrary the price variation has been observed to be over a limited range negating the contention of price increase.
21. On the aspect of concerted shut downs by top players to curtail production and limit supply, the Commission has noted that various reasons for shut downs have been provided by the ACS manufacturers during the period under examination. The Commission observes that in general all the players shut down their plants for some time every year. Each player has provided its own reasons for shut down. The Commission notes that the primary reasons for shut down of plants by the ACS manufacturers were annual maintenance, major replacement of machinery, modifications, festival holidays, strikes, floods, etc as also stated in the DG report. The Commission has also observed that apart from shut down there has also been halts in production due to reasons such as want of raw material, cleaning, etc. Considering the fact that the periods in which the players had shut down their plants and the reasons for shutting down of their plants vary from one player to another, the Commission is of the view that there does not seem to be sufficient evidence indicating a concerted action among the ACS manufacturers regarding the shut down.



22. Further, the Commission also notes that ACS industry has a period of lean demand from July - October and the remaining months of the year are characterized with high demand and that every year the production usually falls during the lean period. Moreover, while production of ACS products generally increased from 2008-09 to 2011-12 there was a variation in production of ACS products among the major six players. For instance in 2010-11 there was a decline in production of ACS products for RIL, HIL and VIL while there was an increase in production of ACS products by other players such as EIL, UAL and SIL. The DG after the examination of the submissions, documents and data opined that the submission and analysis indicate valid economic operational reasons for steeper reduction in production at occasions and no evidence regarding top players acting in concert with the intention to reduce production and limit supply have been noticed. The Commission, in view of absence of any evidence to hold contrary, is of the opinion that the reason for the shut downs cannot be attributed to the intent of reducing the production by the top ACS manufacturers.
23. On the issue of capacity utilization the Commission observes that the DG has analyzed the trends in the installed capacity for all the players in the ACS industry for the four year period i.e. 2008-2012. It is observed from the data analyzed by the DG that there was an increase in total installed capacity by 16% during the five years period. The Commission has also noted that from the data analyzed by the DG four out of the major six players namely, RIL, VIL, HIL and SIL have added new capacity. Thus, the Commission is of the view that there has been an increase in installed capacity in the industry by the major ACS players during the period under examination. As far as utilization of the installed capacity is concerned, the Commission notes from the DG report that the capacity utilization for the industry varied between 80 to 90 % during the period of examination and for the major players, capacity utilization during the period under examination was close to 90 %. In view of the foregoing, the Commission observes that there is no cogent evidence of any concerted action by the major players for limiting.



24. On the aspect of profitability, the Commission observes that unlike analysis related to market shares, prices, shut downs conducted by the DG, the analysis of profitability is of limited relevance as the major manufacturers are themselves engaged in diversified businesses and only few of them have been able to provide segment-wise details of return on capital employed and profit margins related to the ACS segment. The DG had therefore conducted the analysis of profitability during the period 2008-09 to 2011-12 at the company level. As such, the Commission observes that the profit earned by these manufacturers need not necessarily related to the manufacturing and sale of ACS products alone and hence this analysis is of limited scope. The Commission also observes that the data analyzed by the DG on profit margins for the major six ACS manufacturers indicate that it varies from one player to another during the period 2008-09 to 2011-12. Here, it is noteworthy that profitability of ACS manufacturers was higher in 2009-10 alone and it had substantially declined thereafter during the period under examination. Hence, the Commission is of the view that higher profitability is not indicative of prevalence of cartel in ACS industry.
25. The Commission has also considered and perused the record of telephonic and electronic communications between the major ACS manufacturers. It is observed that the Senior Executives of HIL, RIL, EIL, UAL and VIL were regularly communicating amongst themselves. However, the Commission notes that the communication was mainly with respect to investment in a chrysolite mine in Jeffry, Quebec by the consortium/JV formed by these entities and no inference of cartelization of ACS product can be drawn on the basis of these records of communications. The Commission has also perused the minutes of meeting of ACPMA and observes that these minutes do not suggest that ACPMA platform was used for cartelization activities. As regards the anonymous complaint to the SFIO alleging that ACPMA and its members depute their officials to the plants of others to ensure shutdown of those plant, the Commission notes that ACPMA periodically sends audit teams to the plants of its members to ensure that these plants have implemented and are following all the measures necessary to ensure health standard and safety of their



workers and comply with environment protection norms which if left unchecked may be cause serious harm. The Commission holds that in absence of any evidence to suggest contrary, there is no reason to disagree with the findings of the DG that there is no case of concerted shout down.

26. On the basis of the above analysis, the Commission is of the considered opinion that there is not sufficient evidence to hold that the manufacturers of ACS have contravened the provisions of Section 3(3) read with section 3(1) of the Act. Since there is no evidence on record to suggest cartelization by ACS manufacturers, the matter is disposed off accordingly and the proceedings are closed forthwith under Section 26(6) of the Act.

27. The Secretary is directed to communicate this order as per the relevant regulations.

New Delh
Date: **11.02.2014**

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(Ashok Chawla)
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