



COMPETITION COMMISSION OF INDIA

Ref. Case No. 01 of 2020

In Re:

**CP Cell, Directorate General Ordnance Service,
Master General of Ordnance Service
CP Cell/OS Dte, Room No. 101,
D-II Wing 1st Floor, Sena Bhawan,
New Delhi - 110001**

Informant

And

**M/s Sankeshwar Synthetics Pvt. Ltd.,
239, Oswal Road, Industrial Area – A,
Ludhiana - 141003**

Opposite Party No. 1

**M/s KKK Mills,
B – 40, Phase V, Focal Point,
Ludhiana - 141010**

Opposite Party No. 2

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

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

1. The instant reference dated 16.11.2020 has been filed by CP Cell, Directorate General Ordnance Service, Master General of Ordnance Service ('**Informant**') under section 19(1)(b) of the Competition Act, 2002, ('**Act**') against M/s



Sankeshwar Synthetics Pvt. Ltd. ('OP-1') and M/s KKK Mills ('OP-2') alleging *inter alia* contravention of the provisions of Section 3 of the Act.

2. The Informant in the present case had issued RFP in the Tender No. A/60117/ Dept RC/Underpant Woollen/ DGOS/ OS-PIII/ Proc Sec on 11.01.2019 for procurement of Underpant Woollen for 9,95,073 pairs. The Informant has stated that out of 12 firms which participated, only 7 firms could qualify for opening of commercial bids.
3. The Informant submits that post-opening of commercial bids, it was observed that the rate quoted by two firms may have been quoted after collusion. As submitted by the Informant, details of the bid are reproduced in the table below:

Table 1: Details of Bidders

S. No	Firm Name	Rate	Status
(i)	M/s Sankeshwar Synthetic Pvt. Ltd. Ludhiana (OP-1)	127.90	L-1
(ii)	M/s KKK Mills, Ludhiana (OP-2)	127.90	L-1

4. The Informant has stated that it is opined that firms have colluded and quoted same rate, "*it gives an impression that the rates offered are through cartelisation. Financial Adviser recommended that the case be retendered due to quoting of pool rate/ cartel formation by firms*".
5. The Informant thus prayed that the Commission may direct the Director General ('DG') to conduct an investigation into the matter under Section 26(1) of the Act to examine if there is any contravention of the provisions of Section 3 of the Act, so that further action may be taken.



6. The Commission considered the matter in its ordinary meeting held on 08.12.2020 and 09.02.2021, and observed that the information provided was not complete in terms of description of the tender floated by the Informant as the details of bids submitted by qualified bidders were not provided. Accordingly, the Commission sought additional information from the Informant with respect to details of the impugned tender, details of bidders who participated in the impugned tender, minutes of the meeting of tender approval committee, instances of alleged violation of terms and conditions of tender along with relevant documents in support of its allegation of bid rigging, etc. The Commission also sought information on additional tenders for procurement of the same item, details of participating entities and their bids, and negotiation if any with bidders *etc.* to determine occurrence of any collusion. In pursuance of the Commission's directions, the Informant filed certain additional information before the Commission on 15.01.2021 and 08.03.2021.
7. The Commission has perused the information and the additional information/documents filed in the matter.
8. The Commission notes that the bid rigging is defined in explanation under Section 3(3)(d) of the Act as, any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding. The Commission observes that bid rigging or collusive bidding in a tender can be done by unscrupulous bidders in myriad ways, including clandestine arrangements to submit identical bid or deciding *inter se* as to who shall submit lowest bid amongst them or who shall refrain from submitting a bid and even includes designation of bid winners in advance on rotational basis/ geographical basis or on customer allocation basis.



Any such agreement is clearly in contravention of Section 3(3)(d) read with Section 3(1) of the Act.

