



COMPETITION COMMISSION OF INDIA

Case No. 25 of 2021

In Re:

XYZ (Confidential)

Informant

And

Continental Milkose India Limited
K 185/2, 1st Floor,
Surya Plaza Building, Sarai Julena,
New Friends Colony, New Delhi - 110025

Opposite Party

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 the Informant under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “Act”) against Continental Milkose India Limited (hereinafter, the “**Opposite Party**”) alleging contravention of the relevant provisions of Sections 3 and 4 of the Act. Though specifically not named as an Opposite Party in the Information, the allegations have also been made against M/s KAG Industries/ M/s KAG Enterprises and Imperial Malts Limited.



2. The Informant has sought confidentiality over its identity in accordance with Section 57 of the Act read with Regulation 35 of the Competition Commission of India (General) Regulations, 2009.
3. The Informant has alleged anti-competitive practices of cartelisation led by Continental Milkose India Limited and M/s KAG Industries in respect of tenders invited by the Army Purchase Organization (“APO”), Quarter Master General Branch, Integrated Head Quarters, Indian Army for procurement of “Dry Food Rations/ Malted Milk Foods” over the past many years.
4. The Informant has stated that the total value of tenders issued by APO for procurement of malted milk foods over the last six years are approximately Rs. 600 crores. This, has significant implications on security of the country, as the food products supplied by the aforesaid entities to the APO are for the consumption of lakhs of soldiers of Indian Army. It is stated that the Indian Army has been procuring approximately 5000 MT of malted milk foods worth Rs. 100 crores approximately per annum for which open tenders have been invited by the APO during the last 10 years.
5. As per the Informant, during the last six years, only the following three companies/ entities are participating in the said tenders and securing the supply orders:
 - (i) Continental Milkose India Limited
 - (ii) M/s KAG Industries
 - (iii) Imperial Malts Limited
6. The Informant has averred that Continental Milkose India Limited and M/s KAG Industries are related entities, as both have the same set of promoters and have common Director(s)/ Partner(s). This fact has been veiled by the two bidders from the APO in order to create a façade of being independent bidders, which is in violation of the norms of open tender and vitiates the bidding process every year. Further, it is stated that over the last six years, the lowest bidder (L1) has always been either Continental Milkose India Limited or its related entity, M/s KAG Industries.
7. It has also been averred that another bidder, Imperial Malts Limited, is also a part of this cartel. Imperial Malts Limited has participated in the said tenders as a cover bidder and



also has been regularly supplying malt to Continental Milkose India Limited and M/s KAG Industries.

8. The Informant has stated that one Mr. Deepak Agarwal is a Director of Continental Milkose India Limited as well as a Partner of M/s KAG Industries and that both the entities have a common set of owners. Further, as shown in the financial statement of M/s KAG Industries for the year 2017- 2018, the following shareholders of Continental Milkose India Limited are also the partners of M/s KAG Industries:
- i) Mr. Deepak Agarwal
 - ii) Ms. Prabha Agarwal
 - iii) Mr. Anuj Agarwal
9. The Informant has also enclosed a copy of the standalone financial statement of Continental Milkose India Limited for the period 01.04.2019 to 31.03.2020, which exhibits details of its Directors as under:
- i. Mr. Deepak Agarwal: Whole Time Director
 - ii. Mrs. Jyoti Gupta: Whole Time Director
 - iii. Mrs. Namrata Agarwal: Whole Time Director
 - iv. Mr. Punit Singh: Additional Non- Executive Director
 - v. Mr. Anuj Jain: Additional Non -Executive, Independent Director
10. Further, the Informant has stated the name of the following entities which have shareholding of Continental Milkose India Limited and are managed by Mr. Deepak Agarwal:
- i) Gold Worth Overseas India Private Limited
 - ii) Concept Trade Overseas LLP
 - iii) Neelanchal Agro Product LLP
 - iv) Nezone Merchandisers LLP
 - v) Aditya Continental Food Product India LLP
11. The Informant has further submitted that the Defence Procurement Manual (DPM), 2009, which lays guidelines in respect of procurement, has been breached multiple times by the said bidders for which appropriate and stringent action may be initiated.



