



COMPETITION COMMISSION OF INDIA

Case No. 44 of 2019

In Re:

M/s RH Agro Private Limited
A-7, South Extension- II,
New Delhi-110049

Informant

And

State Bank of India, ('SBI')
Through Shri V.K.Ohri, General Manager
Stress Assets Management Branch,
First Floor- Local Head Office Building,
Sector 17 A, Chandigarh -160017

Opposite Party No. 1

M/s Patanjali Ayurveda
Patanjali Ayurveda Limited
Haridwar, Uttarakhand -249401

Opposite Party No. 2

M/s International Trader
Through its Proprietor Shri Saket Aggarwal
7, Gopinath Building, Khari Baoli, Delhi- 110006

Opposite Party No. 3

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present information has been filed by M/s R.H. Agro Overseas Pvt. Ltd. ('**Informant**') through its authorized Director under Section 19(1)(a) of the Competition Act, 2002 ('**Act**') against State Bank of India ('**SBI**'/ '**OP-1**'), M/s



Patanjali Ayurveda (‘**Patanjali**’/ ‘**OP-2**’), M/s International Trader (‘**International Trader**’/ ‘**OP-3**’) alleging contravention of the provisions of Section 3 and 4 of the Act.

FACTS, IN BRIEF, AS STATED IN THE INFORMATION

2. The Informant is a private Limited Company duly registered and incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at South Extension-II, New Delhi-110049. The Informant is stated to be a large scale basmati rice manufacturer situated at Bahalgarh, Sonapat. The total area of its manufacturing plant is 69121.25 sq. yard. The Informant submits that it was availing term loan and working capital from a consortium of banks namely, State Bank of India, State Bank of Patiala and Punjab National Bank. The present matter has arisen in regard to the process of auctioning of the Informant’s property by State Bank of India, on account of its borrowing being classified as Non-Performing Asset (NPA).

3. The Informant is engaged in Basmati Manufacturing and was availing cash credit limit to the extent of Rs.160 Crores in favour of its unit engaged in basmati processing, mainly for export of basmati rice. The Informant has submitted that the company’s rice processing unit is built on 14.28 acres of land which is located on National Highway 1 in Sonapat, Haryana at an approximate distance of 42 KM from ISBT, Delhi. This processing unit consists of buildings and civil construction and broadly comprises factory building having 76ft. height, main processing building containing 05 floors accommodated with production and other allied department, laboratory, workshop machinery hall, panel rooms, Office Area, underground water tank, RO plant room, Generator and transformer block, labour rest room and guard room *etc.* This unit has been mortgaged as primary security to the consortium of banks.



4. The Informant states that during 2012-13, there was a huge crisis in the export business of basmati rice as overseas buyers were rejecting the rice exported due to quality issues on account of use of pesticides by Indian farmers. In the event of such financial crisis, the Informant attempted to convince the banks to sell its unit at Sonapat, Haryana to a Saudi Arabian buyer at a reasonably handsome price, but the bank officials were adamant and not inclined to accept the offer due to which the assets mortgaged as primary security could not be sold for maximum realization of proceeds. Afterwards the plant was closed, taken into possession by the banks and the cash credit account of M/s RH Agro was declared NPA. As per SBI letter dated 03.08.2016, the outstanding dues of the Informant as on 09.11.2015 stood at Rs. 220.49 crore as per the agreed rate of interest and other expenses and charges, as applicable.
5. The Informant is aggrieved with alleged fraudulent activity in the matter pertaining to the one-time settlement of NPA account of the Informant by the officials of State Bank of India, Stressed Assets Branch, Chandigarh in alleged collusion with officials of M/s Patanjali Ayurveda Limited and M/s International Trader. The Informant alleges that collusive conduct of the above named players resulted in process of bid rigging and also in the denial of access of Informant to other players who could have potentially acquired its plant at better prices, which resulted in an appreciable adverse effect on competition.
6. The Informant submits that the SBI as consortium leader had earlier caused valuation of land and building with plant and machineries on annual basis and even after declaring the account as NPA, the valuation of the entire basmati manufacturing plant at Sonapat, Haryana was carried out which came in the Range of about Rs.70 crores. However, the Valuers appointed by the bank had taken a casual approach towards valuation with the result that each and every part of the plant and machineries was not taken into account and valuation was conducted by the said



bank in a crude and callous manner, with no intent and object to maximise the sale proceeds. The Informant alleges that the bank authorities, namely Sh. V.K. Ohri, General Manager and Sh. Satish Garg, Assistant General Manager, in an attempt to devalue the entire manufacturing plant came with the plea that the valuation at the instance of bank carried out in the year 2016 came to approx. Rs.63 crore. However, when the same valuation was undertaken by the Informant itself through Government approved valuers M/s Anil and Associates, Panipat and M/s Devinder Sheel Jain, Noida, UP, the valuation came to Rs. 121 Crores in the month of July, 2016.

