



COMPETITION COMMISSION OF INDIA

Case No. 41 of 2018

In Re:

**Reprographics India,
Through Mr. Deepak Khanna
604, Siddhartha Building,
96, Nehru Place, New Delhi 110 019**

Informant

And

**Hitachi Systems Micro Clinic Pvt. Ltd.
E-44/2, Okhla Industrial Area, Phase-II,
New Delhi – 110 020**

Opposite Party No. 1

**IL&FS Technologies Limited
3rd Floor, Ambience Corporate Tower,
Ambience Mall, Gurgaon,
Haryana – 122 002**

Opposite Party No. 2

CORAM

**Mr. Sudhir Mital
Chairperson**

**Mr. Augustine Peter
Member**

**Mr. U.C. Nahta
Member**

Present (on 31.10.2018)

For Informant

**Dr. Vijay Agarwal, Advocate
Mr. Avtar Krishan Ganjoo, Technical Advisor
Reprographics India**

For BHEL

**Mr. Mukesh Arora, GM, CDT, BHEL
Mr. Avnit, Sr. Executive (Delhi), BHEL
Mr. Satish Asnani, DGM (Bhopal), BHEL
Mr. Chitresh Datta, Dy. Manager (Bhopal), BHEL**



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

1. The present information has been filed by Reprographics India, acting through its proprietor Mr. Deepak Khanna, (hereinafter, the '**Informant**') on 11.09.2018, under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, '**Act**'), alleging bid rigging/collusive bidding by Hitachi Systems Micro Clinic Pvt. Ltd. (hereinafter, '**Opposite Party No. 1/OP-1**') and IL&FS Technologies Limited (hereinafter, '**Opposite Party No. 2/OP-2**') and collectively referred to as '**Opposite Parties/OPs**') in the tender floated by Bharat Heavy Electricals Limited (hereinafter, '**BHEL**') being Corporate Rate Contract No. LOI BPL:RC:IT:LEASE/2017 Ref. dated 01-04-2017, *inter alia*, for procurement of items, namely, PCs & Peripherals in Group A (hereinafter, '**CRC- 01.04.2017**'/ '**Impugned Tender**').

Background of the Parties

2. According to the Informant, it is an ancillary to BHEL Haridwar's unit. Since the time of its inception, it has diversified its business from manufacturing of Ammonia, Dielectric Plotter Paper, *inter alia*, to building and installing of A0 size Flatbed Scanner. From 2013, it started manufacturing A0 size Folding and Finishing Systems, which have been installed in various institutions. It is also a distributor of IT products and provides services therewith. It claims to have distributed and/or supplied IT products, either directly or through System Integrators of Original Equipment Manufacturers (hereinafter, '**SI**s'), in tenders floated by BHEL and its units, in the past.
3. OP-1 works in close collaboration with leading Original Equipment Manufacturers (hereinafter, '**OEM**s') vendors, to provide customised and tailored IT solutions and services to different businesses to help



them upgrade to agile, state-of-the-art and resilient IT infrastructure. As per the Informant, OP-1 is a HP Partner/Reseller and is a SI.

4. OP-2 is stated to be, *inter alia*, a global technology leader with more than a decade of experience in providing the best-in-class IT solutions for efficient citizen service delivery and smart governance, through smart infrastructure. As per the Informant, OP-2 is a HP Partner and is a SI.
5. The Informant has averred that OP-1 and OP-2 have, *inter alia*, an alliance and partnership with HP and, thus, both the OPs are associated with HP in one way or the other. It has been further averred that related companies of the OPs also have business relations.
6. BHEL is a public sector undertaking, having its manufacturing plants and offices all over India. The Informant has averred that BHEL, as a cost saving exercise, started the process from 2006 of collating the requirements of IT products of all BHEL units/offices across India and floating a composite Tender, ultimately culminating into a Corporate Rate Contract. This process was carried out by BHEL's Digital Transformation Centre at Bhopal. All the computers related equipment was procured on hire and purchase (financial lease) basis. Various BHEL Units have also procured computers and related equipment, from time to time, through local tenders, for meeting their immediate requirements.

