



**COMPETITION COMMISSION OF INDIA**

**Case No. 50 of 2015**

**In re:**

**Nagrik Chetna Manch,**

**Through its President Maj. Gen. S.C.N. Jatar (Retd.)**

**A 102, Neel Sadan 1426, Sadashiv Peth**

**Pune-411030**

**Informant**

**And**

**Fortified Security Solutions**

**A-10 Shreyas Apartments, Opp. E-Square**

**Shivaji Nagar**

**Pune- 411016.**

**Opposite Party No. 1**

**Ecoman Enviro Solutions Private Limited**

**Flat No. G-1002, MSR Queens Town**

**Survey No. 3876, Udyog Nagar, Chinchwad**

**Pune- 411033.**

**Opposite Party No. 2**

**Pune Municipal Corporation**

**Municipal Corporation of Pune, Shivaji Nagar**

**Pune- 411016.**

**Opposite Party No. 3**

**Lahs Green India Private Limited**

**B-508, Building No. 13, Palash Gawand Baug**

**Pokharan Road no. 2**

**Thane-400606**

**Opposite Party No. 4**



**Sanjay Agency**

**3682, Beed Road, Jamkhed**

**Ahmednagar**

**Maharsashtra-413201**

**Opposite Party No. 5**

**Mahalaxmi Steels**

**Shop no. 16, Paras Industrial Estate**

**Near JBM tools telco road, Bhosari**

**Pune, Maharashtra-411026**

**Opposite Party No. 6**

**Raghunath Industry Private Limited**

**3, Pushpanjali Apartment, Plot No. 1162/4A**

**Shivaji Nagar**

**Pune-411005**

**Opposite Party No. 7**

**CORAM**

**Mr. Devender Kumar Sikri**

**Chairperson**

**Mr. Sudhir Mital**

**Member**

**Mr. Augustine Peter**

**Member**

**Mr. U.C. Nahta**

**Member**



### **Appearances:**

*For Informant*

Major General S.C.N. Jatar

*For Opposite Party No. 1 and  
Shri Bipin Vijay Salunke*

Mr. Vikas Mishra, Advocate

*For Opposite Party No. 2 and  
Shri Bipin Vijay Salunke*

Mr. Vikas Mishra, Advocate

*For Opposite Party No. 3*

Ms. Sukriti Jaggi, Advocate

Mr. Mulay Ravindra, Deputy Engineer

Mr. Amit Ramchandra Ughade, Junior Engineer

*For Opposite Party No.4 and  
Shri Saiprasad Sharadchandra  
Prabhukhanolkar*

Mr. Irfan Ahmed, Advocate

*For Opposite Party No.5 and  
Shri Sanjay Harakchand Gugle*

Ms. Aditi Sharma, Advocate

*For Opposite Party No. 6 and  
Shri Manoj Gupta*

Mr. Kartik Nagarkatti, Advocate

*For Opposite Party No. 7 and  
Shri Vijay Raghunath Salunke*

Mr. Vikas Mishra, Advocate



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

### **Introduction**

1. The present case was initiated on the basis of an information filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the 'Act') by Nagrik Chetna Manch through its President Retd. Major General S.C.N Jatar (hereinafter, the 'Informant') against Fortified Security Solutions (hereinafter, 'OP-1'), Ecoman Enviro Solutions Pvt. Ltd. (hereinafter, 'OP-2') and Pune Municipal Corporation (hereinafter, 'OP-3/ PMC').

#### *Facts, in brief:*

2. The Informant obtained information from the website of PMC regarding certain tenders floated by it during the period December 2014 to March 2015 for "Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s)" viz. Tender nos. 34, 35, 44, 62 and 63 of 2014. On examination of the bid information and the tender documents submitted by the bidders for these tenders, the Informant found that bidding for these tenders appeared to involve anti-competitive practices in contravention of the provisions of Section 3 of the Act. Thus, the Informant approached the Commission with the present information.
3. After perusing the information, the Commission was of *prima facie* view that the case involved bid rigging and/ or collusive bidding in violation of Section 3(3) read with Section 3(1) of the Act. Therefore, the Commission *vide* its order passed under Section 26(1) of the Act on 29.09.2015 directed the Director General (hereinafter, the 'DG') to investigate the case.
4. Subsequently, on request received from the DG, four entities *i.e.* Lahs Green India Pvt. Ltd. (hereinafter, 'OP-4'), Sanjay Agencies (hereinafter, 'OP-5'),



