



**COMPETITION COMMISSION OF INDIA**  
**Case No. 43 of 2013**

**In Re:**

**M/s Shivam Enterprises**

**Informant**

**And**

- 1. Kiratpur Sahib Truck Operators  
Co-operative Transport Society Limited** **Opposite Party No. 1**
- 2. Members of Kiratpur Sahib Truck Operators  
Co-operative Transport Society Limited** **Opposite Party No. 2**

**CORAM**

**Mr. Ashok Chawla**  
**Chairperson**

**Mr. S. L. Bunker**  
**Member**

**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

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

**Appearances:** Ms. Sonam Mathur and Ms. Kabyashree Chaharia, Advocates  
for the Informant.



Shri Dharam Vir Sharma, Senior Advocate and Ms. Nikita Sharma, Advocate for the Opposite Party No.1 and its office bearers.

**Order under Section 27 of the Competition Act, 2002**

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by M/s Shivam Enterprises ('Informant') against Kiratpur Sahib Truck Operators Co-operative Transport Society Limited ('OP 1') and its members ('OP 2') alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.

**Facts**

2. Facts, as stated in the information, may be briefly noticed.
3. The Informant is a partnership firm engaged in the business of providing service of freight transport by trucks. OP 1 is a co-operative society registered under the Punjab Co-operative Societies Act, 1961. OP 2 are truck owners who are members of OP 1 and provide the services of freight transport by trucks to various industrial units located within the area of Kiratpur in Punjab.
4. The Informant alleged that the OP 1 allows only the trucks owned by its members to engage in freight transport of goods from Kiratpur region. The Informant has submitted that it has obtained an order for providing freight transport services to M/s Ambuja Cements Ltd. to transport cement from their warehouse in Kiratpur region for distribution in the State of Punjab. The said order was stated to be awarded on the basis of quoting considerably lower rates as compared to the rates fixed by OP 1. However, the members of OP 1 have been forcibly obstructing the Informant on various occasions in executing its contract of transportation. The



Informant also alleged that a member of OP 1 is not allowed to negotiate rates with any customer and is forced to abide by the rates decided by OP 1.

5. The Informant avers that OP 1 receives orders from customers either over telephone or orally. The transportation orders are then assigned to its members on first-come-first-serve basis. The rates for transport services are quoted by OP 1 and the price lists for availing such services are circulated by OP 1 to all industrial units located in nearby areas. As per the Informant, the members of OP 1 *i.e.* the truck owners do not communicate directly with the individual customers who avail the freight transportation services.
6. The Informant further states that the freight rates fixed by OP 1 and its members are listed according to distance for which a consignment has to be transported. The rates quoted are usually inflexible and cannot be negotiated. Another important aspect of the freight rates fixed by OP 1 is imposition of minimum distance condition whereby fixed charge is payable till 80 km which acts as a fixed base charge, irrespective of the distance that is actually required for goods to be transported.
7. According to the Informant, non-members of OP 1 are prohibited from operating within the area covering fifty (50) villages which falls within the territory of OP 1. The same practice is followed by some other transport associations/ unions. According to a newspaper report dated 31.12.2012, the President of OP 1 issued a warning that no new truck operator (s) who is not a member of OP 1 will be allowed to provide freight transportation services in the region and all transportation services will be provided only by the members of OP 1.
8. As per the Informant, there are two relevant product markets in the present



case, namely the market for freight transport by trucks in which the members of OP 1 *i.e.* OP 2 are present and the ancillary related market for front-end freight forwarding services in which OP 1 is present. The geographic market in this case may be defined as those areas in and around Kiratpur region where only OP 1 provides the service of freight transport by trucks.

9. The Informant has also alleged that OP 1 is an enterprise under section 2(h) of the Act as it allocates the work amongst its own members who are not directly dealing with the customers. Further, as per the Informant, OP 1 is in a position of strength and can adversely affect the competitors of OP 2. As freight transporting firms are dependent upon the services of OP 1, it is able to reinforce its position of strength and impose unfair prices in the sale of freight services which amounts to violation of section 4(2) (a) (ii) of the Act. The Informant further alleged that OP 1 does not allow any competing enterprise to operate within the region, resulting in denial of market access which amounts to violation of section 4(2)(c) of the Act.
10. Based on the above averments and allegations, the Informant has filed the instant information alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.

#### **Directions to the DG**

11. The Commission after considering the entire material available on record *vide* its order dated 30.07.2013 passed under section 26(1) of the Act, directed the Director General (DG) to cause an investigation to be made into the matter and to submit an investigation report. The DG, after receiving the directions from the Commission, investigated the matter and submitted the investigation report on 19.08.2014.



### **Investigation by the DG**

12. The DG examined the issues relating to contravention of the provisions of sections 3 and 4 of the Act.
13. To investigate the alleged abusive conduct of OP 1 under the provisions of section 4 of the Act, the DG firstly noted OP 1 as an 'enterprise' within the meaning of section 2(h) of the Act and thereafter proceeded to delineate the relevant market. The relevant market in the present case was delineated as 'provision of services of goods transportation by trucks in and around Kiratpur area in Punjab'. In this relevant market, the DG; based upon the analysis of various factors such as market share, size & resources of the enterprise as well as of the competitors and dependence of consumers, opined that OP 1 was in a dominant position in the said relevant market.
14. On the issue of abuse, it was concluded by the DG that OP 1 by adopting illegal means imposed unfair and discriminatory prices and also caused various obstructions and denied access to other truck operators from conducting business in the relevant market and hence limited and restricted the freight transport services in the relevant market in contravention of the provisions of section 4(2)(a)(ii) and 4(2)(b)(i) of the Act. Further, it was concluded that these practices and conduct of OP 1 of misusing its dominant position has resulted into denial of market access to other competitors in the relevant market which is a violation of the provisions of section 4(2)(c) of the Act.
15. So far as the contravention of the provisions of section 3 of the Act is concerned, it was noted by the DG that OP 2, who are truck owners, through the platform of OP 1 are limiting and controlling the provision of services in the market by ensuring that there are no new entrants in the relevant market who can compete with them. OP 2 were found to be acting



in violation of section 3(3)(b) of the Act as the members, which are competing enterprises, have agreed with each other to limit supply of the service of freight transport by trucks in Kiratpur region by prohibiting any independent transporter from operating in the market. Any person wishing to operate on its own cannot successfully undertake business due to the resistance met from the members of OP 1.

