



**COMPETITION COMMISSION OF INDIA**

**Case No. 41 of 2020**

**In Re:**

**Mr. Deepak Sultania,  
Director, Durga Bearings (Mumbai) Pvt. Ltd.  
401, Prabhu Vijay,  
Plot B-17, Kapol CHS, VM Road,  
Diagonally opposite Jalsa, Juhu,  
Mumbai – 400049.**

**Informant**

**And**

**Security Printing and Minting Corporation of India,  
Through its Chairman and M.D.,  
16<sup>th</sup> floor, Jawahar Vyapar Bhavan, Janpath,  
New Delhi – 110001.**

**Opposite Party No. 1**

**Security Paper Mill,  
Through its General Manager/ Unit Head,  
Hoshangabad,  
Madhya Pradesh – 461005.**

**Opposite Party No. 2**

**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 is filed by Mr. Deepak Sultania (hereinafter, the “**Informant**”) under Section 19(1) (a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Security Printing and Minting Corporation of India (hereinafter “**OP-1/ SPMCIL**”) and



Security Paper Mill (hereinafter, “**OP-2/ SPM**”) (OP-1 and OP-2 are hereinafter collectively referred to as ‘**OPs**’) alleging contravention of provisions of Section 4 of the Act.

2. As per the information, the Informant is the Director of Durga Bearings (Mumbai) Private Limited (hereinafter, “**DBMPL**”) which was established in 1977. DBMPL is stated to be engaged in supply and distribution of bearings and is averred to be one of the largest suppliers of ball bearings in India. The Informant claims that DBMPL is an authorised distributor of many multinational manufacturers of industrial equipment with M/s Schaeffler India being one of them. The Informant has filed the information in his individual capacity and DBMPL is not arrayed as an Informant.
3. It is stated in the information that OP-1 is a wholly owned Schedule ‘A’ Miniratna Category-I company of the Government of India, incorporated in 2006 which has experience in Security Printing and Minting and the Ministry of Finance exercises administrative control over it through the Board of Directors. OP-1 is stated to be engaged in the manufacture/ production of Currency and Bank Notes, Security Paper, Non-Judicial Stamp Papers, Postal Stamps & Stationery, Travel Documents *viz.* Passport and Visa, Security certificates, Cheques, Bonds, Warrant, Special Certificates with security features, Security Inks, Circulation & Commemorative Coins, Medallions, Refining of Gold & Silver and Assay of Precious Metals. It is further stated that apart from the regular manufacturing of national use products such as currency, OP-1 also hosts an eclectic clientele of various temples throughout India and provides refining services for precious metals donated to these temples. It is also averred that OP-1 is engaged in the production of mementos/ coins for such places of spiritual value and has been serving many distinguished organisations such as Reserve Bank of India, Department of Post and Ministry of External Affairs.
4. As per the Informant, OP-2 was established in 1968 as a non-commercial undertaking under the administrative control of the Ministry of Finance which manufactures high quality bank notes and other security papers. It is stated that OP-2 became OP-1’s unit



during 2006 (corporatization). OP-2 is averred to be the only paper mill in India which produces high quality Bank Notes, Security Papers and Non-Judicial stamps.

5. The Informant has stated that OP-2 issued a tender bearing no. 6000013238/ME01/2019-20/930 dated 19.08.2019 (“**Tender for Bearings**”) for purchase of various types of bearings and accessories in a two-bid process with 20.09.2019 being the last date for submission of bids. The Tender for Bearings required the bidders/ tenderers to be either the Original Equipment Manufacturers (“**OEM**”) *i.e.* SKF, Schaeffler, FAG and Timken or Authorised Industrial Distributors of such OEM. The Tender for Bearings in Section XIV thereof also required the bidder/tenderer (distributor) to provide an industrial distributor certificate in the prescribed form known as “Manufacturer’s Authorisation Form” (“**MAF**”) issued by OEM to its authorised distributor for relevant period. The MAF mandated an undertaking from the OEM that it had authorised only one distributor for participating in the Tender Document. The specific portion reads as under:

*“We further confirm that no supplier or firm or individual other than Messrs \_\_\_\_\_ (name and address of the above agent) is authorized to submit a tender, process the same further and enter into a contract with you against your requirement as contained in the above referred tender enquiry documents for the above goods manufactured by us.”*