Facts and Allegations as stated in the Information

7. According to the Informant, BHEL floated the Impugned Tender on 01.04.2017, whereby inviting tenders from bidders who were qualified, as per its criteria. The tender was invited for supply, installation and maintenance of PCs, Servers, Printers, UPS, network equipment and other Computer Peripherals throughout India at more than 20 locations



for a period of five years on Lease Basis, on the Corporate Rate Contract. The tender was required to be submitted in two parts, namely, Techno-commercial (unpriced) and Price.

8. As per the Impugned Tender, total items were grouped into 02 categories, namely, PCs & Peripherals (Group A - comprising of 24 items) and Enterprise Equipment (Group B comprising of 47 items). A bidder was given the option to quote in one or both the categories and L1 was to be determined in each group respectively, based on the total value of items in that group.
9. The Informant has levelled allegations in respect of Group-A items only and accordingly, Group-A items are stated as below:

Table 01: Group A Items

Sr. No.	Item Code	Item Name	Quantity No.
1.	NB01	Notebook- General	428
2.	NB04	Rugged Tablet	82
3.	PC01	PC – General	7172
4.	PC02	Engineering PC	714
5.	PC03	PC - Thin client – Fanless	143
6.	WS01	Graphics Workstation – Type I	260
7.	WS02	Graphics Workstation – Type – II	114
8.	LJ01L	LaserJet Printer – A4 Mono Personal	572
9.	LJ02L	LaserJet Printer – A4 Mono General	865
10.	LJ04L	LaserJet Printer – A4 Color Low End	382
11.	LJ06L	LaserJet Printer – A3 Mono Low	152
12.	LJ07L	LaserJet Printer – A3 Color	31
13.	DM01L	Dot Matrix Printer	322
14.	LM01L	Line Matrix Printer	28
15.	MF01	MFS – A4 Mono (Print, Copy, FAX and Scan)	95



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16.	MF02	MFS – A4 Color (Print, Copy, FAX and Scan	107
17.	PL01L	Plotter – A0 Low End (Inkjet)	27
18.	PL02L	Plotter – A0 MFS	5
19.	SC01L	Scanner – A4 Color Low End	328
20.	SC03	Scanner - A3 Color	42
21.	UP01L	Small UPS- 800 VA	4578
22.	UP02L	2KVA UPS	87
23.	UP03H	5KVA UPS	41
24.	NB01 (A1)	Add-on – Notebook – General (External DVD)	65

10. As per the Impugned Tender, eligible bidders were either OEMs or SIs of OEMs. The terms and conditions of the Impugned Tender provide for the definition of the OEM, which means manufacturers of Group I to Group VIII items only. These groups are as follows:

Group I	PCs, Note Books and Thin Clients
Group II	Servers and Workstations
Group III	Printers
Group IV	Network Equipment
Group V	UPS
Group VI	Storage Devices (NAS, SAN)
Group VII	Scanners
Group VIII	Plotters and MFS

11. It is averred that, according to the terms and conditions of the Impugned Tender, all the items in each Group must be of the same OEM. The important events, *inter alia*, on the timeline of the Impugned Tender were as follows:

05.04.2017

Last date for receiving queries



10.04.2017	Reply to such queries by BHEL
12.04.2017	Pre-Bid meeting (attended by the representatives of the Informant, OP-1, OP-2, HP India and others)
21.04.2017	Corrigendum issued. Incorporated changes, <i>inter alia</i> , in Item Codes PL01L and PL02L (Group A)
15.06.2017	Last date for submission of bids