16. Furthermore, it was concluded by the DG that OP 2 are also in violation of the provisions of section 3(3)(a) of the Act as the members who are competing enterprises have agreed with each other to fix prices for supply of services of freight transport by trucks in Kiratpur region under the garb of a co-operative society *i.e.* OP 1.
17. Accordingly, it was concluded by the DG that the conduct of OP 2 through OP 1 is anti-competitive and violates the provisions of section 3(3)(a) and section 3(3)(b) read with section 3(1) of the Act.
18. The DG also identified the office bearers of OP 1 who were the members of the Managing Committee of OP 1 during the relevant period for the purposes of fixing responsibility under section 48 of the Act.

#### **Consideration of the DG report by the Commission**

19. The Commission, in its ordinary meeting held on 28.08.2014, considered the investigation report submitted by the DG and decided to forward copies thereof to the Informant, OP 1 and the persons identified by the DG in terms of the provisions contained in section 48 of the Act as office bearers/ members of the Managing Committee of OP 1, who at the time of contravention were responsible for conduct of the business of OP 1 for filing their respective replies/ objections thereto. The Commission also directed OP 1 to furnish its Balance Sheet and Profit & Loss Account/ Turnover for the financial years 2010-11, 2011-12 and 2012-13. Besides,



the Commission directed the identified persons for the purposes of section 48 of the Act to furnish their Income Tax Returns in respect of the said financial years. The Commission also directed the parties to appear for oral hearing, if so desired. Subsequently, arguments of the parties were heard on 20.11.2014.

**Replies/ Objections/ Submissions of the parties**

20. On being noticed, the parties filed their respective replies/ objections/ submissions to the report of the DG besides making oral submissions.

**Replies/ objections/ submissions of the opposite parties**

21. A common reply was filed on behalf of OP 1 and its office- bearers/ ex- members of the Managing Committee, raising various pleas. Preliminary submissions were made by arguing that village Bara Pind, Tehsil and District Ropar, where the warehouse of M/s Ambuja Cements Ltd. is located does not fall in the area of operation of the OP 1 and the same rather falls in the area of operation of Beli Cooperative Truck Operators Goods Carrier Transport Society Ltd., Beli, Tehsil and District Ropar ('Beli Society') after its registration on 03.10.2008. While denying the violations, it was submitted that the DG has relied upon the statement of the Informant only and has not taken into consideration the statements and other documents on record of the society and its committee members.
22. It was argued that a perusal of the complete statements recorded by the DG would reveal that OP 1 and its members have specifically denied any obstruction having been caused to the Informant. It was the specific case of OP 1 that the Informant is overloading the goods of two trucks into one truck in order to make its rates economically viable, otherwise the rates on which it has been carrying on the work of M/s Ambuja Cement are not viable. This aspect has been totally overlooked in the investigation report while holding OP 1 liable for violating the provisions of the Act.



23. It was alleged that the DG did not summon the goods receipts from the Informant. It was further submitted that OP 1 had never given its bid or filed its tenders or rates with M/s Ambuja Cements Ltd., Nalagarh. Since OP 1 did not compete with the Informant, there was no question of obstructing it from carrying on its business. At the same time the Informant has never submitted any tender (s) for transportation of clinkers with M/s J.P. Himachal Cement Plant. Therefore, there was no competition between the Informant and OP 1. It has also come in evidence that the Informant is carrying on its business since 1995 with M/s Ambuja Cements while OP 1 has been registered in the year 2000 only. It was contended that if it had any intention to cause obstruction to transport services provided by the Informant, then OP 1 would not have allowed them to carry on the business after its incorporation in the year 2000. It was submitted that moment the Beli Society was incorporated on 03.10.2008, it started fighting with OP 1 immediately and got an illegal order on 16.12.2008 from the Deputy Registrar, Co-operative Societies, Ropar. It is also a fact that the Bara Pind, where M/s Ambuja Cement has opened a warehouse, in fact, falls in the circle of Assistant Registrar, Co-operative Societies, Ropar and not in the circle of Assistant Registrar, Co-operative Societies, Kiratpur Sahib. Therefore, Beli Society had been raising the dispute against OP 1. So is the case with village Bharatgarh. In fact, it was alleged that the Informant is fighting a proxy battle on behalf of Beli Society with their active support. It has been submitted that the Informant has alleged that on 12.06.2013 at about 5.30 A.M., the members of the Managing Committee of OP 1 had gone to Bara Pind to prevent the Informant from loading the cement alongwith Shri Inder Singh, one of the Committee Members. It was submitted that admittedly Shri Inder Singh is suffering from cancer and is unable to travel and that is why he has not been able to give any statement even before the DG and a request was sent to that effect which is on record at page 421 of Volume II of the Report. The Police has denied that such incidence had taken place on 12.06.2013.





In fact, it was argued that there was no question of using any dominant position and at the most it was a question of law and order.

24. Referring to the proceedings before the Hon'ble Punjab and Haryana High Court, it was also pointed out that the Hon'ble Court, seeing the conduct of the Informant and the stand taken by the State as well as the President of OP 1, did not grant any protection to it as was granted in other Civil Writ Petition No. 18143 of 2006 titled as *Manjinder Singh v. State of Punjab & Ors.*
25. It was stated that when the writ petition was going to be dismissed on 28.10.2013, then the Informant made a statement before the Hon'ble High Court that he would deposit Rs. 2 lakhs to bear the expenses for providing adequate security whenever trucks are loaded.
26. It was further submitted that while sending the information, *vide* letter dated 12.07.2014 (pp. 418-420 of Volume II), OP 1 has specifically mentioned that there is a ACC Cement Plant, which is located at Barmana in district Bilaspur (HP). Cement from ACC Cement Plant, Barmana is transported by Bilaspur District Truck Operators Cooperative Society, which has opened an office in Kiratpur Sahib. Since OP 1 did not object to the operation of Bilaspur Truck Operators Cooperative Society, which is operating from Kiratpur Sahib itself, there was no question of stopping the Informant from operating from Bara Pind, Tehsil and District Ropar, which in fact does not fall within the area of operation of OP 1.
27. On merits, it was denied that OP 1 has violated the provisions of the Act. It was argued that the DG has erroneously concluded that OP 1 enters into contracts on behalf of its members and fixes the rates. It was pointed out that OP 1 is a body corporate within the meaning of section 30 of the Punjab Co-operative Societies Act, 1961 and being a body corporate



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enters into contracts on its behalf and settles the rates and not on behalf of its members. Relying upon the decision of the Hon'ble Supreme Court of India in *Daman Singh v. State of Punjab*, 1995 PLJ 289, it was submitted that once a person becomes a member of co-operative society he loses his individuality *qua* the co-operative society and he has no independent rights except those given to him by the statutes and the bye-laws. Referring to the said decision, it was further contended that as OP 2 have no independent existence, it cannot be held that OP 2 are present in the product market of providing service of freight transport by trucks. Further, the conclusion of the DG that OP 1 and the Informant are the only players present in this product market were vehemently contested. It was pointed out that there are four societies/ unions which are operating in Tehsil Anandpur Sahib. Besides, it was pointed out that four more societies are registered with Assistant-Registrar, Co-operative Societies, Ropar.

