



COMPETITION COMMISSION OF INDIA

Case No. 34 of 2021

In Re:

Mr. Vipul Jain

R/o C-266, Street Number -8, Majlis Park

Delhi-110033

Informant

And

Samsung India Electronics Private Limited

20th - 24th Floor, Two Horizon Centre,

Golf Course Road, Sector-43,

DLF Phase-V, Gurgaon,

Haryana - 122202

Opposite Party 1

LG Electronics India Private Limited

51, Udyog Vihar, Udyog Vihar Extension,

Ecotech-II, Udyog Vihar, Greater Noida,

Uttar Pradesh- 201306

Opposite Party 2

N. F. Infratech Services Private Limited

N-14, Lower Ground Floor, Vaikunth Vatika,

Malviya Nagar,

New Delhi - 110017

Opposite Party 3

Mantra Softech (I) Private Limited

Ansal Vikasdeep Building, Laxmi Nagar

Commercial Complex,

Swasthya Vihar, New Delhi,

Delhi -110092

Opposite Party 4



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Systech IT Solutions Private Limited
23/1, 1st floor, J. C. 1st cross,
J C Road, Near Poornima Theatre,
Bengaluru,
Karnataka - 560027

Opposite Party 5

Shree Rani Sati Distribution Private Limited
B-19, Swasthya Vihar,
Delhi - 110092

Opposite Party 6

Mobiokart
5089, Gali Number 1, Block 5B,
Krishna Nagar, Karol Bagh,
Delhi - 110005

Opposite Party 7

Nagpal Mercantile Private Limited
Opposite DRM Office, Nagpal Complex,
Near Railway Ground, Bikaner,
Rajasthan - 334001

Opposite Party 8

Invictus Digital
R-552, Shankar Road, Pocket R,
Rajender Nagar Part- 2,
New Rajinder Nagar,
Delhi - 110060

Opposite Party 9

Divya Shakti Fones Private Limited
Laxmi Narayan 34 - New Jagnath Plot
Union Housing Society,
Rajkot, Gujarat - 360001

Opposite Party 10



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Walt Energy Solutions (I) Private Limited
M-13A, Lower Ground Floor,
Malviya Nagar,
Delhi - 110017

Opposite Party 11

Beam Energy Systems Private Limited
J 1/9 (A-70), Basement R/s KH No.57,
Khirki Extension, Malviya Nagar
New Delhi - 110017

Opposite Party 12

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. Vipul Jain (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) alleging contravention of the provisions of Sections 3 and 4 of the Act by Samsung India Electronics Private Limited (hereinafter, “**OP-1**”), LG Electronics India Private Limited (hereinafter, “**OP-2**”), N. F. Infratech Services Private Limited (hereinafter, “**OP-3**”), Mantra Softech (I) Private Limited (hereinafter, “**OP-4**”), Systech IT Solutions Private Limited (hereinafter, “**OP-5**”), Shree Rani Sati Distribution Private Limited/ Shree Rani Sati Tradecorp Private Limited (hereinafter, “**OP-6**”), Mobiokart (hereinafter, “**OP-7**”), Nagpal Mercantile Private Limited (hereinafter, “**OP-8**”), Invictus Digital (hereinafter, “**OP-9**”), Divyashakti Fones Private Limited (hereinafter, “**OP-10**”), Walt Energy Solutions (I) Private Limited (hereinafter, “**OP-11**”), and



Beam Energy Systems Private Limited (hereinafter, “OP-12”), hereinafter, collectively referred to as the Opposite Parties (“OPs”).