12. The Informant has further stated that OP-1, *vide* its email dated 07.06.2017, requested the Informant to submit certain documents of its products for the purpose of Impugned Tender. The same was replied by the Informant, accordingly. The items quoted by the Informant, belonged to Group VIII for Item Code No. PL01L - Plotter A0 Low End (Inkjet Cannon iPF771) and Item Code No. PL02L – Plotter - A0 MFS [(KIP 7170 I MFS (with Rodent proofing)]. Similar query was raised by OP-2, *vide* its email dated 13.06.2017, with the Informant and the same was also replied by the Informant, accordingly. As per the Informant, bids were submitted by OP-1 and OP-2 only and the Rate Contract LOI for IT Equipment of contract value of about Rs. 110 Crores plus taxes, in respect of the Impugned Tender, was awarded to OP-1 by BHEL on 23.12.2017 (hereinafter, '**Rate Contract**'). The total value of the Rate Contract had three components, namely, Outright Purchase Price (towards cost of equipment) (Rs.79,72,38,084/-) + Maintenance cost (Rs.9,56,68,656.4/-) + Interest cost (Rs.20,72,81,942.4/-).
13. The Informant has alleged, *inter alia*, that in the entire bidding process, OPs acted in collusion and thereby, rigged the process. Such alleged collusive bidding caused huge loss to public exchequer. The gist of the instances of alleged conduct of the OPs has been stated in succeeding paragraphs.



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- 13.1. It has been averred that OP-1, as a SI, chose to ignore much lower priced products, which met Impugned Tender's specifications. Instead of quoting products like Canon Japan [S. No. 17, Item Code PL01L- Item Name Plotter – A0 Low End (Ink Jet)] and KIP Japan [S. No. 18, Item Code PL02L- Item Name Plotter -- A0 MFS], OP-1 quoted much higher-priced products of HP, *i.e.*, HP DesignJet 5600 and HP PageWide 4000 respectively. As per the Informant, the Government e-Market (hereinafter, 'GeM') prices of the said Canon and KIP products were lower than quoted HP products. The Informant claims that OP-1 quoted the product (HP PageWide 4000), which did not even meet the Impugned Tender's specifications.
- 13.2. The Informant further stated that OP-1 quoted most of the HP products *i.e.* 18 out of 24 items (75%) as enumerated in Group A in the Impugned Tender, cornering approximately 90% of the total value of Rate Contract. As per the Informant, Outright Purchase Prices (towards cost of equipment) of the products quoted by OP-1, were higher than MRP and online retail/GeM prices of these products.
- 13.3. Based on the RTI reply received from BHEL, the Informant averred that the total value of initial quotes of OP-1 was of Rs. 143 Crores and that of OP-2 was Rs. 151 Crores. The Informant alleged that OP-2 submitted its bid and offered higher prices so that OP-1 could win the bid. By doing so, they created an image of close competition.
- 13.4. The total value of Rate Contract, as awarded to OP-1, was of Rs. 110 Crores + taxes. Thus, the Informant alleged that approximately 23% discount was given by OP-1 to BHEL,



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which is inconceivable in the IT industry, and is not possible without collusion between OP-1 and OP-2.

- 13.5. OP-2, on the other hand, quoted much lower-priced products of Canon Japan, KIP *etc.*, yet it was a L2 in the Impugned Tender.
- 13.6. It is claimed by the Informant that it apprised OP-2 about the product HP PageWide 4000 (quoted by OP-1) that it did not meet the Impugned Tender's specifications. However, according to the Informant, OP-2 had never raised such objections before BHEL, for, if raised, would have resulted in cancellation of OP-1's bid on technical grounds and OP-2 would have won the bid, instead. This, according to the Informant, is not a typical behaviour of any contesting bidder *i.e.*, OP-2.
- 13.7. The Informant has averred that the parallel conduct of OPs is suspected to be a result of their alliance and partnership with the HP. According to the Informant, it is inconceivable that only two SIs participated in the Impugned Tender, having some connection with HP. The Informant suspects that OP-1 and OP-2 might have mutual business dealings, *inter alia*, of HP products and thus, is a matter of investigation.
- 13.8. The Informant stated that the collusion between OP-1 and OP-2 led to quoting and awarding of Rate Contract at higher prices. The Informant, in order to buttress its allegation, has attempted and analysed Outright Purchase Prices of 08 items out of 24 items in the Rate Contract *vis-à-vis* their MRP and online/retail/GeM prices. As per the inference drawn by the Informant, it alleged that the Outright Purchase Price rates and total excess outflow arising therefrom, were in excess, by upto 64% and 26.5% respectively, to rates available to retail