28. It was also stated that the ACC Plant is established in village Barnana, District Bilaspur (HP) with a warehouse at Kiratpur Sahib and its transportation work is being done by Bilaspur District Trucks Co-operative Transport Society. Besides, M/s Prakash Co-operation with a branch office at Kiratpur Sahib is functioning from here and the DG has made no reference to this fact while holding that OP 1, OP 2 and the Informant are the only truck operators present in the region.
29. It was pointed out that village Barapind is in Tehsil Ropar whereas the Kirtapur Sahib is in Tehsil Anandpur Sahib. The cement which is unloaded in the warehouse at Barapind by M/s Ambuja Cement Ltd. does not pass through Kiratpur Sahib where the registered office of OP 1 is located.
30. The finding of the DG that OP 1 has created physical barriers to stop entry of other suppliers was also denied and it was further submitted that the



DG erroneously concluded that only those truck operators who belong to fifty villages within Kiratpur region are allowed to operate and conduct the business.

31. Assailing the findings of the DG that threats were reported in various newspapers, it was argued that the Informant has procured the same through extraneous considerations and a detailed rebuttal of such reports was made by the Opposite Parties in their reply.
32. It was further submitted that the DG has wrongly concluded that customers do not have any other option as OP 1 and OP 2 do not allow entry of other truck operators in the region. Delineation of the relevant market by the DG was also challenged. Further, it was argued that the Opposite Parties do not enjoy any strength in the relevant market which enables it to operate independently of competitive forces prevailing in the relevant market or has in any way affected the competitors or consumers or the relevant market in its favour.
33. The findings of the DG on abuse of dominant position were also challenged. It was pointed out that the DG relied upon the statement of Shri Raj Kumar Bhalla, Proprietor of M/s Guru Nanak Logistics to the effect that he had a contract with M/s JP Cement Industries in January 2010. Reliance was placed upon the statement of Shri Joginder Seru, President, JP Himachal Cement Plant to argue that no contract was executed with M/s Guru Nanak Logistics.
34. Adverting to the finding of the DG that Shri Raj Kumar Bhalla, who attempted to operate within the Kiratpur region, was driven out of business by OP 1 as his office/ compound at Bharatgarh was destroyed by the members of OP 1 society, it was submitted that the name of Shri Jarnail Singh, who was not the President of OP 1 in January 2010 as he was



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elected on 16.05.2012 only, was wrongly mentioned. With respect to the name of Shri Shamsher Singh Shera in demolishing the wall, it was pointed out that he is the President of Beli Truck Operators Society, in whose area the village Bharatgarh, Tehsil Ropar fell. It was, thus, pointed out that OP 1 has no concern with the said village. Moreover, it was stated that Shri Raj Kumar Bhalla neither placed on record any contract nor any complaint or any copy of the case, which is alleged to have been filed by him. He has reasons to depose against the OP 1 as it was getting some work executed from him which was stopped with effect from 18.07.2010.

35. It was alleged that in the report of the DG, a twist has been given to the contract with M/s Navratan Buildwell Pvt. Ltd. while holding OP 1 guilty of violation of the provisions of section 4(2)(b) of the Act without referring to the statement of Shri Joginder Seru, President, JP Himachal Cement Plant or correctly interpreting the statement of Shri Mukul Thapliyal at pp. 335-336 of Vol. I. It was argued that Shri Thapliyal has specifically stated that M/s Navratan Buildwell Company was not having any truck though it made arrangements for about 200 trucks from various transporters. Objection was raised that Shri Thapliyal did not name transporters from whom he arranged 200 trucks. It was alleged that M/s Navratan Buildwell Company was a one man company and Shri Thapliyal was having one room office with one computer in Delhi. As such, he could not handle the contract which resulted into cancellation of the contract by M/s JP on 27.03.2010. Shri Joginder Seru, President, JP Himachal Cement Plant (p. 318 Vol. I answer to Q. 5) also stated that M/s Navratan Buildwell Pvt. Ltd. which was awarded the contract on 29.01.2010 by M/s JP did not own any truck. Therefore, he was unable to execute the contract, because of which his contract was cancelled on 27.03.2010.
36. It was further submitted that the daily lifting of clinkers from Dehni Dump was 2500-3000 tons per day. For transporting 3000 tons clinker in a day,



the transporter required 34 trucks of 6 tyres, 20 trucks of 10 tyres and 15 trucks of 12 tyres. As has been admitted by M/s Navratan Buidwell Pvt. Ltd., it could arrange only 10 trucks. Moreover the rates of Rs.1.50 per MT/ KM were not found to be economical by M/s Navratan Buidwell Pvt. Ltd. Therefore, it did not execute the contract and approached OP 1 and offered them his services of transportation by arranging 10 trucks. Accordingly, M/s Navratan Buidwell worked with the 10 trucks arranged by his company from 23.04.2010 to 18.07.2010 under the name of M/s Navratan Buidwell Pvt. Ltd. When OP 1 stopped taking work from him, he became inimical and made statements at the behest of the Informant and falsely claimed that OP 1 was to pay him Rs. 6 lakhs. If any amount would have been due from OP 1, then it would have been sued for recovery.

37. On the finding of the DG on contravention of the provisions of section 3 of the Act, it was denied that OP 1 has formed a cartel by not allowing its members to operate in the areas. It was argued that the complaint regarding formation of cartel could have been made by M/s Jaypee Cement and they never made any such complaint. It was also argued that cartel cannot be formed with the members of OP 1. Cartels can be formed by unions, and not by societies.
38. Lastly, the Opposite Parties have stated that they have fully co-operated with the inquiry and in the event of a finding of contravention, the provisions of section 46 of the Act may be invoked.

*Replies/ objections/ submissions of the Informant*

39. The Informant, while agreeing with the finding of the DG, filed its written submissions which have been dealt with in the later part of the order while examining the issues on merits.