Mahalaxmi Steels (hereinafter, 'OP-6') and Raghunath Industry Pvt. Ltd. (hereinafter, 'OP-7') were included as Opposite Parties in the matter *vide* order dated 28.06.2016 (hereinafter, OP-1, OP-2, OP-4, OP-5, OP-6 and OP-7 collectively referred to as the 'OPs'). The DG, after completing the investigation submitted the investigation report on 23.11.2016.

*Lesser Penalty Applications under Section 46 of the Act:*

5. During the course of investigation, an application under Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 (hereinafter, 'Lesser Penalty Regulations') read with Section 46 of the Act was filed by OP-6 on 02.08.2016 at 04:18 P.M. In its application, OP-6 accepted that it had submitted cover bid to aid OP-2 to win Tender nos. 62 and 63 of 2014. It also disclosed the *modus operandi* of the cartel and provided documents and evidence in support thereof.
6. Thereafter, on 04.08.2016 at 12:19 P.M. and on the same day at 04:18 P.M. OP-5 and OP-4 filed their respective applications under Regulation 5 of the Lesser Penalty Regulations read with Section 46 of the Act. In its application, OP-5 accepted its involvement in the cartel but stated that the extent of its involvement was limited to providing documents for participation in the Tender nos. 62 and 63 of 2014. Further, OP-4 in its application disclosed that it had agreed to bid as a proxy bidder to assist OP-2 to win the Tender nos. 34, 35 and 44 of 2014.
7. Subsequently, OP-2 and OP-7 also filed applications under Regulation 5 of the Lesser Penalty Regulations read with Section 46 of the Act on 05.08.2016 at 12:40 P.M. and on same day at 02:32 P.M., respectively. OP-2 accepted that it had arranged proxy bidders to ensure that the tender period in Tender no. 34, 35, 44, 63 and 64 of 2014 was not extended and the tenders were awarded to OP-2. It also provided documents and evidence in support of its submissions. OP-7 in its application accepted that it had provided authorization letters to OP-1 and



OP-6 to fulfill eligibility criteria enabling them to participate in the PMC tenders.

8. Lastly, on 20.09.2016 at 03:00 P.M., OP-1 filed application under Regulation 5 of the Lesser Penalty Regulations read with Section 46 of the Act accepting that it had submitted cover bids in Tender no 34, 35 and 44 of 2014 and provided documents in support thereof.

**Profile of the parties:**

9. 'Nagrik Chetna Manch' *i.e.* the Informant, is a Pune based public charitable trust registered under the Bombay Public Trusts Act, 1950 and the Societies Registration Act, 1860. It is functioning with the objective of bringing transparency in governance and eradicating corruption by using the Right to Information Act, 2005 and ensuring basic water supply, proper management/handling of municipal solid waste and clean environment *etc.* to the citizens.
10. 'Fortified Security Systems' *i.e.* OP-1, is a registered shop and a proprietary concern of Shri Bipin Vijay Salunke established under the Bombay Shops and Establishment Act, 1948. It is engaged in the business of sales and services of electronic security systems, health and medical equipment *etc.*
11. 'Ecoman Enviro Solutions Private Limited' *i.e.* OP-2, is a private limited company registered under the Companies Act, 1956 with two directors, namely, Shri. Bipin Vijay Salunke and Shrimati Sulabha Vijay Salunke. It is stated to be a leading company in the field of decentralized solid waste management having an advanced technology in composting. Furthermore, it claims to have developed a unique solution for decentralised solid waste management by its composting machine named 'Foodie' which converts organic waste into compost in 24 hours.