2. The Informant is stated to be an IT consultant. OP-1 and OP-2 are the Original Equipment Manufacturers (“OEMs”) of smartphones, tablets, *etc.* and OP-3 to OP-10 are the companies/entities who, *inter alia*, participated in tenders floated by various government departments for procurement of smartphones, tablets, *etc.* OP-11 and OP-12 are alleged to be the subsidiary shell companies of OP-3 (one of the key bidders on behalf of OP-1).
3. It has been stated that during the course of his business, the Informant has discovered that OPs have formed a cartel in response to certain tenders floated by various government departments for procurement of smartphones, *etc.* It has been alleged that OP-1 and OP-3 are the main beneficiaries of such cartel arrangements and OP-2 submits bid as a cover bidder even though it has announced worldwide closure of its smartphone division in April, 2021. It is submitted that OP-2, in some previous instances, has also participated in such tenders through its representatives who have had direct transaction with OP-3 and its shell companies. As per the Informant, OP-3 has formed OP-11 and OP-12 as shell companies to participate and assist OP-3 in the tenders floated by various government departments.
4. The Informant has also averred that the requirement of participation of minimum three OEMs, as stipulated under Rule 149 of the General Financial Rules (“GFR”), has been violated in such tenders.
5. The Informant has provided the details of following four tenders, invited by various State and Central Government departments on the Government e-Marketplace (“GeM”) portal:
 - i) GEM/2021/B/1088593 (cancelled tender) issued on 03.03.2021 by the Women and Child Department (State Nutrition Mission), Government of Uttar Pradesh for the purchase of 123398 smartphones having an estimated value of Rs. 98,71,84, 000/-.
 - ii) GEM/2021/B/1270377 issued on 09.6.2021 (*in lieu of* GEM/2021/B/1088593) by the Women and Child Department (State Nutrition Mission), Government of Uttar Pradesh for the purchase of 123398 smartphones having an estimated value of Rs.116,48,77,120/-.



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- iii) GEM/2021/B/990103 issued on 22.01.2021 by the Medical Health and Family Welfare Department (National Health Mission), Government of Uttar Pradesh for the purchase of 79647 smartphones having an estimated value of Rs 79,48,77,060/-
- iv) GEM/2021/B/1128824 issued on 19.03.2021 by the Department of Post, Government of India for the purchase of 20014 smartphones having an estimated value of Rs. 20,01,40,000/-.

6. It has been averred by the Informant that, in all the aforesaid four tenders, OP-3 has emerged as the successful bidder which, allegedly, is the outcome of collusive bidding by way of cover bidding indulged in by the OPs. As per the Informant, the ultimate beneficiary of this collusive bidding is OP-1 and because of the same, the market share of OP-1 has strengthened.

7. The Informant has also alleged that OP-4, OP-5, OP-6, OP-7, OP-8, OP-9 and, OP-10 have received earnest money deposit (“EMD”) amount from OP-11 and OP-12 for participating in the tenders. The details of money transferred/ received in this regard are as follows:

- i. OP-6 received Rs. 80 lakhs on 08.04.2021 from OP-3 (through OP-12) towards the submission of EMD in respect of tender/ bid no. GEM/2021/B/990103 dated 22.01.2021, invited by the Medical Health and Family Welfare Department (National Health Mission), Government of Uttar Pradesh for procurement of 79647 smartphones.
- ii. Rs. 49,50,920/- was transferred to OP-5 on 23.03.2021 which was returned to OP-3 (through OP-12) on 02.07.2021 and OP-4 had returned Rs. 49,35,920/- to OP-3 (through OP-12) on 22.07.2021, which was received towards the submission of EMD in respect of tender no. GEM/2021/B/1088593 dated 03.03.2021, invited by the Women and Child Department (State Nutrition Mission), Government of Uttar Pradesh for procurement of 123398 smartphones. However, the said tender was eventually cancelled.
- iii. OP-3 (through OP-12) had transferred Rs. 58,25,000/- to OP-7 on 07.07.2021, which was returned/ reimbursed on 06.09.2021 whereas OP-3 (through OP-12) transferred Rs. 32 lakhs and Rs.26.5 lakhs to OP-9 on 29.05.2021 and 06.07.2021 respectively towards the submission of EMD in respect of tender GEM/2021/B/1270377, dated



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09.06.2021 invited by the Women and Child Department (State Nutrition Mission) for procurement of 123398 smartphones.