7. Further, the Informant received information that M/s Patanjali Ayurveda Limited was interested in buying the manufacturing plant. The initial conversation in regard to this deal was conducted between the parties through Mr. Saket Aggarwal, proprietor of M/s International Traders, who was closely associated with M/s Patanjali Ayurveda Limited as he himself is Chief Executive Officer in one of the Patanjali Group companies'. Further, his father is stated to be a director in M/s Swasth Aahar Pvt. Ltd. which is a part of the Patanjali Group companies.
8. The Informant further states that Mr. C.P.Nagpal, on-panel consultant of Patanjali Ayurveda visited the plant on 04.06.2016, accompanied by Mr. Saket Aggarwal along with his brother Mr. Shobit Aggarwal. It is pertinent to mention that the bank officials were in loop during the whole process and the plant visit was also facilitated by the bank officials as the keys of the plant were in possession of the bank itself. A further valuation was conducted through M/s R.C. Bysack of Calcutta, the internal valuers of Patanjali in order to access the plant, machinery building and land. The Informant submits that the valuation by M/s R.C. Bysack came close to Rs. 120 Crore.



9. The Informant further submits that the Informant was invited for a meeting with promoters of Patanjali Group on 09.08.2016 at their Haridwar Office. After detailed discussion and negotiations it was agreed between the parties that the Informant would sell the plant to Patanjali for a consideration of Rs.101 Crore. The bank officials were duly informed by the Informant that Patanjali has agreed to purchase the property for Rs.101 Crores. The Informant was informed that Sh. Ramdev (@Baba Ramdev) of Patanjali would be visiting Delhi in next 3-4 days and then a formal written tripartite agreement would be drawn between the parties and the bank as per the conclusion reached between the parties in the above mentioned meeting. Afterwards, the Informant made continuous efforts to reach out but the representative kept on postponing the meeting.
10. On 08.08.2016, the Informant received a notice dated 03.08.2016 issued by the SBI wherein it was stated that an e-auction was going to be held on 07.09.2016 in respect of the mortgaged property of the Informant. The Informant approached the Learned Debt Recovery Tribunal, Chandigarh in order to get a stay on the e-auction but the aforesaid Tribunal refused to grant any relief to the Informant. The auction was held on 07.09.2016 and the Informant sought information on the e-auction on 08.09.2016 via letter to the Deputy General Manager, SBI.
11. The Deputy General Manager of the bank replied *vide* letter dated 10.09.2016, which was received by the Informant on 21.09.2016 wherein it was stated that there were two bidders who participated in the auction held on 07.09.2016 after depositing the stipulated earnest money deposit amount. The two bidders who participated in the auction were M/s Patanjali Ayurveda Limited, Haridwar and International Traders, New Delhi. It was further mentioned that assets of the Informant had been sold to the highest bidder, M/s Patanjali Ayurveda Limited who made a bid of Rs.69,72,50,000/- (Rupees Sixty Nine Crore Seventy Two Lakh and Fifty Thousand).



12. The Informant alleges that the earnest money on behalf of International Traders was also arranged by Patanjali in order to make International Traders participate in the bidding process and create a smokescreen to make it look like as though International Trader was an independent bidder. Mr. Saket Aggarwal *i.e.* proprietor of International Traders was in clear collusion with Patanjali Group in order to rig the bidding process which directly lead to an appreciable adverse effect on competition.
13. The Informant alleges that it was agreed between the parties that M/s Patanjali Ayurveda would create a dummy bidder through their CEO, Mr. Saket Aggarwal who would quote a comparatively lower bid price to avoid any allegation of single party bidding which would have resulted in cancellation of bid. The Informant alleges that arbitrary practices adopted by the officials of the State Bank of India are anti-competitive in nature as the officials of the Bank abused their dominant position by restricting access to market to other players to make the bid.
14. The Informant has prayed to the Commission to take up this matter and order appropriate actions as per the provisions of the Act against the officials of State Bank of India for abusing their dominant position and denying market access to the other players by rigging the biding process in connivance with the Promoters of M/s Patanjali Ayurveda and M/s International Traders. The Informant has prayed that the Commission may direct the Director General ('DG') to conduct an investigation into the matter under Section 26(1) of the Act to examine if there is any contravention of the provisions of the Act, so that further action may be taken.
15. The Commission considered the matter in its ordinary meeting held on 02.01.2020, and directed SBI to file relevant information along with documents, if any, by 30.01.2020. In response to the direction of the Commission, SBI submitted its response on 06.03.2020, after obtaining extension of time from the Commission.