12. 'Pune Municipal Corporation' *i.e.* OP-3, is the Municipal Corporation of Pune which controls the municipal administration of Pune and is in charge of the civic and infrastructural needs of the citizens of the metropolis.
13. 'Lahs Green India Private Limited' *i.e.* OP-4, is a private limited company registered under the Companies Act, 1956 with three directors, namely; Shri Saiprasad Sharadchandra Prabhukhanlkar, Shri Saili Prabhukhanolkar and Shri Gulab Pandurang Jadhav. It is engaged in solar water heating, lighting and water purifying solutions and equipment for residential and commercial applications. It was also found to specialise in zero waste management, in which wet and dry garbage is treated which results in zero dumping.
14. 'Sanjay Agencies' *i.e.* OP-5, is a partnership firm registered under the Bombay Shops and Establishment Act, 1948, with Shri Dattaray Shrikrishna Hoshing and Shri Sanjay Harakchand Gule as its two partners. It is a pharmaceutical dealer and stockist of drugs of companies like Allergen, Pfizer, GSK etc.
15. 'Mahalaxmi Steels' *i.e.* OP-6, is a proprietorship firm registered under the Bombay Shop & Establishment Act, 1948. Its proprietor is Shri Manoj Kumar Gupta. It is engaged in the steel trading business.
16. 'Raghunath Industry Private Limited' *i.e.* OP-7, is a private limited company registered under the Companies Act, 1956 with two directors namely, Ms. Sonali Sahasrabudhe and Shri Vijay Raghunath Salunke. It is engaged in field of solid waste management and manufacturing of composting machines since June 2013 and started manufacturing from July 2013.



### **DG's Investigation:**

17. During investigation, the DG examined allegations of cartelisation and bid-rigging and/ or collusive bidding by OP-1, OP-2, OP-4, OP-5, OP-6 and OP-7 in the PMC's Tender nos. 34, 35, 44, 62 and 63 of 2014 pertaining to 'Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s)'. Further, the DG also examined whether the officials of PMC had a role to play in facilitating collusion amongst the OPs to pre-determine the winner of the bids.
18. To investigate the above issues, the DG collected evidence from various sources by issuing probe letters to the parties and third parties including telecom operators, banks, *etc.* and also recorded statements on oath.
19. With respect to the five tenders under consideration, the DG noted that:
  - i. In Tender no. 34 of 2014 (for a project duration of six (06) months), three entities *i.e.* OP-1, OP-2 and OP-4 participated and OP-2 emerged L1 bidder with the lowest bid of Rs. 74,95,500/-.
  - ii. In Tender no. 35 of 2014 (for a project duration of six (06) months), three entities *i.e.* OP-1, OP-2 and OP-4 participated and OP-2 emerged L1 bidder with the lowest bid of Rs. 54,96,500/-.
  - iii. In Tender no. 44 of 2014 (for a project duration of three (03) months), OP-1, OP-2, OP-4 and Aruna Green Venture Pvt. Ltd. participated. However, Aruna Green Venture Pvt. Ltd. was declared ineligible for the bid, as it did not fulfill the qualifying criteria of having at least one year of experience in operation and maintenance of similar plant with any Government / Semi Government / Private installation. OP-2 emerged L1 bidder in this tender with the lowest bid of Rs. 17,50,000/-
  - iv. In Tender no. 62 of 2014 (for a project duration of sixty-six (66) months), OP-2, OP-5, OP-6 and Greenlite Power India Pvt. Ltd. participated in the





bid. However, Greenlite Power India Pvt. Ltd. was declared ineligible for the bid, as it did not provide any distributor proof, certificate of experience or proof of sales tax. OP-2 emerged L1 bidder with the lowest bid of Rs. 9,08,84,235/-.

- v. In Tender no. 63 of 2014 (for a project duration of sixty-six (66) months), five entities *i.e.* OP-2, OP-5, OP-6, Bioenable Technologies Pvt. Ltd. and Greenlite Power India Pvt. Ltd. participated in the bid. However, two of these entities *i.e.* Bioenable Technologies Pvt. Ltd. and Greenlite Power India Pvt. Ltd. were declared ineligible because they failed to sign the tender documents and did not provide any proof documents, company profile *etc.* OP-2 emerged L1 bidder with the lowest bid of Rs. 6,19,53,345/-.
- vi. Thus, from the above the DG noted that in the five tenders that were subject matter of investigation, OP-2 participated in all the five tenders and emerged as L-1 bidder in all of them. With respect to participation of other OPs, it was noted that OP-1 and OP-4 had participated only in Tender no. 34, 35 and 44 of 2014 and OP-5 and OP-6 had participated only in Tender no. 62 and 63 of 2014.