### Analysis

40. At the outset, it may be pointed out that the Commission, *vide* its order dated 30.07.2013, passed under section 26(1) of the Act found *prima facie* contravention of the provisions of sections 3 and 4 of the Act. In this connection, it is apposite to notice the relevant observations therefrom:

*5. From the facts disclosed by the Informant, it is apparent that OP-1 through its members, prima facie was in contravention of section 3(3)(a) and (b) read with section 3(1) of the Act, and it also seems to have formed a cartel of truck owners to control the area of Kiratpur and neighbouring area of 50 villages and had restricted the entry of new entrants as well as of the trucks owned by the industrial units, who were forced to take services of OPs. It is apparent that the OP1, an association of such enterprises and persons engaged in the business of transporting goods was prima facie indulging in price determination in the relevant market for the industrial units.*

*6. The facts reveal that individual member of OP-1 were not allowed to deal with industries directly and orders for service could be placed only on OP-1. That gave OP-1 the character of an enterprise providing relevant service. Since, OP-1 by use of its trade union tactics seems to have grabbed the entire relevant market, it prima facie was a dominant enterprise and appeared to be a dominant player under explanation (a) to section 4 read with factors mentioned in section 19(4) of the Act. It is apparent from the facts that the OP-1 had been abusing its dominance in the relevant market as it unilaterally fixed freight rates which are non-negotiable. It also barred new players and non-members from entering and conducting business in the relevant market and give competition to OP-1 or its members.*



41. Accordingly, DG investigated the alleged contraventions with respect to the provisions of sections 3 and 4 of the Act.
42. It is pertinent to point out that the information was laid against OP 1 as well as its members who were collectively described as OP 2. The findings of the DG with respect to the contravention of the provisions of section 3 have been returned *qua* OP 1 and OP 2. However, it may be pointed out that OP 1 has over 800 members who were neither investigated nor otherwise examined and as such no finding *qua* members in their individual capacity can be maintained. Hence, the order confines to the examination of alleged contraventions by OP 1 alongwith the culpability of its office bearers in terms of the provisions of section 48 of the Act, if any.
43. With the above caveat, the contravention, if any, by OP 1 of the provisions of sections 3 and 4 of the Act may now be examined.
44. On a careful perusal of the information, the report of the DG and the replies/ objections/ submissions filed by the parties and other materials available on record, the following issues arise for consideration and determination in the matter:
- I. Whether the provisions of section 4 have been contravened by the Opposite Parties?
  - II. Whether the provisions of section 3 have been contravened by the Opposite Parties?

**Determination of issue No. I**

45. Before examining the issue of alleged contravention by OP 1 of the provisions of section 4 of the Act, it is necessary to ascertain as to whether OP 1 is an enterprise, since section 4(1) of the Act forbids abuse of



dominant position by an 'enterprise' or 'group'. In this connection, it may be pointed out that section 2(h) of the Act defines the term 'enterprise' as a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

46. Thus, it can be seen that section 2 (h) of the Act while defining the word 'enterprise' uses the word 'engaged in any activity' which means that only if any person is engaged in production, storage, supply, distribution, acquisition or control of articles or goods, or provision of service *etc.* would fall within the purview of the term 'enterprise'. Section 2(1) of the Act defines a 'person'. The definition is inclusive and it includes an association of persons or body of individuals whether incorporated or not and whether in India or outside India. In order to make definition vast, other juridical persons not falling within the different sub-clauses of section 2(1) have been included by clause 2(1)(ix) of the Act.
47. In view of the afore-stated legal provisions, the issue whether OP 1 is an 'enterprise' or not may be examined. As noted earlier, OP 1 is a society registered under the Punjab Co-operative Societies Act, 1961. As such, it is a 'person' within the meaning of the term as given in section 2(1) of the





Act. For a 'person' to qualify as 'enterprise', it must be engaged in any activity relating to, *inter alia*, the provision of services, of any kind in terms of the provisions contained in section 2(h) of the Act, as discussed above.

48. The Commission notes that normally associations themselves do not engage in any such economic activities and the Commission also has not found such associations to be enterprises. However, the Commission has examined the functional aspect of the associations to reach such conclusions.
49. The DG in light of the conduct of OP 1, held it to be an 'enterprise' as it is found to be engaged in activities relating to provision of services of freight transport by trucks.
50. The Commission agrees with the conclusion of the DG on this ground as from the report of the DG it is apparent that OP 1 takes the contracts in its own name and gets them executed through its members *i.e.* OP 2 according to its own internal procedure/ management and the customer has no choice or control over the various members *i.e.* OP 2 directly. The customer makes payment for the services to OP 1. OP 1 then passes the payment to the concerned member after retaining a commission/ its own administrative charges of Rs. 50 for each trip taken by truck operator/ member *i.e.* each of OP 2. From such functions discharged by OP 1, it is safe to conclude that this role played by OP 1 enables it to exercise control over supply of freight transport services.
51. In view of the above, it can be held that OP 1 is engaged in activities relating to provision of freight transport services and as such is an 'enterprise' within the meaning of the term as given in section 2(h) of the Act.



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52. Having held so, the Commission now proceeds to define the relevant market in the present case. It may be observed that the DG delineated the relevant market in the present case as provision of services of goods transportation by trucks in and around Kiratpur area in Punjab.
53. The Commission agrees with such delineation of the market as it appears from the report of the DG that the factors enumerated in section 19(7) of the Act were considered while defining the relevant product market. It may be noted that within the segment of freight transport by land, there is limited substitutability between rail and road freight movement. While transportation through road is generally considered more suitable for shorter distances, movement on railways network is generally more appropriate for longer distances. It may also be noticed from the report that the demand for freight transport by trucks is inelastic and there are no close economic substitutes and therefore, freight transport by means of trucks form a separate relevant product market given its different physical characteristics.
54. It has also come in evidence that for industrial consumers in Kiratpur region, the reach and penetration of railways is not a viable alternative as it only enables station to station delivery. It is reported that there is a railway station at Bharatgarh which is at about 3.5 kms. from Ambuja warehouse situated at Barapind village. Another railway station situated at Kiratpur is at a distance of about 16 kms. from Ambuja warehouse situated at Barapind village. Thus, rail transport is not substitutable for trucks. Railway stations are located at a distance from consumers' factories/warehouses. Therefore, to transport the goods from these factories/ warehouses to the railway stations, customers had to engage trucks in any case and also incur additional costs and losses in loading and unloading their goods to the point from where they can be loaded onto the train. This process significantly adds to the costs apart from being time



consuming and there exists a possibility of incurring losses and damage to the goods being transported while handling.