6. The Informant has stated that DBMPL submitted its bid on 11.09.2019 which included all the requisites of the Tender for Bearings, including the Manufacturer Authorisation Certificate (“**MAC**”) of M/s Schaeffler India Ltd. and NSK Ltd., which were valid until 31.12.2019.
7. The Informant has claimed that though DBMPL had submitted the MAC along with its bid yet OP-2 *vide* email dated 03.01.2020 (after three months of bid submission) asked for a validated MAC and also the email ID of the OEM - M/s Schaeffler India Ltd. Furthermore, DBMPL was asked by OP-2 to give its consent to extend the quotation



till 31.03.2020. DBMPL *vide* email dated 16.01.2020 submitted the already filed MAC and provided the email ID of M/s Schaeffler India Ltd. while accepting extension of validity of its quotation submitted to OP-2 till 31.03.2020.

8. Thereafter, DBMPL, *vide* email dated 17.06.2020, was communicated about its disqualification on technical grounds without citing any specific reason for being rejected. Aggrieved by this, DBMPL sent a letter dated 22.07.2020 to OP-2 seeking reasons for its disqualification and wrote a letter dated 25.07.2020 to OP-1 informing about its illegal disqualification by OP-2.
9. The Informant has averred that after continuous follow ups with OP-2 seeking reasons for its disqualification, DBMPL was made aware by OP-2 *vide* email dated 04.08.2020 that the OEM hadn't authorised DBMPL to take part in the Tender for Bearings. However, as per the Informant, OP-2 did not provide any written evidence/ document of the OEM *i.e.* M/s Schaeffler India Ltd.
10. The Informant delineated the relevant market in the instant case to be the "*market for procurement of bearings in the Territory of India*". The Informant has further stated that as per the decisional practice of the Commission, acquisition of goods or services through a competitive procurement process is an economic activity and thus OPs squarely fall within the definition of enterprise.
11. For the purpose of assessing dominance, the Informant has claimed in the information that OPs are the only companies which produce bank-notes and coins in India, having a statutory monopoly. The Informant has alleged that the OPs abused their dominant position by inserting the unfair/ discriminatory condition (Section XIV) in the Tender for Bearings as it passed the discretion to bid in the tender or technical eligibility of the distributor(s) on the OEM. As per the Informant, this alleged abusive clause limited the bidders to four as the bidder/ tenderer had to be either OEM (SKF/ Schaeffler/ FAG or Timken) or any of its Authorised Industrial Distributor, failing the test of reasonableness and transparency.



12. The Informant has prayed to the Commission to take up this matter as the impugned condition is unfair, anti-competitive and denies market access to the entities such as DBMPL and is in violation of Section 4(2)(a)(i) and Section 4(2)(c) of the Act. The Informant has *inter alia* requested to initiate an inquiry against the OPs for abuse of dominant position under Section 4 of the Act and direct them to amend the restrictive and abusive tender conditions.
13. Apart from the above, the Informant has stated that DBMPL filed a writ petition before the Hon'ble High Court of Madhya Pradesh challenging arbitrary conditions in the tender floated by OP-2 and its illegal disqualification. The said writ was disposed of *vide* order dated 03.09.2020 with a direction to OP-2 to decide DBMPL's pending representation after hearing it within ten days. Pursuant to this order, OP-2 heard DBMPL on 21.09.2020 *via* video conferencing. The Informant also filed the speaking order of OP-2 dated 05.10.2020 subsequently with the Commission *vide* email dated 16.10.2020.
14. The Commission has carefully perused the information including additional information and documents filed by the Informant and the relevant information available in the public domain. The Commission notes that the gravamen of allegations of the Informant appears to be that the OPs allegedly abused their dominant position by inserting the unfair/ discriminatory condition in the Tender for Bearings which is allegedly anti-competitive as it passed the discretion to participate in the tender or technical eligibility of the distributor(s) on the OEM, limiting the bidders to four, as the bidders/ tenderers had either to be the OEM *viz.* SKF, Schaeffer, FAG and Timken only or their authorized Industrial Distributors.
15. Before examining the abuse of dominance by the OPs, the Commission finds it imperative to delineate the relevant market in terms of Section 2(r) of the Act, which in turns requires delineation of Relevant Product Market and Relevant Geographic Market in terms of Section 2(t) and 2(s) of the Act, respectively.
16. The Informant delineated the relevant market in the instant case to be the "*market for procurement of bearings in the Territory of India*". The Informant has relied upon