*Tender no. 34, 35 and 44 of 2014*

- 20. To assess whether there was bid-rigging/collusive bidding in Tender Nos. 34, 35 and 44 of 2014 by OP-1, OP-2 and OP-4, the DG examined the information given by these OPs in the tender documents such as address and contact details, the demand drafts submitted by them towards earnest money deposit and the internet protocol address used by them to upload tender documents and found as follows:

*Address and Contact Details*

- 21. On examination of the documents of OP-1 and OP-2 submitted with PMC for the tender, it was found that OP-1 and OP-2 had a common place of business *i.e.* A-10 Shreyas Apartments, Opposite E-Square, Shivaji Nagar, Pune-411016 and they were managed by a common person *i.e.* Shri Bipin Vijay Salunke even



though they were separate legal entities and had bid as competitors.

22. Further, the DG examined the ‘contact details of a person for the bid’ required to be submitted by the bidders during online filing of the tender. On analysis of these details given in bid document of Tender no. 34, 35 and 44 of 2014, it was found that the phone number given by OP-1 in the contact details belonged to Shri. Parimal Salunke who was neither a proprietor nor the official designated to file online tender for OP-1. He was in fact an Executive Director in OP-2, which was the competitor of OP-1 in the said tender. Thus, it was found that the affairs of proprietorship concern, OP-1 and the company OP-2 were not at arm’s length as far as bidding for these tenders was concerned.

*Demand Drafts for Earnest Money Deposit*

23. Furthermore, it was noted that the Demand Drafts (hereinafter, ‘DD’) submitted by OP-1 and OP-4 for Earnest Money Deposit (hereinafter, ‘EMD’) of Rs. 75,000/- for Tender no. 34 of 2014 were prepared from the same bank *i.e.* Bank of Maharashtra, Pune main branch on the same date *i.e.* 20.12.2014. Also, the DD nos. were very close to each other *i.e.*, 816612 and 816621, suggesting that they were prepared almost around the same time. The DG did not consider this to be a mere coincidence, as OP-4 had its office in Thane, different town far away from Pune. Moreover, the account from which EMD amount of OP-4 was debited belonged to Shri Bipin Vijay Salunke, the proprietor of OP-1 and a director in OP-2, which were the other bidders for the tender. Thus, there appeared to be a common design and an understanding whereby the DDs for EMD were prepared by debiting the accounts of a common person who was the director in the company (OP-2) making L1 bid.
24. In case of Tender no. 35 of 2014 also the DDs of OP-1 and OP-4 for EMD amount of Rs. 50,000/- were prepared from the same bank *i.e.* Bank of Maharashtra, Pune main branch but on different dates. As in case of Tender no. 34 of 2014, in this tender also the bank accounts held by Shri Bipin Vijay



Salunke, were used for preparing DDs for EMD amount for tender by all the three bidders.

25. In case of Tender no. 44 of 2014 also it was found that the DDs for OP-2 and OP-4 were prepared from the same Bank *i.e.* Bank of India, JM Road Branch, Pune, even though OP-4 was based in Thane, a city away from Pune. The DD of OP-1 was prepared from Bank of Maharashtra, Pune Branch. The DG observed that all the three drafts were prepared on the same date *i.e.* 31.12.2014. Moreover, the DDs of OP-2 and OP-4 had consecutive numbers *i.e.* 023959 and 023960. In addition, it was noted that the DD application of OP-4 mentioned the name “Bipin V. Salunke” under the head “Applicant’s name and other details or Account Number”.