55. On the issue of relevant geographic market, it may be noticed that the nature of transport services is inherently local as consumer demand originates from a particular location. Accordingly, the geographic market in this case may be taken as Kiratpur area, which is a town in Punjab and all the adjoining areas *i.e.* the 50 villages for which OP 1 offers its services.
56. Thus, the Commission is in agreement with the delineation of the relevant market by the DG in the present case as “provision of services of goods transportation by trucks in and around Kiratpur area in Punjab”, as described above.
57. On the issue of dominance, it may be observed from the DG report that OP 1 is the only enterprise that operates within the Kiratpur region. It is also reported that there are no other competitors within the relevant geographic market. From the statements recorded by the DG, it appears that OP 1 is the only society which is in operation in the relevant area and it does not allow any other transporter to operate there. Attempts by other truck owners to operate and engage in business of freight transport within the Kiratpur region resulted in failures. As the consumers are completely dependent upon OP 1 for transportation of goods from Kiratpur area, OP 1 is able to operate independently of competitive forces prevailing in the relevant market and affect its competitors/ consumers/ the relevant market in its favour.
58. It may be noted that though the Opposite Parties argued that there are other societies/ unions operating in Tehsil Anandpur Sahib, in absence of any



details about the fleet or trucks operated by such societies, nothing turns upon such submission *in vacuo* particularly when the DG examined the issue in detail by recording the statements of various persons to ascertain the market and its size in the Kiratpur area (including 50 villages). It was noted by the DG that there have been attempts by other truck owners to operate and engage in business of freight transport within the Kiratpur region. The investigation also revealed that Shri Raj Kumar Bhalla in 2010 made an attempt to operate within the region but was driven out of business by the conduct of OP 1. Shri Bhalla during his recording of statement before the DG on oath on 03.04.2014 informed that in the month of January 2010 he got a contract from M/s Jaiprakash Associates Ltd. directly for transportation of cement but during the construction of his office at Bharatgarh, the compound was destroyed by the members of OP 1. The DG, on a detailed analysis of the factors enumerated in section 19(4) of the Act, reached the conclusion that OP 1 is a dominant enterprise in the relevant market for freight transport in the Kiratpur region. The Commission also notes that in the statement made before the DG by Shri Bhupinder Singh, member of OP 1, it was admitted that Beli society has only two trucks and is not having any business contract. This aspect further strengthens the conclusion reached by the DG on the issue of dominance.

59. In view of the above, the Commission concurs with the finding of the DG on the issue of dominance of OP 1 in the relevant market.
60. DG found that OP 1 imposed unfair prices for transportation services in contravention of the provisions of section 4(2)(a)(ii) of the Act. For this, DG relied upon the statements of the Director of a transport company *viz.* Navratan Buildwell Ltd. and President of JP Himachal Cement Plant as noted at pp. 40-43 of the report.



61. For felicity of reference, the same may be noticed as below:

Statement of Shri Mukul Thapliyal, ex-Director, M/s Navratan Buildwell Pvt. Ltd.

*Q2. It has been observed during investigation that you got a contract in the name of M/s Navratan Buildwell Pvt Ltd from JP Himachal Cement Plant for transportation of clinker from Dehni dump yard in Kiratpur to its Roorkee and Panipat unit. Please inform complete details of the contract.*

*Ans. I got the above contract dated 29.01.2010 (copy enclosed) for a period of five years. There were mutual discussion with then Director Sh. Rakesh Sharma (now Managing Director) of JP Cement Plant, Bagheri and I offered our rates which were accepted by them. I was well aware with JP group because I was associated as a supplier for other items. To the best of my information and knowledge the company started storage of clinkers at Dehni dump yard in April 2010. As far as I remember now I arranged ten trucks for transportation of clinker on getting a call from the company in April 2010 (I do not remember exact date) at the Dehni dump yard. On reaching myself along with ten trucks at the Dehni yard, a crowd of about 600 people from the Kiratpur Transport Society came inside the yard and threatened us that they would not allow us to do transportation and told us to leave the place. In the presence of JP staff at the yard (security personnel etc) we were forced to leave the place. I told JP about the above incident and my inability to execute the contract in the present circumstances. JP company has not issued any termination letter of the contract till date. The contract was not executed by me. After above incident and on my report to JP Cement Plant about the above and on having no other option to meet their transportation requirements, JP Cement gave its transportation contract to Kiratpur Sahib Truck Operators Cooperative Transport Society Ltd.*



*I arranged trucks from various transporters on my commission basis because company was not having any truck. As I already made the arrangement for about 200 trucks with various transporter starting with 10 trucks, I faced lot of loss of time and resources and also ill-will from the various transporters with whom I promised to take their trucks for the above business but could not execute as stated above.*

*Subsequently, I approached Kiratpur Sahib Truck Operators Cooperative Transport Society Ltd. through its office bearers (I do not remember their name) and offered them my services of the transportation under them by arranging ten trucks. Accordingly I worked with the ten trucks arranged by me for about two and half month in April-Jul 2010 under the name of Navratan Buildwell Pvt. Ltd. As the Kiratpur Sahib Truck Operators Cooperative Transport Society Ltd. members at that time did not have sufficient number of trucks to execute the contract work of JP Cement, they had given me the above work. I did not take any membership of Kiratpur Sahib Truck Operators Cooperative Transport Society Ltd. and on verbal negotiation work was done under them. I used to get payments through cheque from Kiratpur Sahib Truck Operators Cooperative Transport Society Ltd. After other members joined, just after two and half months Kiratpur Sahib Truck Operators Cooperative Transport Society Ltd. stopped giving work to us and I remember that Kiratpur Society still have to give me Rs. 6.00 lakhs to me for my above transportation work. I am associated at present with JP group including JP Cement Plant as a supplier for various items.*

**Statement of Shri Joginder Seru, President of JP Himachal Cement Plant**

*Q5. As the transportation work has been given to various transport societies as per allocation cited above, please comment*



*with complete details how the Kiratpur Sahib Truck Operators Co-operative Transport Society Ltd is involved?*