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customers, HP online retail prices and prices on GeM. These Outright Purchase Prices were also in excess, by upto 47% and 12.2% respectively, to their MRPs.

13.9. Additionally, the Informant has stated that BHEL's Haridwar unit (hereinafter, '**BHEL Haridwar tender**') had floated a tender on 02.01.2017 for supply, installation, commission and maintenance of computer hardware at BHEL, Haridwar, on a five-year lease basis. There were 04 bidders in the said process. OP-1 had also participated in the said tender, but was not L1. BHEL Haridwar tender was later on cancelled. Based on L1 prices, corresponding to 04 items in the Rate Contract, in BHEL Haridwar tender the Informant averred that Outright Purchase Prices in the Rate Contract were in excess, by upto 64% to L1 prices in BHEL Haridwar tender. Moreover, one of the items, having same make and model (EPSON LQ2090) in the Rate Contract, was 62% higher than in BHEL's Haridwar tender. It is further averred that Outright Purchase Price rates of Rate Contract were in excess, by upto 36%, as compared to rates received in BHEL Haridwar tender.

13.10. The Informant has stated that quoting of products at inflated prices by OP-1 was not possible without meeting of minds between OP-1 and OP-2.

14. Thus, in light of the above stated facts and allegations, the Informant has alleged that OP-1 and OP-2 indulged in bid rigging/collusive bidding to the detriment of the public exchequer and thereby, contravened the provisions of Section 3(3)(d) read with Section 3(1) of the Act.



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15. Accordingly, the Informant has prayed that the Commission institute an inquiry into the matter and direct the OPs to cease and desist from such anti-competitive practices.
16. The Commission considered the matter on 09.10.2018 and directed to call upon the Informant and BHEL (procurer) for a preliminary conference on 31.10.2018.
17. On 31.10.2018, the Learned Counsel for the Informant and concerned officials from BHEL appeared in the matter.
18. During the preliminary conference, the Informant reiterated its allegations as stated in the foregoing paragraphs.
19. The concerned officials, on behalf of BHEL (the procurer), made certain oral submissions and as per the Commission's directions, submitted its written submissions on 05.11.2018, which are summarised as under:
 - 19.1. BHEL had been procuring IT hardware items on five years financial lease basis through open tender for its office/Manufacturing units/regions/sites at more than 100 locations across India. For the Impugned Tender also, BHEL followed its internal policy alongwith CVC guidelines/rules throughout the process.
 - 19.2. BHEL has its Cross Functional Team (CFT) which, after soliciting IT hardware requirements from various units *etc*, frames vendor-neutral specification and qualifying criteria as per established rules and procedures for tender enquiry, which includes various costing components like equipment cost, spares, onsite maintenance, services and engineers support, interest on capital, insurance *etc*. for the entire lease period.