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12. The Informant has also stated that agreement in the instant case may be inferred from the conduct of the aforementioned entities, whereby the process of bidding has been manipulated by the submission of multiple bids through different entities by the same promoter, viz. Mr. Deepak Aggarwal, which amounts to bid rigging. The Informant has alleged that the same promoter acting through his two entities in order to fulfil the requirement of sufficient participation in the open tender, has resulted in the work order being given every year to the related entities. This, according to the Informant, amounts to denial of market access to the other players for supply of Dry Food Ration/ Malted Milk Foods to APO in response to its tenders.
13. The Informant has sought interim relief seeking a direction from the Commission to temporarily restrain Continental Milkose India Limited and M/s KAG Industries from participating in the Tenders invited by APO.
14. The Informant has also prayed for the following reliefs post investigation:
- i) to restrain/disqualify the accused entities from participation in the Government of India tenders, and
 - ii) to levy penalty under the Act based on the supply orders as obtained by the bidders in the last seven years, by allegedly indulging in cartelisation.
15. The Commission, *vide* order dated 28.09.2021, sought comments from APO on the Information filed and the same was received on 22.12.2021. The Commission, *vide* order dated 04.01.2022, granted sufficient liberty to the Informant to file its response to the reply/ comments of APO. However, no response has been filed, even after grant of extension of time as sought by the Informant. The Commission in its ordinary meeting held on 22.03.2022, considered the Information and the reply filed by APO and decided to pass an appropriate order in due course.
16. The Commission notes the following reply/ comments of APO:
- i. The allegation that the entities as named in the Information formed a cartel is factually incorrect and that till 2015-2016, the procurement of malted milk food products was done through limited tender enquiry through firms registered with APO and the same are: Continental Milkose India Limited, M/s Kaira District



Coop. Milk Products (Amul), M/s Jagatjit Industries, and M/s Hi Tech Maltomax Foods. However, the procurement process was changed from limited tender enquiry to open tender enquiry from the year 2017-2018 onwards.

- ii. That number of firms other than Continental Milkose India Limited and M/s KAG Industries not only participated in the tender invited by APO but also secured contracts in the last ten years like M/s Goodrich Limited, and M/ s Jagatjit Industries.
- iii. That, as per the tender conditions, even co-operatives were eligible to participate, thereby widening participation. Also, any firm with the lowest bid could secure tenders and those entities who were also awarded contracts were in no way related/associated with the Opposite Party, *i.e.*, Continental Milkose India Limited.
- iv. Mr. Deepak Agarwal (Director, Continental Milkose India Limited) retired as a Partner from the allegedly related entity, *i.e.*, M/s KAG Industries in 2017-18 and a partnership deed dated 12.09.2018 has been submitted along with the response. M/s KAG Industries started participating in tenders alongwith Continental Milkose India Limited only from the year 2019-2020 onwards, after Mr. Deepak Agarwal had retired from M/s KAG Industries as a Partner.
- v. There are eight Directors in Continental Milkose India Limited who are not common with Partners of M/s KAG Industries or Imperial Malts Limited, and that firms in which Continental Milkose India Limited and M/s KAG Industries allegedly have common interests are completely unrelated to the tender invited by APO. There was no requirement on the part of APO to verify the list of those allegedly connected with Continental Milkose India Limited.
- vi. That, as per the registration documents submitted by Continental Milkose India Limited and M/s KAG Industries with APO, no common Partner/Director have been found, and that the other entity, Imperial Malts Limited, is a totally independent entity with apparently no linkages with Continental Milkose India Limited and M/s KAG Industries.

17. At the outset, the Commission observes that the Informant has mainly alleged bid rigging/cover bidding in respect of tenders invited by APO for the procurement of “Dry



Food Rations/ Malted Milk Food Products” during the year 2015-2021 against the following entities:

- i) Continental Milkose India Limited
- ii) M/s KAG Industries
- iii) Imperial Malts Limited

However, only Continental Milkose India Limited has been arrayed as an Opposite Party.