previously decided cases of the Commission involving allegations of abuse of buyer's power. These include Case No. 70 of 2014 titled Shri Rajat Verma v. Public Works (B&R) Department Government of Haryana & others, Case No. 16 of 2013 titled Adcept Technologies Pvt. Ltd. v. Bharat Coking Coal Limited and Case No. 80 of 2015 titled V.E. Commercial Vehicles Limited v. UPSRTC wherein, the Commission delineated the relevant market by applying the concept of 'demand side substitutability' inversely *i.e.* by assessing the availability of substitutes for suppliers and their ability to switch to alternative sales opportunities both in terms of products as well as geographies.

17. Before assessing the conduct of the OPs, their dominance needs to be established. Taking forward the market delineated by the Informant, the Commission notes that the Informant has not provided in the information any details or description regarding the type and nature of bearing being tendered by the OPs. However, the Commission notes that the impugned tender invited by OP-2 specifies three hundred and forty types of bearings and accessories sought to be procured by it. Given the fact that there are numerous types of bearing being procured by the OPs, and that as per information DBMPL itself has claimed that it has been catering to various customers, public sector undertakings to whom it has been supplying the bearings for past many years, the Commission finds it difficult to hold that the OPs are the only buyer or procurer of such bearings and dominant in the relevant market delineated by the Informant. From the demand side perspective, the Commission further notes that bearings have an extensive use in automobile sector, agriculture, energy, heavy industries and manufacturing plants *etc.* In the given facts and circumstances, the Commission notes that it is certainly not the Informant's case that the bearings being supplied to OP-2 are unique in the sense that there is no other procurer/buyer for these. The Commission, thus, is of the opinion that OPs cannot be said to be a monopsonist or a buyer with significant market power in view of the fact that bearings are of wide variety and usage across different industries and notes that there are numerous buyers and sellers of this product in the market and some of the bearings are even imported into India.
18. The Commission further notes that in a similar matter *viz.* Case No. 72/2016 titled M/s Shah Associates v. Timken India Limited, in the absence of any submission by the



Informant on the relevant market, the Commission had observed that “*Bearings, also known as anti-friction components are used in a variety of applications in automobiles, pumps, gearboxes, heavy earth-moving equipment and other industrial sectors. All the aforementioned sectors, other than automotive sector, can be broadly categorized as industrial.*” and had accordingly delineated the relevant market as *market for industrial bearings in India.*

19. As per publicly available information<sup>1</sup>, in India, industrial segment constitutes around 52% of domestic demand for bearings which is largely driven by its use in general machines/ motors, electrical equipment (fans/appliances) as well as heavy industries. Automotive is the single highest revenue generating application segment in this market. As per the latest data available with CMIE Prowess<sup>2</sup> regarding sale of companies producing ‘*bears, gears and driving elements*’ NIC 28140, there are more than 70 companies present in the market with NRB Bearings Ltd. (‘**NRB**’), ABC Bearings Ltd (‘**ABC**’), SKF India, Schaeffler India, FAG Bearings, National Engineering Industries Ltd. (‘**NEI**’) and Timken India being the prominent players manufacturing/ supplying bearings in India. The Commission finds that as per research<sup>3</sup> by Information and Credit Rating Agency Limited (‘**ICRA Limited**’) Indian market is dominated by international as well as indigenous players like NEI, NRB, ABC and others; in terms of demand dynamics, OEMs constitute 60% of demand, whereas, the rest is driven by aftermarket and exports. As per Centre for Monitoring Indian Economy (‘**CMIE**’) database, ₹26,864 million worth of bearings were exported and ₹62,017 million were imported into India in FY 2019-20<sup>4</sup>. The Commission notes that even if the relevant product market needs to be delineated narrowly to include only industrial bearings, the assessment of state of competition will not undergo any change.
20. The Commission also takes on record the speaking order dated 05.10.2020 passed by OP-2 that the impugned Section XIV of the Tender for Bearings Document is part of

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<sup>1</sup> <https://auto.economictimes.indiatimes.com/news/auto-components/changing-market-dynamics-landscapeof-automotive-bearing-industry-in-india/64598105> as accessed on 02.11.2020.