8. In relation to the tender invited by the Department of Post, Government of India, it has been submitted that OP-12, in order to facilitate submission of a cover bid in favour of OP-3, had introduced OP-8 as a bidder to bid for supply of smartphones of OP-2.
9. The Informant has also enclosed a copy of an Order dated 01.10.2021 passed by the Hon'ble Supreme Court in Special Leave Petition (SLP) No. 13298/2021, arising in appeal out of final order dated 18.08.2021 passed in Case No. 14582/ 2021 by the Hon'ble High Court of Allahabad (Lucknow Bench) in the matter of M/s Resoursys Telecom Delhi vs State Nutrition Mission in relation to the tender no GEM/2021/B/1270377, in which the Apex Court held that as the contract (tender) had been awarded and executed hence it would not like to interfere. The said SLP was dismissed as withdrawn with liberty to pursue other legal remedies.
10. Based on the above, the Informant has alleged that the OPs have acted in concert and indulged in bid – rigging as envisaged under Section 3(3)(d) read with Section 3(1) of the Act and the OPs, more particularly, OP-1 has abused its dominant position by participating in the tenders through its numerous representative bidders and denying access to the other players in contravention of the provisions of Section 4(2)(c) read with Section 4(1) of the Act.
11. Accordingly, the Informant has, *inter alia*, prayed to the Commission to:
 - a) impose penalty on all the OPs at the rate of 10% on the average of three years' annual turnover.
 - b) restrain the OPs from participating in tenders and indulgence in the contravening acts as stated above.
 - c) direct the OPs to not exploit their dominant position by denying access to other bonafide entities.
 - d) pass such other order(s) as may be deemed fit and appropriate in the interests of justice.
 - e) grant interim relief restraining the OPs from participating in the prospective tenders.
12. The Commission considered the matter in its ordinary meeting dated 17.11.2021 and decided to seek comments/ response from the procurers *viz.* Women and Child Department (State Nutrition Mission), Government of Uttar Pradesh; Medical Health and Family Welfare



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Department (National Health Mission), Government of Uttar Pradesh and; the Department of Post, Government of India on the Information filed and the tenders in question. The Commission considered the comments/ responses received from the said procurers on 09.03.2022 and decided to pass an appropriate order in due course.

13. The Commission notes the reply/ submission of the Department of Post, Government of India on the allegation that OP-3 and OP-8 had bagged multiple government projects and participated with the same or different OEM through collusion and other illegal practices, that GeM portal is a digital and fully automated platform to ensure transparency and efficiency in Government procurement. Both the companies *i.e.*, OP-3 and OP-8 were duly registered on the GeM portal and that the OEMs (Samsung & LG) had duly authorised these bidders for participating in the Bid. Thus, keeping in view the mechanism of GeM it was inappropriate to suggest that OP-3 and OP-8 had cartelised.
14. The Commission also notes the reply/ comments of Women and Child Department (State Nutrition Mission), Government of Uttar Pradesh that the entire procurement had been done transparently through GeM following all the norms of GeM General Terms and Conditions and GFR. The department further stated that M/s Resoursys Telecom who had not even participated in the bidding had filed writ petition no. 14582/2021 before the Lucknow Bench of the Hon'ble Allahabad High Court challenging the GeM Bid conditions of Bid Number: GEM/2021/B/1270377 on the same pleas and that the said writ was dismissed by the Hon'ble High Court after detailed hearing.
15. The Commission observed that the crux of allegations in the instant matter is that the OPs have indulged in cover bidding with a view to ensure that one of the OPs *i.e.*, OP-3 emerged successful in tenders invited by various State/ Central Government Departments particularly, Women and Child Department (State Nutrition Mission), Government of Uttar Pradesh; Medical Health and Family Welfare Department (National Health Mission), Government of Uttar Pradesh and, Department of Post, Government of India for procurement of smartphones, tablets. The Informant has adduced preliminary details regarding only four tenders and requested to examine certain more tenders.



