



**COMPETITION COMMISSION OF INDIA**

**Case No. 44 of 2016**

**In re:**

**XYZ**

**Informant**

**And**

**1. HSCC (India) Ltd.**

**(Hospital Services Consultancy Corporation India Ltd.)**

**Plot No. 6-A, Block- E**

**Sector 1, Noida, U. P. - 201301.**

**Opposite Party No. 1**

**2. Vardhman Mahavir Medical College (VMMC)**

**& Safdarjung Hospital**

**Ministry of Health & Family Welfare**

**Government of India, New Delhi - 110029.**

**Opposite Party No. 2**

**CORAM**

**Mr. S. L. Bunker**

**Member**

**Mr. Sudhir Mital**

**Member**

**Mr. Augustine Peter**

**Member**

**Mr. U. C. Nahta**

**Member**

**Dr. M. S. Sahoo**

**Member**

**Justice G. P. Mittal**

**Member**

**Case No. 44 of 2016**

**Page 1 of 4**



सत्यमेव जयते



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

1. This information has been filed under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') by an Informant, who has sought confidentiality of its identity. It alleges, *inter alia*, contravention of the provisions of section 4 of the Act by HSCC (India) Ltd. ('OP 1') and Vardhman Mahavir Medical College & Safdarjung Hospital ('OP 2') [collectively, hereinafter, 'OPs']. As per the information, OP 1 is a Government of India enterprise and has been, *inter alia*, engaged in the provision of hospital consultancy services. OP 2 is a New Delhi based medical college and hospital under the administrative control of the Ministry of Health & Family Welfare, Government of India.
2. It is stated in the information that Masep Medical Science Technology Development Schenzhen Co. Ltd. ('Masep') manufactures 'Stereotactic Radiosurgery System (SRS)', which is commonly known as Gamma Knife. However, Gamma Knife is a registered trademark of Elekta AB (Elekta). The information refers to the product manufactured by Elekta as 'Gamma Knife – Proprietary (GKP)'. In terms of technical specifications and usage, GKP and SRS are similar and are substitutable products. There are only two manufacturers of this genre of products – Masep manufactures SRS and Elekta manufactures GKP, and there is no manufacturer in India.
3. It is stated in the information that an e-tender no. HSCC/SDJ/Medical Equipment/2015/10 dated 30.10.2015 ('Tender') was floated by OP 2, through its consultant OP 1, for supply, installation, testing, commissioning and handing-over of various medical equipment, including GKP. The tender solicited bids for GKP and not SRS. It has a number of other terms which aim to avoid bid for SRS. It has, thus, been alleged that the terms of the tender aim to keep SRS/ Masep out of competition, and hence the OPs have violated provisions of section 4 of the Act. It has also been alleged that Elekta, a competitor of Masep, has influenced the OPs to specify such terms in the tender and thereby abused its dominance.



4. Based on the above submissions, the Informant has requested the Commission to order the OPs to call for a fresh tender avoiding the abusive clauses and without adding any new further clauses so that the tender would be just, fair, and open to competitive bidding. It has also requested the Commission for grant of interim relief in the matter.
  
5. The alleged contravention of section 4 of the Act by the OPs needs to satisfy two main ingredients, namely, (a) the OPs are dominant, and (b) they have abused their dominance. There is nothing whatsoever in the information to indicate that OPs are in a dominant position. As regards the terms of the tender, the Commission observes that the OPs are sophisticated consumers. They are procuring GKP to provide life-saving services. They need to procure what meets their requirements fully and provides them competitive advantages in provision of their services. They understand their needs and interests. As consumers, their choice is sacrosanct in a market economy. They must have freedom to exercise their choice freely in procurement of goods and services. We do not find any fault in the tender which specifies certain clauses in terms of technical specifications / eligibility to meet their requirements. Of course, there could be competition concerns in rare cases where a monopoly/ dominant buyer stipulates unfair or discriminatory clauses, but the present case is not in that category.
  
6. As regards contraventions by Elekta, the information has nothing whatsoever to indicate that Elekta is dominant or it has abused its dominance. The information merely alleges that Elekta has influenced the decision of the OPs. It does not adduce anything in support of such influence. It even does not make Elekta a party to the proceeding. Therefore, the alleged abusive clauses/ technical specifications in the tender cannot be attributed to the dominance of Elekta.
  
7. In the light of the above, the Commission finds that no case of contravention of the provisions of section 4 of the Act is made out against the OPs or Elekta



in the matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

8. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(S. L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(Dr. M. S. Sahoo)**  
**Member**

**Sd/-**  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**

**Dated: 09.08.2016**