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- 19.3. It was submitted that the net cost to BHEL works out to be economical as against outright price/MRP basis on account of ensuing financial advantage in terms of depreciation and taxes *etc.* It was further submitted that the reduced price (after negotiations with L1) was within BHEL's estimate.
- 19.4. A composite list of items and its specifications was finalised by the Technical Committee as per the list of hardware items provided by the Corporate IT. In the Impugned Tender, bidders comprised of OEMs/SIs, which were to quote for various equipment and offer their services including spares, onsite maintenance with support engineer with SLA(Service Level Agreement for uptime and penalty, if any, as per tender clauses and integration of various quoted equipments) for pan-India locations (more than 100 locations) on a consolidated basis.
- 19.5. The successful bidder was required to do and integrate various equipment/components as a whole package to ensure seamless working between various equipments.
- 19.6. As per the details noted above, the Impugned Tender was floated as an open tender and documents were made publicly available on BHEL's website. The pre-bid discussions were held on 12.04.2017 and 13.04.2017, at BHEL Bhopal which were attended by the Informant and more than 25 interested bidders. Based on the discussions, corrigenda were issued.
- 19.7. Only 02 bidders (OPs) submitted their bids for Group A and 04 bidders for Group B. All were found to be technically qualified.
- 19.8. As per the Impugned Tender's terms and conditions, L1 was evaluated on the basis of total cost to BHEL for all the items



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indicated in the enquiry put together as a package from single bidder, who had quoted various OEM products as per the Impugned Tender's specifications. For Group A, after due evaluation and scrutiny of bids received, OP-1 was declared to be L1.

- 19.9. It was submitted that the Informant had quoted for Plotters in the bid submitted by OP-2, which was evaluated as L2 after price bid opening. Till the LOI placement to OP-1 on 23.12.2017, the Informant had not made any representation of any nature and raised queries only after OP-2 lost the bid.
- 19.10. It was further submitted that the equipment of other OEMs (other than HP) like Panasonic, Epson, Lipi, Reprographics Uniline were also quoted by both the bidders.
- 19.11. It was clarified that the GeM site being referred by the Informant is only the outright purchase cost whereas in the Impugned Tender the price quotation included cost of spares, onsite maintenance, service engineers support, interest on capital and insurance for the entire lease period.
- 19.12. It was generally submitted that the piecemeal comparison of the tendered 24 items of Group A for their price reasonability with respect to outright price *vis-à-vis* lease price, was not conclusive owing to various factors as outlined above.
- 19.13. It was submitted that the Informant pressed upon BHEL to issue a separate tender to procure its products independently.
20. The Commission has carefully perused the information and heard the submissions of the Informant and BHEL.



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21. With respect to the primary allegation of the Informant that the participation of only 02 bidders in the Impugned Tender, having connection with HP, could only happen incase there was meeting of minds between OPs, is not *prima facie* convincing, in light of the submissions made by BHEL. The Commission notes that BHEL categorically stated that the Impugned Tender was an open tender and there was no embargo on any SI or OEM to participate and there were pre-bid discussions which were attended by the SIs, OEMs and other representatives from the industry. It was further stated that the Impugned Tender was not only for Group A items – Office Equipments *etc* but also consisted of Group B items. It was averred that in Group A items, 02 SIs (OPs) submitted the bids and for Group B items, 04 bids were submitted. Group A items were meant for installation at more than 100 locations of BHEL whereas Group B items related to Data Centre equipments, which were to be installed at few locations. Moreover, requirement for Group A items, as per the Impugned Tender, comprised of providing maintenance and other services for five-year lease period including seamless integration between various components *etc*. Therefore, it was submitted that number of participation of bidders for Group A items and Group B items ought not raise any suspicion as the modalities for providing services were different and thus, large submission of bids for Group A items in such a scenario would have been far-fetched. The Commission finds substance in the submissions made by BHEL.
22. The Commission notes that the fact that subsequently only 02 bids were submitted for Group A items, by itself, is not adequate to raise any suspicion of cartelisation. The Commission observes that there could be factors like stringent operative requirements, as explained by BHEL, which could have resulted in low participation. It is also noted that 04 bids were submitted for Group B items, which were relatively less rigorous as submitted by BHEL. This has to be appreciated in light



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of the fact that there is no allegation or evidence to suggest that the OPs knew that other SIs/OEMs would not participate nor there was any entry barrier for other SIs/OEMs to participate. Thus, in such facts and circumstances, the Commission views that a low participation may not necessarily be indicative of or be an outcome of any concerted action.