18. The Commission notes the allegations of the Informant that Continental Milkose India Limited and M/s KAG Industries, owned by common set of promoters, have won tenders during the last six years by vitiating the tender process by, purportedly, acting as independent bidders. Further, Imperial Malts Limited, that regularly supplies malt to the aforesaid entities, is alleged to have acted as a cover bidder in these tenders.

19. Considerable emphasis has been made in the Information that one Mr. Deepak Agarwal, Director of Continental Milkose India Limited, is also a Partner of another bidder viz. M/s KAG Industries. The Commission in this regard notes that APO has refuted this fact by stating that Mr. Deepak Agarwal ceased to be a Partner in M/s KAG Industries in 2018 and that M/s KAG Industries started participating in the tenders of APO post cessation of any linkage between Mr. Deepak Agarwal and the said M/s KAG Industries. Further, Mr. Anuj Agarwal, another Partner of M/s KAG Industries, retired in 2020, with the reconstituted firm having Ms. Prabha Agarwal as one of the Partners, who also appears to be a shareholder in Continental Milkose India Limited. Despite the opportunity to respond to comments of APO, the Informant has not submitted any specific comments on the structural linkages, and its impact on the bidding process, if any, which has been the mainstay of his Information. Be that as it may, the Commission, in the facts and circumstances of the instant case, observes that merely having common Directors/Partners may not, *ipso facto*, give rise to anti-competitive concerns, in the absence of other material factors to indicate that such common relationship facilitated a few entities to come together and manipulate the bid process and reduce the strategic uncertainty required in such process. It may not be entirely uncommon, where a common Promoter/Director acts as a link between two entities, to facilitate anti-competitive behaviour. However, there is no presumption that it has to be that way at all times; instead it will depend upon the attendant factual matrix. Thus, the Commission is of the view that merely having common business



linkages between the bidders as projected by the Informant, in itself, cannot be the sole basis to suggest meeting of minds or *assentio mentium* between the bidders in the bidding process.

20. The Commission has previously held that common ownership is not sufficient to record any findings of contravention of the provisions of Section 3 of the Act. In *Re: Alleged cartelization in road construction work in the State of Uttar Pradesh* (Suo Motu Case No. 03 of 2018), it was held that:

“Having examined the DG report and the material available on record, the Commission, at the outset, notes that as regards related parties submitting bids or parties having common ownership, the Commission is of the opinion that mere commonality of ownership of participating firms, in itself, is not sufficient to record any conclusion about bid rigging in the absence of any material indicating collusion amongst such bidders while participating in tenders. The Commission has consistently held that mere common ownership is not sufficient to record any findings of contravention of the provisions of Section 3 of the Act. In this regard, reference may be made to a few of such previous orders passed by the Commission. In Re: Ved Prakash Tripathi v. Director General Armed Forces Medical Services & Ors. (Case No. 10 of 2020), the Commission held 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.... Further, In Re: Reprographics India v. Hitachi Systems Micro Clinic Pvt. Ltd. & Ors. (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....”. Resultantly, mere commonality of ownership does not imply contravention of the provisions of Section 3(3)(d) of the Act, unless there is material on record to substantiate the allegations of bid rigging by way of collusion.”

21. Having thus considered the Information, the response of the aforementioned procuring organisation, and the material available on record, the Commission is of the *prima facie* view that the allegations of bid rigging as envisaged under Section 3(3)(d) read with



Section 3(1) of the Act is not attracted in the present case. Though a feeble allegation has been made in the Information regarding violation of Section 4 of the Act, without stating the manner in which the said provision is attracted, the Commission deems the same as merely perfunctory and not meriting any examination.

22. In view of the foregoing, the Commission is of the opinion that there exists *no prima facie case* of contravention of any of the provisions of Section 3 and/or 4 of the Act against the Opposite Party, and therefore, the matter be closed forthwith under the provisions of Section 26(2) of the Act. Consequently, no case for grant of relief(s) as sought under Section 33 of the Act arises, and the same is also rejected.

23. The Secretary is directed to communicate to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Dated: 04.04.2022