

COMPETITION COMMISSION OF INDIA

Case No. 44/2012

Date : 19/09/2012

IN THE MATTER OF:

Dr.Naveen Karnwal

... Informant

V.

1. State of U.P., through Secretary, Department of Geology and Mines
2. Director, Geology and Mines, Lucknow UP
3. District Magistrate, Saharanpur
4. Uppar Mines Management Services Pvt. Ltd.
5. Sand and Stone 13 Pvt. Ltd.
6. Ashok Chandak
7. Shiva Associates

... Opposite parties

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002.

1. The information was filed by Dr. Naveen Karnwal (the informant) under section 19(1)(a) of the Competition Act, 2002 (the Act) against the opposite parties. The informant submitted that the Supreme Court in SLP No. 19628-19629 of 2009 vide order dated 16th January 2012, directed closure of all illegally operating screening plants and stone crushers and seizure of the mineral so illegally mined. The State Government then seized all the mineral amounting to 3961728 cubic metres and moved to sell the same in accordance with law.

2. As per the informant, the auction notice was published on 29.05.2012 in newspapers and as per notice auction was to be held on 02.07.2012. The informant highlighted clauses 5, 6 and 7 of the terms and conditions of the auction notice. The informant also listed the other mandatory requirements to participate in the auction.
3. One of the essential requirements for participating in the auction was deposit of the earnest money i.e. 25% of the reserve price initially fixed at Rs. 101, 46, 82, 878/-, later reduced to Rs. 95,28,40,584/- by orders of the District Magistrate, Saharanpur. As per the terms and conditions, 4 parties were found eligible for participation i.e. OP.4, OP.5, OP.6 and OP.7. The auction was held and finalized in favour of OP. 5.
4. The informant submitted that the purpose of holding auction by public bidding stood defeated, as all the 4 bidders were related to each other and had created a cartel. The informant explained the relation between the OP. 4 to OP. 7. The informant submitted that the whole auctioning procedure was sham as all the participants were closely related to each other and no one's credentials were verified. Also, it is stated that OP.4 was convicted by the Trial Court, confirmed by the High Court and in appeal, the Supreme Court merely reduced the period of sentence to the period of punishment already undergone.
5. A perusal of the material placed on record by the informant shows that after the Supreme Court Order, the local administration closed down all crushers and other mining

operations in the area and seized the material already illegally mined. It was this material which was put to auction. The reserve price of the material was assessed at Rs.101,46,82,848/- and a participant in the auction was to deposit 25% of the reserved price. When the auction was to take place, 15 crushers brought stay order from the High Court against auction of the material at their site, thus around 2,50,000 cubic meter of the material went out of the auction process. Accordingly, District Magistrate, Saharanpur reduced the reserved price to Rs.95,28,40,584 and asked the eligible bidders to give their bid in the open public auction. One of the bidders contended that after looking at the material, he was of the opinion that the material was not even worth Rs.10 crores so he started bidding from Rs.10 crore. He was stopped from bidding below the reserved price. Only three bidders remained in the fray and participated in the open bid and the auction got concluded at Rs.95,62,13,000/- in favour of Sand and Stone 13 Pvt. Ltd.

6. The contention of the applicant is that the bidders had rigged the bidding as they were related to each other. However, it is seen that OP-4 & OP-5 are Private Limited Companies, OP-6 is individual and OP-7 is a proprietary firm. OP-4, OP-5 & OP-6 may have common Directors, who may be related to each other. But it is a matter of fact that a wide publicity was given to the bidding process as bid notice was published in several newspapers. Everybody was free to participate in the bid. It is also seen that Crushers, whose material was seized by the administration, were quite active and some of them had gone to High Court and about 15 of them had brought a stay orders from the High Court.

7. A company is a legal person and can participate in the bidding in its own right. Common directors do not make companies related to each other, unless they are part of the same group as defined under section 5 of the Act. It was made clear to bidders that they would be bound by any Court order that may be issued in respect of material or the proceedings. The applicant and all other persons interested in participating in the bid, were free to participate. The bidding process was completed in presence of District Magistrate and other senior officials who had reached at the place from Lucknow and officials from Forest Department, Revenue Department and Police Department. The bid was done in 22 rounds and it is thereafter that bid was finalized. In such an open bidding process which had taken place in presence of interested parties, where the reserved price itself was kept quite high, we find no material to form a prima facie opinion that it was a case of bid rigging.

8. The concern raised by the informant was that the OP.1 to 3 did not take necessary precautions and steps to conduct a fair auction process, resulting in the awarding of tender to the OP. 5. We do not find force in this contention. It was further alleged that by auctioning entire material at one go, opposite parties 1 and 2 created a monopoly in favour of highest bidder who was likely to exploit the consumers in view of fact that all mining activities had been stopped under Supreme Court order.

9. Section 3(1) of the Act prohibits an association of enterprises from entering into an agreement in respect of production, supply, distribution, storage, acquisition or control of goods or

provision of services which causes or is likely to cause appreciable adverse effect on competition within India. Section 3(3) declares that an agreement entered into between enterprises or association of persons or enterprises including cartels engaged in similar trade of goods/services which directly or indirectly determines purchase or sale price shall be presumed to have an appreciable adverse effect on competition. In the present case, the material placed by the informant and the facts do not disclose a conduct on the part of opposite parties that directly or indirectly determines the purchase or sale price or results in bid rigging or collusive bidding. The facts as disclosed by the informant do not raise any competition issue.

10. In the light of the above facts and situation, the Commission finds that no *prima facie* case is made out against the opposite parties. It is a fit case for closure under section 26(2) of the Act and is hereby closed. It is ordered accordingly.

Secretary is directed to inform all concerned accordingly.

Sd/-
(H.C.Gupta)
Member

Sd/-
(R.Prasad)
Member

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L.Tayal)
Member

Sd/-
(Justice S.N.Dhingra)
(retd.)
Member

Sd/-
(Ashok Chawla)
Chairperson