RESPONSE FILED BY SBI/OP-1

16. In its written submission dated 06.03.2020, SBI/ OP-1 has raised a preliminary objection as to the jurisdiction of the Commission to entertain the present information. The Informant is stated to be a high-value defaulter of the consortium of banks, in which SBI/OP-1 is the lead bank. It is stated that an overall financial facility of Rs. 174.81 crores were sanctioned jointly by SBI/OP-1, Punjab National Bank (PNB) and State Bank of Patiala. The share of SBI in this credit facility is approximated to be Rs. 164.81 crore and that of PNB to be Rs. 10 crore. In consideration of the credit facility extended, the Informant had provided properties in the form of factory land and building, including plant and machinery mortgaged as primary security and land measuring 50 Bighas and 10 Biswas in Village Kalupur, Sonapat in the name of M/s Chelsia Apartments Pvt. Ltd. as collateral security.
17. It is submitted that upon default of the borrower, account of the Informant was declared as Non-Performing Asset (NPA) on 30.06.2014 and the proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('**SARFAESI Act**') were initiated. The factory land and building including plant and machinery, mortgaged to it were sold in proceedings, for recovery of monies outstanding from the Informant, in exercise of its rights under Section 13 of SARFAESI Act. Further, Section 35 of the SARFAESI Act contains a non-obstante clause which gives an overriding effect to the provisions of the SARFAESI Act over and above any other statute in force. As the property in question has been sold under provisions/ remedies available under SARFAESI Act, the present complaint is not maintainable in view of the overriding effect of such provisions of the Act.
18. SBI submits that e-auction of factory land and building, including plant and machinery (Sonapat) took place on 07.09.2016 and the present complaint has been



filed on 10.12.2019, after a period of more than 03 years which makes it liable to be rejected on the ground of delay and laches alone. SBI has submitted that OA No. 1075 of 2014 for recovery of Rs. 176,60,67,991/- was also filed on behalf of all the three banks before the Debt Recovery Tribunal, Chandigarh on 30.09.2014 in which a Local Commissioner was appointed *vide* order dated 01.12.2014. The Local Commissioner after inspection submitted report dated 23.01.2015 with remarks that entire stock which was hypothecated with the bank stood misappropriated and was not available on the premises. After taking leave of the Ld. District Magistrate, the physical possession of the primary security of the borrower viz. land and plant and machinery thereon was taken on 18.05.2015 and property of guarantor, M/s Chelsia Apartments Pvt. Ltd. was taken on 12.06.2015.

19. SBI has contended that an application was filed by a third party claiming to be owners of a part of the property which was mortgaged with bank by guarantors M/s Chelsia Apartments Pvt. Ltd. Further, a part of the mortgaged property was sold by the borrower/guarantor in a fraudulent manner without getting it redeemed from the bank and consequently FIR No. 314 dated 01.08.2015 was lodged by District Police Sonapat, against the promoters of the company, Mr. Sukhchain Chawla and Mr. Dilbagh Rai Chawla. It is submitted that the anticipatory bail was declined by trial court in this matter and further petition before Hon'ble Punjab & Haryana High Court was dismissed and subsequently an SLP filed before the Hon'ble Supreme Court was also dismissed.
20. SBI submits that in order to settle this dispute, the Informant made several offers for onetime settlement by saying market value of secured assets is much less than the outstanding dues and made several offers for one-time settlement, but were rejected for being on the lower side. SBI has stated that different values of the primary securities, i.e. factory land and building along with plant and machinery had been submitted by the Informant varying between Rs. 50 crore to Rs. 84 crores. Upon



taking physical possession under proceedings of SARFAESI Act, the property was put for auction on 05 occasions. SBI submitted that notice was given to the Informant regarding auction with reserve price, and no objection as to the valuation was made by it at any stage. The constant stance of the Informant was that valuation was on higher side and there would be no buyers. In the 06th auction conducted on 03.08.2016, SBI (OP-1) received two bids from M/s Patanjali Ayurveda (OP-2) and M/s International Traders (OP-3), in which higher bid was given by M/s Patanjali Ayurveda and was accepted by the Authorised Officer and sale was confirmed in their favour. After receipt of entire consideration, sale certificate was executed in favour of M/s Patanjali Ayurveda and actual physical possession was handed over to them.