*Ans. For the transportation of clinkers for grinding units at Panipat and Roorkee a feeder yard was established in village Dehni (Punjab). This place is adjoining the grinding unit at Bagheri (HP). At Dehni fully mechanized arrangement has been installed (fully commissioned in 2011) for unloading, handling and loading of clinkers. The local habitat around village Dehni and adjoining became members of Kiratpur Society. The Kiratpur Society approached the company for transport work which was negotiated and awarded subsequently vide contract 21.04.2010 valid for five years. For similar transport work one more agency namely M/s Guru Rakha was also in operation from village Ganauli (Punjab) which had to be stopped wef May 2010 for pollution reasons. From Dehni dump an agency in the name of M/s Navratan Buildwell Pvt. Ltd was also awarded work on 29.01.2010 which it failed to execute.*

*Q6. How the agreement was entered with Kiratpur Sahib Truck Operators Co-operative Transport Society Ltd.? Please give the complete details about proposal, negotiations, settlement of payments, present status and offers to other transporters?*

*Ans. During the construction of our dumping yard at Dehni, the Kiratpur Society increased its members from in and around Dehni area approached us on their own and offered their services saying that they are the only resourceful transport society in the area which could execute the work from dump yard as per company's requirement from time to time. At that time Brig K.K. Talwar, Unit Incharge Bagheri Plant was reporting to late Sh. K.P. Sharma, Director at Bagha Plant. Brig Talwar was given the responsibility to look after the Dehni dump yard as well. The Kiratpur Society members accordingly approached Brig Talwar. It is informed that*



*Brig Talwar has left the group company in 2013. I was also reporting to late Sh. K.P. Sharma. The members of Kiratpur Society also met me for the work in about March 2010. As we were looking for an alternative transport agency because the previous transporter M/s Navratan Buildwell left the work on 27.03.2010 because of his reasons, I asked Kiratpur Society to submit its offer which was submitted by them vide their letter dated 23.03.2010. The letter was marked by Brig Talwar with a remark to 'please dispatch to Bagha'. The letter, thus, was reached to late Sh. K.P. Sharma and hence to me. Accordingly, further negotiation was held with the members of the society by calling them through Brig Talwar at Bagheri. In the negotiation a committee comprising myself, Brig Talwar and late Sh. K.P. Sharma from our company and members of society participated in the conference room in our Bagheri plant. During negotiation they agreed to reduce their rates from offered Rs. 3.00 per tonne per kilometre to Rs.2.56 per tonne per kilometer and accordingly agreement dated 21.04.210 was entered into which was signed by Sh. Ashwinin Kumar Puri, President of Kiratpur Society, Sh. Satkar Singh-Member, Sh. Nirmal Singh Walia- Secretary and Sh. Balbir Singh-Member in the presence of Narinder Kumar Puri and Sh, Jarnail Singh, Serpanch Massywala, Bagheri on behalf of Kiratpur Society and Brig K.K. Talwar and Brig J.S. Thind, the then administrative incharge on behalf of the company.*

*We make the payments to the Kiratpur society through bank by cheque/RTGS within 15 days after submission of bills as per agreement. I am giving you the copies relating to details of payments for the FY 2011-12,12-13, and 13-14 (Annexure III) and will submit the monthly actual payments made to Kiratpur society for the above period latest by 30.7.2014.*

*At present, Kiratpur Society has filed cases before Session Judge Solan, HP with a prayer to pass injunction against direct*





*transportation of material from Bagha to Panipat and Roorkee. They have pleaded that the company should be restrained for transport of clinkers directly to Panipat and Roorkee. At present these are directly transported by the HP transport societies associated with Bagh plant and partly to Dehni yard. They have also filed a petition before HP High Court seeking arbitration in the matter. Next date for appearing in the Hon'ble High Court for arbitration is 3 September 2014 and for Session Judge is on 6 August 2014.*

*Q7. Please tell us other transporters to whom you contacted for the work which was awarded to Kiratpur Society.*

*Ans. The company was having another feeder yard at Ganauli (Punjab) from where clinkers were transportation to M/s Guru Rakha Transport Company, Ropar vide contract dated 05.04.2010 (Annexure-IV) for a period of five years. However work was stopped wef 28.05.2010 because of the reasons pollution had raised objection (Annexure-V) and we had to close the yard. The land was taken on leased basis and was surrendered. Apart from the above contract for transport was also given to Navratan Buildwell on 29.01.2010 for Dehni yard, however agency failed to execute the contract and terminated the contract on 27.03.2010. At the time of giving contract to Kiratpur Society, we contact M/s Guru Rakha Transport for the work verbally but it did not show interest. In view of the above we did not contact any other transport agency either from outside nor any other agency contacted us for transport work at Dheni yard. It is informed that Ganauli yard was about 25 KM away from our yard towards Ropar (Punjab). It is submitted that contract rates of both the above contractors were low than Kiratpur Society. It was Rs. 2.15 per tonne kilometer for Guru Rakha Transport and Rs. 1.50 per tonne kilometer for Navratan Buildwell. Both these transporters having their limited resources i.e., lesser number of trucks that*



*also about 40 tonnes trailer type than that the Kiratpur Society had. However, as the company was in search of establishing other yards it continued to contact number of transporter agencies (Annexure-VI) but could not finalise because proposal for yard was dropped by the company. In this regard it is submitted that normally the transporters who are having the transport business also have the land in their names and negotiate with the company for opening up the yards at their land on rental basis.*

62. Thus, it is evident that M/s Jaiprakash Associates Ltd. which had a willing transporter to execute its job @ Rs.1.50 per MT/ KM was forced to enter into a contract with OP 1 at much higher rate *i.e.* @ Rs. 2.56 per MT/ KM. It is seen that OP 1's strong-arm tactics not only ousted a potential competitor offering services but also compelled the customer to avail of its services at a price which was much higher than what was otherwise available to such customer.
63. In view of the above, the Commission is of considered opinion that OP 1 imposed unfair prices for transportation services in contravention of the provisions of section 4(2)(a)(ii) of the Act.
64. Based on the testimonies of employees of service procurers and rival competitors noted at pp. 45-51 in the report, the DG also found that OP 1 has limited and restricted provision of services for freight transport in Kirtarpur area in contravention of the provisions of section 4(2)(b) of the Act. It is unnecessary to reproduce the same in the order and it is sufficient to note that the same have not been denied or otherwise challenged by the Opposite Parties in any significant manner. Suffice to note the statement of Shri Rajiv Jain, Vice-President, M/s Ambjua Cements in this regard:

*'Q3. Please explain the practice used so far by you for loading and unloading of cement at above warehouse at Barapind.*



