



COMPETITION COMMISSION OF INDIA

Case No. 10 of 2020

In Re:

Ved Prakash Tripathi

Informant

And

- | | |
|--|------------------------------|
| 1. Director General Armed Forces Medical Services | Opposite Party No. 1 |
| 2. ECHS Khanpur. | Opposite Party No. 2 |
| 3. Anant Pharmaceuticals | Opposite Party No. 3 |
| 4. Saransh Biotech Pvt. Ltd | Opposite Party No. 4 |
| 5. Aarav Pharmaceuticals | Opposite Party No. 5 |
| 6. Laxmi Pharma | Opposite Party No. 6 |
| 7. M C Pharma | Opposite Party No. 7 |
| 8. Maa Ambey Enterprises | Opposite Party No. 8 |
| 9. Goyal Pharma | Opposite Party No. 9 |
| 10. MD Medical Store | Opposite Party No. 10 |

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 present Information has been filed by Mr. Ved Prakash Tripathi, (“**Informant**”) on 04.03.2020 under Section 19(1)(a) of the Competition Act,



2002 (“the Act”) against Director General Armed Forces Medical Services (“DGAFMS /Opposite Party No. 1/ OP-1”); ECHS Khanpur (“Opposite Party No. 2/ OP-2”); Anant Pharmaceuticals (“Opposite Party No. 3/ OP-3”); Saransh Biotech Pvt. Ltd (“Opposite Party No. 4/ OP-4”); Aarav Pharmaceuticals (“Opposite Party No. 5/ OP-5”); Laxmi Pharma (“Opposite Party No. 6/ OP-6”); M C Pharma (“Opposite Party No. 7/ OP-7”); Maa Ambey Enterprises (“Opposite Party No. 8/ OP-8”); Goyal Pharma (“Opposite Party No. 9/ OP-9”) and MD Medical Store (“Opposite Party No. 10/ OP-10”) (collectively, “Opposite Parties/ OPs”) alleging, contravention of the provisions of Section 3 of the Act .

2. DGAFMS was established in 1948 upon integration of medical services of the Royal Indian Navy, the Indian Army and the Royal Indian Air Force. DGAFMS was made directly responsible to the Ministry of Defence for the overall medical policy in so far as they relate to the Armed Forces.
3. Ex-servicemen Contributory Health Scheme (“ECHS”), launched in 2003, is a flagship scheme of the Ministry of Defence, Department of Ex-Servicemen Welfare. The Scheme aims to provide allopathic and AYUSH medicare to Ex-servicemen pensioner and their dependents through a network of ECHS polyclinics, medical facilities and civil empanelled/government hospitals/specified government AYUSH hospitals spread across the country. The Scheme has been structured on the lines of Central Government Health Services (“CGHS”) to ensure cashless transactions, as far as possible, for the patients and is financed by the Government of India. The aim of the Scheme is to provide quality healthcare to ex-servicemen pensioners and their dependents.
4. OP-3 to OP-10 are wholesalers and traders of pharmaceutical products.



5. ECHS Khanpur issued general public information on 16.10.2018 regarding registration/renewal of suppliers for the purposes of local purchase of medical supplies and surgical expendable/non-expendable medical supplies/ equipments for the financial year 2019-20. Applications were invited from firms for supply of generic/branded medical stores under the following categories:
 - i) General medicines
 - ii) Laboratory kits and consumables
 - iii) General Surgical Consumables
 - iv) Dental materials and consumables
 - v) Medical equipments *etc.*

6. The firms/ vendors willing to supply medical stores under the aforementioned categories were required to meet the prescribed criteria such as the firm should be a reputed retailer/wholesaler and should possess wholesale/retail drug license, should possess shop license, should be financially sound with total turnover of pharmaceutical products at CFA decided level, should have adequate storage facility *etc.* Further, the bidder needs to submit a list of documents for registration such as income tax returns for the previous three years and GST returns till date alongwith PAN/ TAN numbers, authorized dealership/stockist certificates from reputed DGQA registered firms, audit report for last three years *etc.*

7. Pursuant to this notice, around 22 firms/vendors, including OP-3 to OP-10, participated in the tender. It has been alleged that only OP-3 to OP-10 could qualify the technical bids whereas, technical bids of other participants were rejected citing various reasons.

8. It is also alleged that OP-5 was selected despite the fact that the firm was incorporated in 2018 and the requirement that the firms/vendors to submit



Income Tax Returns for the last three years. It is further alleged that a vendor with decades of experience such as Deep Pharmaceuticals was not selected on the grounds that it submitted the audit report for only two years whereas, OP-5 was selected in spite of submitting forged documents. Also, OP-4, which was established only in the year 2015, participated and was recommended for registration for the tenders floated in the years 2016-17, 2017-18 and 2018-19.

9. It is further alleged that OP-9 and OP-10 are located in the same area *i.e.* Janakpuri market, New Delhi. Further, OP- 3 to OP-7 are proprietorship firms closely held by members of Gupta Family and OP-8 to OP-10 are owned by members of Goyal Family. In the tender issued in 2018-19 also, the same vendors namely OP-4, OP-5, OP-6, OP-8, OP-9 and OP-10 were selected.
10. It is further alleged that the said firms have charged rates that are 1000 times higher than the rates at which aforementioned medical supplies are available in other army hospitals in Delhi.
11. The Commission has perused the Information and the documents filed therewith. It is observed that the allegations levelled by Informant are essentially three fold *viz.*, selection of bidder who allegedly provided forged documents, commonality of directors of technically qualified bidders and lastly, increase in prices of medicines due to bid rigging.
12. With regard to selection of bidders who allegedly provided forged documents to the procurer, the Commission observes that the Informant is at liberty raise such issues before the appropriate forum and no directions can be issued by the Commission in this regard.
13. In relation to the allegations regarding commonality of directors of the impleaded firms are concerned, it is observed that mere commonality of directors or



ownership of participating firms, in itself, is not sufficient to record any *prima facie* conclusion about bid rigging in the absence of any material indicating collusion amongst such bidders while participating in the impugned tender. Moreover, though the Informant has alleged that OP-3 to OP-7 are held by members of Gupta Family and OP-8 to OP-10 are controlled by Goyal Family, the linkages between these two groups of families have not been brought out by the Informant. Similarly, the circumstance that OP-9 and OP-10 are located in the same area, in itself, is of no consequence in the absence of other material establishing concerted behavior.

14. In this connection, it is observed that in the past also, while examining similar allegations, the Commission held that merely having common directors cannot be the basis to suggest collusion in the bidding process. In *Re: Reprographics India v. Hitachi Systems Micro Clinic Pvt. Ltd.* (Case No. 41 of 2018), the Commission held that: “...merely having common business linkages between the OPs as projected by the Informant, cannot be the basis to suggest collusion in the bidding process. Moreover, there is no material on record to suggest that the OPs were engaged in Bid Rotation etc. Therefore, the allegation of supportive bid does not find favour with the Commission...”
15. Resultantly, the Commission is of the opinion that, in the absence of any material on record which can suggest collusion amongst the bidders, no case of contravention of the provisions of Section 3(1) of the Act read with Section 3(3)(d) thereof is made out.
16. In view of the above, the Information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.



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

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

New Delhi
Dated: 06/05/2020

Sd/-
(Bhagwant Singh Bishnoi)
Member