21. SBI submits that promoters of Informant challenged the sale lawfully conducted by the bank in SA No. 233 of 2016 before the Debt Recovery Tribunal-I, Chandigarh but was not able to get any interim order. SBI contended that any objection by the Informant that mortgaged property was sold at a lesser price is patently false and is in fact falsified from different communications given by the Informant to bank itself.
22. SBI contends that averment of Informant that there was a cartel and bank had knowledge about it is factually incorrect. Rather the Informant is guilty of misappropriation of the hypothecated stocks and of misleading the financial institutions. Also a part of the secured assets was sold to third party without getting the property redeemed which is a clear act of fraud. The last stock statement showed the stock to be more than Rs. 100 crores whereas when inspection was done by Local Commissioner appointed by Debt Recovery Tribunal, the stock available was NIL.
23. SBI has also contended that the Informant at no stage informed any of the financial institutions of the consortium that he is in touch with Patanjali and that he is negotiating the sale of the primary security to them at a higher price. It is a matter of



record that in the last communication addressed in the year 2016, the Informant had himself assessed the price of the primary security at Rs. 50 crore. Further in all the auctions which were fixed with reserve price of Rs. 69.67 crores, no objections were raised by the Informant.

24. SBI submits that the auction of the property in question indeed took place on 07.09.2016, and was conducted by the Authorised Officer in accordance with the provisions and procedure under SARFAESI Act and Security Interest (Enforcement) Rules, 2002.
25. SBI further refuted the Informant's assertion of bank being in a dominant position, by stating that it is a matter of common knowledge that in relationship of a banker and a customer nobody is in a dominant position. The public sector banks grant financial facilities to the borrowers as part of their official duty and a borrower is duty bound to return the borrowed money in terms of his contractual obligation. In case of non-payment, the bank officials are duty bound to proceed against the borrower and its secured assets in accordance with law.
26. SBI submits that there is no contravention under Section 3(3)(d) of the Competition Act, 2002 which otherwise is also not applicable on SARFAESI proceedings as the same is governed by the said Act being a special enactment. Also, there is no question of bid-rigging as the property could have been sold even to a single bidder. In any case, since the property which is being sold was a rice seller, the bidder will obviously be from the same trade. But keeping in view the fact that it was an e-auction, neither the bank officials nor the agency conducting the e-auction had any idea of any correlation between the participating bidders.
27. SBI further submits that its Authorised Officer had to give due notice in newspaper before the date of auction, and ensured public notice to general public and the



contention of the Informant that “*officials of SBI had denied access to relevant market and thus their conduct was in direct contravention to Section 3 of Competition Act*” is wrong.

FINDINGS OF THE COMMISSION

28. At the outset, the Commission notes that in the present case the Informant has made allegation of fraud and collusion between SBI officials and officials of Patanjali Group and M/s International Traders. The Informant has stated that the manufacturing plant at Sonapat, Haryana had been extended as primary security to the consortium of banks for availing term loan and working capital requirement of its business.
29. The Informant has further stated that the said primary security was shut down and seized by the Bank, SBI, as Informant’s payments were tied up after the financial crisis in 2012-13. The Informant’s account was also declared as NPA and valuation of land, building and assets were also undertaken. The initial valuation undertaken by SBI had come out to be approx. Rs. 70 crores. Further, the same valuation when undertaken by the Informant through Govt. approved valuers in July, 2016 had come out to be Rs. 121 crores. The SBI, in its letter dated 16.01.2015, had stated the current value (as on 16.01.2015) to be Rs. 141.65 crores.
30. The Commission observes that the main contention of the Informant is that the bank officials have acted in collusion with buyers of the property in auction dated 07.09.2016. Also, when the auction was conducted, only two bidders participated in which Patanjali Ayurveda has put up EMD for M/s International Traders in order to create a smokescreen and assert transparency of bids in the auction. However, the Informant has not submitted any evidence in support of this allegation. The Informant further submitted that due to such conduct, there has been a denial of



market access to other potential bidders and the bank officials who were in a dominant position have abused such position.