<sup>2</sup> PROWESSIQ, 2020, as accessed on 26.10.2020.

<sup>3</sup> Same as foot note 1.

<sup>4</sup> <https://industryoutlook.cmie.com/kommon/bin/sr.php?kall=wshreport&repnum=160232&frequency=A> as accessed on 26.10.2020.



its Procurement Manual followed in all of its procurement with no deviation of any sort with respect to procurement of either goods or services by OP-2 and it was accepted by DBMPL while accepting all the terms and conditions with technical specifications of the Tender for Bearings. The Commission also notes that the basis of rejection of the bid of DBMPL was its non-authorization by the specified OEM *i.e.* M/s Schaeffler. The Commission has perused a copy of an email dated 17.01.2020 sent by M/s Schaeffler to OP-2 annexed with the Order dated 05.10.2020 passed by OP-2. The Commission notes that through the said email, M/s Schaeffler provided a copy of letter dated 07.09.2019 addressed to OP-2 wherein it had authorised another distributor *viz.* M/s Quality Tools and Bearing Center, Bhopal to quote for Schaeffler products in the Tender for Bearings, and confirmed that the supplies to be made would have manufacturer's standard warranty. Thus, DBMPL's bid was technically disqualified by OP-2 as it did not have the requisite authorization from M/s Schaeffler as was required to be submitted under the terms and conditions of the Tender for Bearings.

21. The Commission has observed *supra* that OPs cannot be said to be dominant in the relevant market so delineated by the Informant. Nevertheless, the Commission having gone through the information and documents on record notes that the allegations of abuse are also not found. Normally a procurer has the choice to procure goods and services as per its need and requirements and ought not to be guided by the provider of such goods. The Commission observes that even if it is assumed that the OPs are dominant in the relevant market, it needs to be seen whether the conduct of OPs is a consequence of abuse of a dominant position. The case at hand pertains to the procurement of bearings and related accessories by an enterprise which happens to be a public sector undertaking. Since, products are being procured for printing machines run by the OPs, it is for the procurer of the product *i.e.* OPs to decide which product of which manufacturer meets its need. The Commission notes that calling out only certain brands (either by themselves or only through one of its authorized distributor) to bid and supply, prejudicially affects both inter-brand and intra brand competition. However, the Commission further notes that in a given case the procurer/consumer, based on its requirement and other commercial considerations, has the right to specify the kind of product, quantity thereof, timelines, mode and the manner in which it requires the same; and the same cannot be dictated by the bidders/suppliers.





22. The Commission, in the present case, has no reason to interfere with the choice of the OPs. The Commission, has earlier also, acknowledged the consumers' freedom to choose in Case no. 03/2010 titled Pandrol Rahee v. DMRC that:

*“A consumer must be allowed to exercise its consumer choice and freely select between competing products or services. This right of consumer’s choice must be sacrosanct in a market economy because it is expected that a consumer would decide what is best for it and free exercise of consumer choice would maximize the utility of the product or service for the consumer. For an individual, that consumer’s choice is based on personal assessment of competing products or services, their relative price or personal preferences. For any other type of consumer, this process of decision making in exercise of consumer’s choice is more structured and reflected in procurement procedures. Such a consumer may use experts or consultants to advise, do its own technical assessment, take advice of others it may trust or even purchase from known and reliable sources. The process of such decision making may result in purchase by nomination or limited tender or open tender. Normally, open tenders without a brand bias are desirable as it may give the best value for money. However, each of the purchase process is acceptable and valid as a process of decision making. The consumer is the best judge. In case of public entities, the entity is a representative consumer on behalf of the public. There are administrative mechanisms in place for carrying on the due process of exercising consumer’s choice on behalf of the public.”*

23. The Commission observes that the OPs do not appear to be the only buyers in the market for the relevant product and the market in some sense seems to be fragmented. Moreover, bearings are widely used in many industries including automobile, agriculture, earth moving equipment, energy and power industries, manufacturing plants units and not by the OPs alone.



24. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case, and the information filed is directed to be closed forthwith against the OPs under Section 26(2) of the Act.
25. 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: 12/11/2020**