23. Further, the Commission notes that the Informant has alleged that OP-2, submitted a supportive bid in favour of OP-1 as both are connected to HP and have business links. The Commission, however, is of the view 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.
24. The Informant, during the hearing, invited the Commission's attention to certain documents indicating that the officials of one OP was earlier working with another OP and therefore, this suggested there was proximity between OPs. The Commission views this contention of the Informant as not tenable as in an industry like Information Technology (IT), a person employed with one IT firm will move and shift to another IT firm only. This in no way suggests that due to movement of a person from one organisation to another would tantamount to any meeting of mind amongst OPs for the Impugned Tender. According to the Commission, this presumptive inference is not a considerable factor.
25. Further, the Commission is of the view that the allegation of the Informant that OP-1 quoted majority of items of HP, also does not appear to suggest any meeting of minds and appears to be a unilateral action on its part. It is evident that OP-1 and OP-2 are two different



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entities. OP-1 as a separate SI was free to select OEM for each group items and so was OP-2. Infact, the Informant has itself indicated in the Information that OP-2 quoted the items of other OEMs such as Canon Japan, KIP Japan *etc.* This, by itself, shows that they were applying their minds independently and does not show any meeting of minds. As also noted above, BHEL submitted that Group A items involved more functional and operative requirements at more than 100 locations for a period of 05 years, therefore, SI in its discretion, must have chosen to quote HP so that it could honour its commitments during the lease period. It was further submitted by BHEL that OP-1 quoted items of other OEMs like Panasonic *etc.* for the other Group A items. Therefore, the Commission agrees with the submissions of BHEL and it appears to be a case of bidders' choice of quoting products, answering to the requirements as per the concerned Tender's terms and conditions.

26. Further, the allegation of the Informant that the quantum of discount given by OP-1 suggested that the bid submitted by OP-1 (Rs. 143 Crores) was by default very high, cannot be construed that it was not an independent bid, in light of the submissions made by BHEL. It was submitted by BHEL that at the time of preparation of tender, a proper analysis of the market was undertaken to devise an estimate. This estimate was of confidential nature and not disclosed to outside world. It was submitted that OP-1 was declared L1 for Group A items, based on the composite value quoted therein, as per the Impugned Tender's terms and conditions. After declaration of winning bid, BHEL called OP-1 (being L1) for negotiations and during negotiations, it reduced its price to present Rs. 110 Crores. This, as submitted by BHEL, was within its estimate and therefore, proper process as per statutory guidelines was followed by BHEL in the Impugned Tender. The Commission also agrees with the submission given by BHEL that the piecemeal comparison of the tendered 24 items of Group A for their



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price reasonability with respect to outright price, GeM price *etc. vis-à-vis* lease price is not appropriate, owing to various factors governing them.

27. After appreciation of the allegations of the Informant and submissions made by BHEL, the Commission is of the view that the Informant has failed to provide or suggest any evidence to show that there was any meeting of minds between the OPs before/at the time of submission of bids. Moreover, the presumptive inference and analysis provided by the Informant was effectively countered by BHEL. Therefore, the Commission observes that a *prima facie* case under the Act is not made out against the OPs as the case of the Informant lacks reasonable allegations based on any concrete evidence in the matter.
28. In view of the foregoing, the Commission in the present case finds no case of contravention of the provisions of Sections 3(3)(d) read with Section 3(1) of the Act against the OPs.
29. The matter is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
30. Secretary is directed to communicate the order to the Informant, accordingly.

Sd/-
(Sudhir Mital)
Chairperson

Sd/-
(Augustine Peter)
Member

Sd/-
(U.C. Nahta)
Member

New Delhi
Date: 09/11/2018