*Ans. Since inception of this warehouse during i.e., end of 2012, we intended to bring cement from our Darlaghat unit to the warehouse for further distribution in neighboring area of Punjab. We entered into an agreement with the Shivam Enterprises (IP) on 17.11.2012 initially for one year (which has since been renewed) for unloading, loading and further transportation upto the various customers/dealers from the warehouse before stocking any cement in the warehouse. Subsequently we stocked in about May 2013 about 100 MT and further about 200 MT in about November 2013 of cement by arranging trucks from the local transporter of the Darlaghat area i.e., other than Shivam Enterprises in above warehouse till date. Under the above agreement the operations (unloading, loading and supervision) of the above warehouse was handed to Shivam Enterprises. The custody of warehouse and goods therein are with Shivam Enterprises since then. Sh. Ankur Sood partner of Shivam Enterprises informed me that on 01.12.2012 when the transportation of cement from the above warehouse was to commence, Sh. Jarnail Singh, the President, and other office bearers and some members of Kiratpur Sahib Truck Operators Co-operative Transport Society approached him and other partner Sh. Ravinder Sood and Sh. Amit Sood and threatened to obstruct their trucks if they attempted to transport cement from Barapind Warehouse. Sh. Ankur Sood further informed me that Sh. Jarnail Singh, President of the above society further threatened that the trucks of Shivam Enterprises shall not be allowed to pass through the area of Barapind (Punjab) because only the trucks of Kiratpur Society can only operate within this area. It was further informed by Sh. Ankur Sood that a police complaint relating to above incidents of threats have been made to SHO Kiratpur Sahib with a copy to SSP and DCP, Rupnagar on 2.12.2012. Shivam Enterprises also informed me that when they did not get any help from the police on their complaint as*



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*above, a writ petition was filed by Shivam Enterprises before the Hon'ble High Court of Punjab and Haryana with a prayer to provide police protection and Hon'ble High Court vide its order dated 14.12.2012 directed the police to provide protection to them to execute their orders at Barapind Warehouse.*

*Sh. Ankur Sood informed me that again in the month of June 2013, Shivam Enterprises was receiving threats on telephone from unidentified persons to face dire consequences on their lives if they attempted to operate from Barapind Warehouse. On 11.6.2013 when the Shivam Enterprises got the cement loaded on their trucks bearing registration number PB 07P 3553 and PB 07Z 9446 at around 5.30 am in the morning, around 20-30 people came in the warehouse and threatened and manhandled the drivers and laborers of Shivam Enterprises. Those people also threatened to set the trucks on fire if the loaded trucks were brought out from the warehouse. The drivers and staff were also threatened and informed by these people that life of SH. Ankur Sood shall also be in danger if he does not stop operations from this warehouse in Barapind. In view of the above, the loaded were got emptied and returned back.*

*It is informed by Sh. Ankur Sood that on 28.10.2013 the Hon'ble High Court of Punjab and Haryana directed to SSP Rupnagar to provide protection to Shivam Enterprises and also directed to Shivam Enterprises to deposit Rs. 2.00 lakhs which was deposited by Shivam Enterprises.*

*Sh. Ankur Sood further informed me that on 11.1.2014 about 8-10 trucks were sent to Barapind Warehouse along with his staff and laborers to load the cement for further transportation, however this time police protection was*



*provided to him as 12-13 policemen were deployed at the warehouse. However, the members of Kiratpur surrounded the warehouse and started shouting slogans that they will not allow to work, Shivam Enterprises in the area or Shivam Enterprises will face dire consequences. It was informed by Sh. Ankur Sood to me that the number of policemen were so less in comparison to members of Kiratpur Society that gathered at the warehouse, the loading of cement and transportation could not be possible as the trucks were not allowed to come out of the warehouse. In the above circumstances the policemen also felt helpless and left the spot without any loading of the trucks.*

*Sh. Ankur Sood also informed me that again on personal visit of Sh. Ravinder Sood, Partner, Shivam Enterprises in the office of SSP Rupnagar on 20.01.2014 for a request that adequate number of policemen be deployed, he was told that because of republic day security arrangements, the police help was not possible and SSP Rupnagar assured Sh. Ravinder Sood to do the needful only after republic day.*

*Sh. Ankur Sood, Shivam Enterprises again informed me that only on 25.2.2014, the adequate police protection was provided, however in spite of that, with great difficulty they were able to load the entire stock of cement as large number of member of Kiratpur Society were trying to obstruct this time also.*

*Sh. Ankur Sood also informed me that next date of hearing in the High Court is fixed in the last week of March 2014.*

*In the above circumstances, we faced difficulty in operationalizing the warehouse and have been incurring heavy losses due to continuous obstructions caused by the members and office bearers of Kiratpur Society. In the instant case also*



*the cement was already stocked in the warehouse was not allowed to be taken out and we could not provide cement to our customers in time from this warehouse.'*

65. From the above, it is obvious that Shri Rajiv Jain, Vice-President, Ambuja Cements, Nalagarh Unit (H.P) categorically stated that the Informant was given the contract on 17.11.2012 for transportation of cement from its Barapind warehouse to neighboring areas of Punjab. Shri Jain was informed by Shri Ankur Sood on behalf of the Informant about obstructions / threats given by members of OP 1 and unidentified persons for transportation of cement on various occasions *i.e.* on 01.12.2012, 02.12.2012, 11.06.2013 and 11.01.2014.
66. It may be pointed out that the testimonies and the other corroborative material including the affidavits of the Informant collected by the DG during investigation clearly bring out the conduct of OP 1 to limit and restrict the provision of services for freight transport in Kiratpur area which can be said to be in violation of the provisions of section 4(2)(b) of the Act.
67. Further, from the testimonies of employees of service procurers (M/s JP Himachal Cement Plant), the Commission is of the considered view that OP 1 abused its dominant position in the relevant market and limited/restricted the freight transport services in the relevant market which has resulted into denial of market access to other competitors in the relevant market. OP 1 because of its dominance in the relevant market captured its entire turnover of the business from JP Cements and hence abused its dominant position which is in contravention of the provisions of section 4(2)(c) of the Act.

### **Determination of Issue No. II**

68. So far the contravention of the provisions of section 3 of the Act is



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concerned, it was noted by the DG that OP 2 *i.e.* the truck owners through the platform of OP 1 are limiting and controlling the provision of services in the market by ensuring that there are no new entrants in the market who can compete with them. OP 2 was found to be acting in violation of section 3(3)(b) of the Act as the members, which are competing enterprises, have agreed with each other to limit supply of the service of freight transport by trucks in Kiratpur region by prohibiting any independent transporter from operating in the market. Any person desirous to operate on its own cannot successfully undertake business due to the threats and resistance met from the members of OP 1 society.