31. At the outset, the Commission will deal with the preliminary objection taken up by SBI that since the auction has taken place under the provisions of SARFAESI Act (special law), the Commission does not have jurisdiction in respect of any information received by it in the present matter. In this regard, the Commission observes that such an objection raised by SBI is not tenable in view of Section 62 of the Competition Act, 2002. In respect of matters falling within the provisions of the Competition Act, 2002, the Commission's jurisdiction is never ousted. Allegation of bid rigging in any auction, even if conducted under the aegis of any special law, will fall within the provisions of Section 3(3) (d) of the Competition Act, 2002. The Commission is within its power to initiate an enquiry in respect of a suspected anticompetitive conduct, either on its own motion or pursuant to an information received under Section 19(1) of the Act.
32. Having dealt with the preliminary objection, the Commission upon consideration of the material on record, opines that any bank under the provisions of SARFAESI Act has a right of enforcement of its security interest under the provisions of Section 13 of the said Act and if a borrower makes any default in repayment of a loan or any instalment thereof then his account is classifiable as a Non-Performing Asset (NPA) by the secured creditor. The main purpose behind provisions of the SARFAESI Act is to provide for banks and other financial institutions to auction residential or commercial properties (of Defaulter) to recover outstanding loan in the event of defaults by the borrower/guarantor. In the present case, it is seen that the SBI has conducted auction dated 07.09.2016 as One-time Settlement of the NPA and realized Rs.69,72,50,000/- from the sale of the primary security.
33. The Commission observes that the allegations of the Informant are mixed in nature, alleging collusive bidding and abuse of dominant position. It is pertinent to mention



here that under the provisions of Section 3 of the Act, any agreement/ understanding/ practices between businesses is scrutinized in respect of entities ‘engaged in identical or similar trade of goods or provision of services’. In the facts of the present case, SBI together with Patanjali Ayurveda (bidder) & M/s International Traders (bidder) cannot be said to be similarly placed or involved in the same line of business or horizontally placed so as to fall within Section 3(3) of the Act. Even otherwise, the conduct of a secured creditor in effecting sale of an asset secured to it, through an auction process cannot be examined under the provision of Section 3(3)(d) of the Act. Hence, analysis of conduct of SBI/OP-1 is not required in the present matter. However, the conduct of bidders Patanjali (OP-2) & International Trader (OP-3) may be liable to be examined under Section 3 (3)(d) of the Act, since they can be said to be horizontally placed in view of their individual interest in acquiring the Informant’s plant, even if they may not be present in the same line of business.

34. As regards to the allegation of collusion between Patanjali and International Trader, the Informant has placed reliance on a document from the website of Ministry of Corporate Affairs indicating that Mr. Saket Aggarwal, proprietor of M/s International Traders is also a Director in Swasth Aahar Private Ltd. which is stated to be a group company of M/s Patanjali Ayurveda, the successful bidder in the auction conducted by SBI. The Commission notes that the Informant other than raising a suspicion that International Trader could have aided Patanjali in winning the bid, has not given any cogent document/evidence to enable the Commission to form a *prima facie* opinion warranting an investigation into the allegations. Further, SBI has sought to counter the allegations of suspected cover bidding by International Trader, in favour of Patanjali by stating that even a single bidder can be validly considered with respect to an auction conducted under the SARFAESI Act.
35. With respect to the allegation of abuse of dominant position by SBI under Section 4 of the Act, the Commission at the outset notes that SBI has sought to belie any



allegation of abuse on its part and has detailed the efforts taken by it in conducting the auction several times in respect of the property mortgaged by the Informant. It was successful only on the 6th occasion. SBI has also said that the Informant did not raise any objection, in respect of the reserve price fixed by SBI, nor to the auction. Further, the allegations made by the Informant with regard to purported infirmities in auction process did not also find favour with the Debt Recovery Tribunal, Chandigarh empowered under SARFEASI Act to look into the matter. In such a scenario, it may not be germane to define a precise relevant market with respect to the auction processes in the present matter. Further, while effecting recovery of loan advanced, under the provisions of a law, neither the bank nor its officials can be said to be in a dominant position.

36. Moreover, in the information, the valuation carried out by bank in 2016 has been stated to be approx. Rs. 63 crores and the realized amount from auction dated 07.09.2016 is Rs. 69.72 crores whereas as per SBI letter dated 03.08.2016 (which forms part of the information) highlights the outstanding dues of the Informant as Rs. 220,49,22,647.78/-. With regard to the contention raised by SBI that the auction process which is being sought to be impugned by the Informant, happened in 2016 and therefore the same is barred by delays and laches, the Commission notes that no such limitation has been prescribed under the Competition Act, 2002.
37. The Commission observes that a bank acting as per the remedies available to it under the SARFAESI Act for recovery cannot be termed as a dominant entity when it acts in accordance with provision thereof as it is acting in recovery of its funds/money in order to mitigate losses in such transaction (where account has been declared NPA). It is also noted that auction of primary security by a secured debtor for realization of funds cannot be said to be a transaction done in ordinary course of business. The sale of security of an account declared NPA is a remedy available to a secured creditor under the provisions of SARFAESI Act.



38. Thus, the Commission is of the opinion that no competition concern can be said to have arisen in the present matter and the information is closed forthwith against the OPs under Section 26(2) of the Act.

39. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 14.05.2020