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16. The details of the four tenders, as provided in the Information and replies submitted by the aforementioned procurers, are as under in Table-1:

Table - 1

Sr. No.	Tender	Procuring Department	Participation	OEM	Price per phone/ other remarks
1.	GEM/2021/B/1088593 issued on 03.03.2021 for purchase of 123398 smartphones having estimated value of Rs. 98,71,84,000/- with EMD of Rs.49,35,920/-.	Women and Child Department (State Nutrition Mission), Government of Uttar Pradesh	1. N. F. Infratech Services Private Limited (OP-3)	Samsung	This tender was cancelled by the Department.
			2. Systech IT Solutions Private Limited (OP-5)	Samsung	
			3. Mantra Softech (I) Private Limited (OP-4)	LG	
			4. Lava International Limited	Lava	
2.	GEM/2021/B/1270377 issued on 09.06.2021 for procurement of 123398 smartphones having estimated value of Rs. Rs.116,48,77,120/- with EMD of Rs.58,24,386/-	Women and Child Department (State Nutrition Mission), Government of Uttar Pradesh	1. N. F. Infratech Services Private Limited (OP-3)	Samsung	Issued <i>in lieu of</i> GEM/2021/B/1088593. Tender was awarded to OP-3 at a unit price of Rs.9,361/- by Reverse Auction.
			2. Invictus Digital (OP-9)	Samsung	
			3. Mobiokart (OP-7)	Samsung	
			4. Divyashakti Fones Private Limited (OP-10)	LG	
3.	GEM/2021/B/990103 issued on 22.01.2021 for procurement of 79647 smartphones having estimated value of Rs.79,48,77,060 /-	Medical Health and Family Welfare Department (National Health Mission), Government of Uttar Pradesh	1. N.F. Infratech Services Private Limited (OP-3)	Samsung	Unit price of Rs.9893.53/-. This price was eventually re-revised to Rs. 9812.53/- after negotiations and accordingly tender was awarded to OP-3.



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	with EMD of Rs. 79,48,771/-		2. Invictus Digital (OP- 9)	Samsung	Rs. 10,297/-
			3. Shree Rani Tradecorp Private Limited (OP-6)	LG	Rs.10,441/-
			4. Ashoka Buildcon Limited	Lava	Technically disqualified
4.	GEM/2021/B/11 28824 issued on 19.03.2021 for procurement of 20014 smartphones having estimated value of Rs. 20,01,40,000/- with EMD of Rs. 60,04,200/-	Department of Post, Government of India	1. N.F. Infratech Services Private Limited (OP-3)	Samsung	Unit price of Rs.11,953/-. Tender was awarded to OP-3 at this price.
			2. Nagpal Mercantile Private Limited (OP-8)	LG	Rs.12,486/-
			3. Ingram Micro India Private Limited	Samsung	Rs.13,500/-
			4. Iris Computers Limited	Lava	Technically disqualified
			5. Instant Procurement	Lava	Technically disqualified

17. In relation to the alleged transfer of money in favour of certain bidders who are alleged to have acted as cover bidders, the Commission notes from the above Table-1 that OP-4 and OP-5 do not appear to have participated in any of the aforesaid three tenders, though they had participated in the cancelled tender GEM/2021/B/1088593 invited by Women and Child Department (State Nutrition Mission), Government of Uttar Pradesh. The Commission also notes that OP-1, OP-2, OP-11, and OP-12 did not participate in any of the four tenders.

18. Further, from the Table-1 above, the Commission observes that the prices quoted by the bidders, in relation to the tenders invited by Medical Health and Family Welfare Department (National Health Mission), Government of Uttar Pradesh and the Department of Posts, Government of India do not indicate any price parallelism or prices being placed in any close or narrow ranges. In respect of the tender invited by the Women and Child Department (State Nutrition Mission), Government of Uttar Pradesh, it appears that the tender was awarded using reverse auction mechanism.



19. The Commission also observes that although the Informant has alleged that OP-4, OP-5, OP-6, OP-7, OP-8, OP-9, OP-10 have received money towards EMD in relation to the impugned tenders from OP-11 and OP-12 for participating in the tenders, however the Information is bereft of any shred of evidence in support of the allegation.
20. Having considered the Information and the other material available on record, including the response of the aforementioned procuring departments, 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 remain unsubstantiated in the facts and circumstances of the instant matter. The Commission also is of the view that no case of violation of any of the provisions of Section 4 of the Act is made out in any manner against the OPs.
21. 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 either Section 3 and/or Section 4 of the Act against the OPs and therefore, the matter is closed forthwith under the provisions of Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises, and the same is also rejected.
22. 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: 31.03.2022