69. Furthermore, it was concluded by the DG that OP 2 is also in violation of the provisions of section 3(3)(a) of the Act as the members which are competing enterprises have agreed with each other to fix prices for supply of services of freight transport by trucks in Kiratpur region under the garb of a co-operative society *i.e.* OP 1.
70. From the business model followed by OP 1, it is evident that OP 1 through its Managing Committee offers and negotiates the price and other terms and conditions with the customers in the area and as such it is indisputable that OP 1 is in contravention of the provisions of section 3(3)(a) read with section 3(1) of the Act as the members which are otherwise competing enterprises have agreed with each other to fix prices for supply of services of freight transport by trucks in Kiratpur region under the garb of a co-operative society *i.e.* OP 1. Accordingly, the Commission agrees with the conclusions of the DG on the point of contravention of the provisions of section 3(3)(a) read with section 3(1) of the Act.
71. Further, the Commission agrees with the conclusions of the DG on the point of contravention of the provisions of section 3(3)(b) read with section 3(1) of the Act, in as much as members through the platform of



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OP 1 are limiting and controlling the provision of services in the market by ensuring that there are no new entrants in the market who can compete with them. It may be observed that OP 2 was found to be acting in violation of section 3(3)(b) of the Act as the members, which were competing enterprises, have agreed with each other to limit supply of the service of freight transport by trucks in Kiratpur region by prohibiting any independent transporter from operating in the market. It was impossible for any persons or entity to enter and operate in the market, due to conduct of members of OP 1.

72. In view of the above, the Commission concurs with the findings of DG on the issue of contravention of the provisions of section 3 of the Act by OP 1. As observed earlier, all the individual members of OP 1 (over 800) were not investigated or otherwise examined in the present case and as such the same in their individual capacities are not being dealt with in the present order.
73. Lastly, the Commission also observes that the allegations of overloading against the Informant as projected by the Opposite Parties are of no consequence as far as the present proceedings are concerned.
74. The Commission is also of the opinion that the contention of OP 1 that it has been operating as per the provisions of the Punjab Co-operative Societies Act, 1961, the same would not give any license to it to flout the provisions of the Competition Law. It is expected from a co-operative society that it should promote competition and benefit its members as well as the consumers by acting in accordance with the regulatory architecture and the *extant* legal framework.

### **Conclusion**

75. In view of the above discussion, the Commission is of the opinion that OP





1 is in contravention of the provisions of sections 3 and 4 of the Act, as detailed above.

76. In view of the findings recorded by the Commission, OP 1 is directed to cease and desist from indulging in the acts/ conduct which have been found to be in contravention of the provisions of the Act in this order.

77. Furthermore, in terms of the provisions contained in section 27(b) of the Act, the Commission may impose such penalty upon the contravening parties, as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse.

78. It may be noted that the primary objectives behind imposition of penalties are to impose penalties on infringing undertakings which reflect the seriousness of the infringement and to ensure that the threat of penalties will deter both the infringing undertakings and other undertakings that may be considering anti-competitive activities from engaging in them.

79. Considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty on OP 1 @ 10 % of the average turnover of the last three years. The total amount of penalty is worked out as follows:

(In Rs.)

S. No.	Name	Turnover for 2011-12	Turnover for 2012-13	Turnover for 2013-14	Average Turnover for three years	@ 10 % of average turnover
1.	KSTOCTS	1078812	2772521	3004876	2285403	228540.3

80. The Commission further directs OP 1 to deposit the penalty amount within 60 days of receipt of this order.



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81. On the issue of individual liability of the persons-in-charge of OP 1 in terms of the provisions of section 48 of the Act is concerned, it may be noted that the DG has identified the office bearers of OP 1 who were the then members of its Managing Committee. Besides, a list of the office bearers of OP 1 who were selected for a term of 5 years w.e.f. 16.05.2012 was also prepared for fixing responsibility under section 48 of the Act.
82. Considering the investigation report, the Commission *vide* its order dated 28.08.2014 forwarded copies of the DG report to the identified parties for filing their respective reply/ objections. The Commission also directed them to file their ITRs in respect of financial years 2010-11, 2011-12 and 2012-13.
83. It may be noted that by virtue of the provisions contained in section 48(1) of the Act, where a person committing contravention of any of the provisions of the Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Further, by virtue of the proviso appended thereto, it is provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.
84. Furthermore, the provisions contained in section 48(2) provide that notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of the Act or of any rule, regulation, order made or direction issued thereunder has been committed by a



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company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly. By virtue of Explanation to section 48 of the Act, the word 'company' has been defined as a body corporate including a firm or other association of individuals.

85. As the Commission has already held that the impugned acts/ conduct of OP 1 were in contravention of the provisions of sections 3 and 4 of the Act, the liability of the persons in-charge of OP 1 flows vicariously from the provisions of section 48 of the Act. In the present case, except the statement that no IT returns have been filed or providing returns by some of the identified persons, nothing has been shown or brought on record either before the DG or by such persons to absolve themselves from the liability in terms of the provisions and mechanism contained in the said section.
86. Considering the totality of facts and circumstances of the present case, the Commission, apart from directing such persons to cease and desist from indulging in the acts/ conduct which have been found in this order to be in contravention of the provisions of the Act, decides to impose penalty on such persons @ 5 % of the average income of the last three financial years in respect of the persons whose financial details are available. The total amount of penalty is worked out as follows:



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(In Rs.)

S. No.	Name	Income for 2011-12	Income for 2012-13	Income for 2013-14	Average Income for three years	@ 5 % of average Income Rounded off to the nearest Rupee
1.	Surinder Singh	0	439148	831205	635176.5	31759
2.	Om Prakash Kura	285314	348992	283248 (2010-11)	305851.3	15293
3.	Ashwani Kumar Puri	182319	218968	281365	227550.6	11378
4.	Krishan Kant	308291	235935	259200	267808.6	13390
5.	Baldev Singh	-	261485 (2014-15)	197500	229492.5	11475
6.	Balbir Singh	-	175700	198500	187100	9355
7.	Charanjit Singh	168000	190320	168000 (2010-11)	175440	8772
8.	Inder Singh	-	-	217500 (2014-15)	217500	10875

87. The Commission further directs these parties to deposit the penalty amount within 60 days of receipt of this order.

88. The Secretary is directed to inform the parties accordingly.

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(S. L. Bunker)  
Member

Sd/-  
(Sudhir Mital)  
Member



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

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

New Delhi  
Date: 04/02/2015