



सत्यमेव जयते



## COMPETITION COMMISSION OF INDIA

Case No. 40 of 2021

### In Re:

**Manish Sharma**

25/10, Pardeshipura

Near Jain Mandir, Indore (MP)- 452007

**Informant**

### And

**Mediglobe Medical Systems (P) Ltd.**

B L Tower, Behind Aarogya Hospital

Shankar Nagar,

Raipur, Chhattisgarh- 492001

**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 Mr. Manish Sharma (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') alleging contravention of provisions of Section 4 of the Act by Mediglobe Medical Systems (P) Ltd. (hereinafter, '**Opposite Party**'/ '**OP**'/ '**Mediglobe**').



सत्यमेव जयते



***Facts and allegations as stated in the Information***

2. The Informant is stated to be assisting his clients to discover latest tenders issued by various government, semi-government and non-government organisations, within the State of Madhya Pradesh and other parts of the country.
3. The OP is stated to be a company registered in the State of Chhattisgarh to carry on business as a dealer, distributor, importer and exporter of all kinds of pharmaceutical, surgical and medical equipment, *etc.*
4. In 2019, various government departments in the State of Madhya Pradesh, namely, the Public Works Department (PWD), Project Implementation Unit, Health Department, Project Implementation Unit, National Health Mission, *etc.*, published notices inviting tenders for the supply and installation of Medical Oxygen Gas Pipeline System and Modular/ Non-Modular Operation Theatres in several government hospitals in the state.
5. The Informant provided its clients with the lead of such tenders, along with information regarding mandatory pre-qualifications and eligibility criteria, to enable bidders to participate in the tenders published by the government departments. Accordingly, its clients applied for such tenders. However, despite fulfilling the essential qualification criteria, the Informant's clients were unable to procure the concerned tenders.
6. Thereafter, the Informant is stated to have sought information from the concerned departments through RTI and learnt that the OP had successfully acquired the concerned tender published by the various government departments in the State of Madhya Pradesh. On further scrutiny of documents, the Informant learnt that the OP was given the tenders by the government departments way higher than its capability as per the Registration Certificate. It has been further alleged that the concerned department gave undue advantage to the OP when the said OP did not even fulfil the pre-qualification criteria in respect of the tender published on 19.06.2020 by



सत्यमेव जयते



PWD, Government of Madhya Pradesh. Further, as per the Informant, the turnover as claimed by the OP in its eligibility criteria and its actual turnover for the past years are different, and therefore, the turnover claimed by the OP was false. On earlier occasions, the OP had been declared ineligible by the concerned departments but they still selected the OP on the basis of alleged false information, forged documents, *etc.* It has also been alleged that the OP exploited its dominant position and obtained tenders in 2019 even before obtaining the desired certificate.

7. The Informant has stated that, in this regard, a complaint has been lodged before the Economics Offence Wing, Madhya Pradesh, against the OP.
8. Based on the above facts and circumstances, the Informant has alleged that the OP has violated the provisions of Section 4 of the Act since the OP procured tenders in collusion with government departments/officials despite not fulfilling the pre-qualification criteria and submitting inaccurate details and documents, resulting in the denial of market access to the clients of the Informant to such markets.

### ***Reliefs Sought***

9. The Informant has prayed for the following reliefs as under:
  - a. Declare the acts of the OP to be void and in contravention of the provisions contained in Section 4 of the Act;
  - b. Direct that an inquiry/investigation be held into the matter, and upon receipt of such findings, take appropriate actions;
  - c. To impose penalty on OP;
  - d. Direct the Power Works Department, Project Implementation Unit and National Health Mission to cancel all pending tenders handed over to the OP in the State of Madhya Pradesh and recover the amount reimbursed by such departments to the OP;



सत्यमेव जयते



- e. The aforesaid department may also be directed to blacklist the OP from occupying further tenders in the State of Madhya Pradesh till the final disposal of the present matter.
10. The Commission considered the present Information in its ordinary meeting held on 15.12.2021 and decided to pass an appropriate order in due course.
  11. The Commission has perused the Information. The Informant has made reference to Section 4 of the Act and has alleged abuse of dominant position by the OP in the award of tender by government departments in the State of Madhya Pradesh. The Informant has claimed that the OP submitted inaccurate details and forged documents, and despite non-fulfillment of pre-qualification criteria by the said OP, it was awarded the tender. Thus, the upshot of the submissions of the Informant is that undue advantage was given to the OP in the tendering process despite it lacking eligibility criteria to participate in such tender.
  12. The Commission is of the view that the nature of allegations do not raise competition concerns under Section 4 of the Act. In the present matter, submission of bid by an alleged ineligible bidder cannot be said to be an instance of abuse of dominant position on the part of that bidder. Insofar as Section 3 of the Act is concerned, the Information is bereft of any reference to any agreement or understanding between the OP and any other party as envisaged under the Act, and, as such, provisions of Section 3 are also not attracted.
  13. The Commission, therefore, does not *prima facie* find any competition concern, either under the provisions of Section 4 or Section 3 of the Act, to have arisen and accordingly, the Information is directed to be closed forthwith under Section 26(2) of the Act.



14. 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  
Date: 31/12/2021**