9. Adverting to the facts of the present case, the Informant had issued RFP in Tender No. *A/60117/ Dept RC/Underpant Woollen/ DGOS/ OS-PIII/ Proc Sec* on 11.01.2019 for procurement of Underpant Woollen for 9,95,073 pairs. The RFP is divided into 5 parts which contains general information and instructions, essential details of items required, standard conditions of RFP to form part of contract with successful bidder, special conditions of RFP to form part of contract with successful bidder and evaluation criteria and format for price bids respectively. The said tender contained clauses prescribing terms and conditions which appear to be in nature of a standard proposal for procurement by Government department.
10. The Informant has provided minutes of 1st TEC Meeting held on 17.01.2020, wherein indent rate is mentioned as “*Rs. 135.00*” and the entire quantity is to be supplied within nine months or earlier. The tender was an open enquiry with two-bid system wherein technical bid was opened on 14.08.2019 and 12 firms had participated. In the minutes of aforesaid meeting, it is recorded that out of the total 12 participating firms, only 7 firms were declared to be RFP compliant.
11. The Informant has also provided minutes of the PC meeting held on 11.05.2020, under the Chairmanship of ADG EME (C). In this meeting, it is recorded that the financial bid of the 7 RFP-compliant firms was opened on 30.01.2020. As per the above minutes of the meeting, two firms were declared as L-1 firm for quoting lowest rates of Rs. 134.30. The table below shows the list of participating firms/vendors and rates quoted by them:



Table 2: Rates Offered by Vendors

S. No	Name of Firm	Basic Rate	IGST	Total Rate	Ranking
(a)	M/s Sankeswar Synthetics Pvt. Ltd.	127.90	5%	134.30	L1
(b)	M/s KKK Mills	127.90	5%	134.30	L1
(c)	M/s Providence Textiles	128.00	5%	134.40	L2
(d)	M/s BK Thapar Hosiery Works	132.95	5%	139.60	L3
(e)	M/s Punjab Wool Syndicate	133.00	5%	139.65	L4
(f)	M/s Integrated Defence Pvt.Ltd.	135.00	5%	141.75	L5
(g)	M/s Heena Knitwears	167.00	5%	175.35	L6

12. The minutes of the meeting further records a unanimous recommendation for counter offer to 4 firms who fall within 15% range of L1 firms. Such counter-offer was accepted by M/s Providence Textile (L-2), M/s B K Thapar Hosiery Works (L-3) and M/s Punjab Wool Syndicate (L-4). Accordingly, 5 firms agreed to work at L-1 rate of Rs. 127.90.
13. The Commission notes that in the additional information it came to light that the case was retendered by Informant based on its assessment that two L-1 firms quoted identical rates which was deemed as cartelisation. As per the additional information, the tender was retracted on 16.09.2020 and retendered on 12.11.2020. The Commission observes upon consideration of the minutes of the meeting of Technical Evaluation Committee that the procurer has raised this suspicion of bid-rigging only based on identical rates. Further, such bid has been negotiated with other firms and the procurer has found 5 firms willing to supply the order at the reduced rate of Rs. 127.90/-.



14. Additionally, it is seen that only two tenders were floated in last 5 years for procurement of woollen underpants. The earlier tender was floated on 02.07.2017 for procurement of 16,54,618 pairs of underpants woollen wherein 23 firms had participated. From list of 23 firms participated in earlier tender, the Commission notes that OPs in the present case had also participated in that tender. The OP-2 in the present matter, had in the previous tender submitted a bid of Rs. 142.40 and was the L4 bidder, and OP-1 had also participated, but did not attain any ranking. However, in the present tender both these firms have submitted the bid price of Rs. 127.90 which is much lower than the rate at which the previous tender was awarded. Further, 5 other firms were found willing to supply the order at reduced rate of Rs. 127.90/-. However, the tender was cancelled and the procurer retendered for the supply of the item.
15. Based on information available at the disposal, the Commission notes that other than mere existence of an identical L-1 rate there is no other evidence to buttress the allegations of collusion or suggest any *inter se* relationship between the Opposite Parties. The Commission observes that the mere existence of price parallelism or identical prices is not *per se* sufficient to hold the parties liable for act of manipulation of bids/ bid rigging. The Commission holds that price parallelism has to be accompanied by some plus factor in order to substantiate the presence of ‘collusion’/ or ‘any agreement’ on part of the bidders which still stands unsubstantiated even after seeking additional information. Thus, the Commission observes that the information available at present is insufficient to proceed forward with this matter.
16. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case and the information filed is closed herewith under Section 26(2) of the Act.



17. The Secretary is directed to inform the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 20.05.2021