*Internet Protocol Address used for Uploading Tender Documents:*

26. Further, on examination of the Internet Protocol address (hereinafter, the ‘IP address’) used by the three bidders to upload the tender documents, the DG noted that, OP-1 and OP-4 had uploaded the documents for the tender no. 34, 35 and 44 of 2014 from the same IP address. Also, the log-in and log-out time of these two bidders showed that the bid documents were uploaded within a gap of around two hours (Tender no. 34 and 35 of 2014) or immediately one after the other (Tender no. 44 of 2014). In addition, the IP address of OP-1 and OP-4 were found to be registered with the same mobile number in the name of Shri Bipin Vijay Salunke, Director of OP-2, indicating that the documents for the tender were uploaded from the same place by the same person. In case of Tender no. 44 of 2014, it was observed that the three qualified bidders *i.e.* OP-1, OP-2 and OP-4 had the same IP address, which was used for uploading the documents for the tender. Whereas, the ineligible bidder Aruna Green Venture Pvt. Ltd. had used a different IP Address.



*Tender no. 62 and 63 of 2014*

27. To assess bid-rigging/collusive bidding by OP-2, OP-5 and OP-6 in Tender Nos. 62 and 63 of 2014, the DG examined the information given by these OPs in the tender documents in similar manner as in case of Tender nos 34, 35 and 44 of 2014 and found that:

*Demand Drafts for Earnest Money Deposit:*

28. In Tender no. 62 of 2014, the DD of OP-2 and OP-6 were prepared from the same bank *i.e.* Bank of Maharashtra, Pune Branch and on the same date *i.e.* 10.03.2015. Moreover, the DD numbers of OP-2 and OP-6 though not consecutively numbered, were very close to each other *i.e.* 125818 and 125821, and thus appeared to have been made around the same time.
29. Similarly, in case of Tender no. 63 of 2014 also, it was found that the DDs of OP-2 and OP-6 were prepared from the same bank *i.e.* Bank of Maharashtra, Pune Branch and on the same date *i.e.* 10.03.2015. Although, the DDs of OP-2 and OP-6 did not bear consecutive numbers, however, the DD nos. *i.e.* 025819 and 025822 indicated that they were made around the same time.
30. In addition, from the submissions of the Bank of Maharashtra, the DG found that Shri Vijay Raghunath Salunke of OP-7 was the applicant for EMD draft for OP-6 in Tender no. 62 and 63 of 2014 who was neither the proprietor nor authorized official to file the tender online. Also, the draft of OP-6 was prepared by debiting the account jointly held by Shri Vijay Raghunath Salunke and Smt. Sulabha Vijay Salunke, who were neither director nor employee of OP-6, but were in fact parents of Shri Bipin Vijay Salunke.



*Contact Details:*

31. Further, it was found that though Abdul Ruf Shaikh was the person designated to file the tender online for OP-6, the phone number given by OP-6 in the tender documents belonged to Shri Parimal Salunke who was neither a proprietor nor the official designated to file online tender for OP-6. Infact, he was an Executive director in OP-2, a competitor of OP-6 in the said tender.

*Internet Protocol Address used for Uploading Tender Documents:*

32. Furthermore, in case of Tender no. 62 of 2014, out of the four qualified bidders, two of them *i.e.* OP-5 and OP-6 were found to have the same IP Address. Whereas OP-2 and the ineligible bidder had different IP Address. The log-in and the log-out time of OP-5 and OP-6 showed that the bid documents were uploaded within a gap of just 15-20 minutes. Also, the IP Address of the OP-5 and OP-6 were found registered with the same mobile number which was in the name of Shri Bipin Vijay Salunke, director of OP-2. In case of Tender no. 63 of 2014, the three qualified bidders *i.e.* OP-2, OP-5 and OP-6 were found to have the same IP Address. Also their log-in and log-out time showed that their bid documents were uploaded within a gap of just 15-20 minutes. In addition to this, the IP Address of the OP-2, OP-5 and OP-6 was registered with the same mobile number in the name of Shri Bipin Vijay Salunke, director of OP-2, indicating that the same person may have uploaded the documents for the tender from the same place.
33. Based on foregoing analysis, the DG was of the view that all the evidences indicated that the OPs were hand- in-glove with each other and had engaged in bid rigging/ cartelisation in Tender nos. 34, 35, 44, 62 and 63 of 2014.
34. Apart from above, the DG also confronted the above evidences and recorded statements of key officials of the OPs while conducting the investigation. These statements were mostly recorded after the submission of application under



Section 46 of the Act by the various OPs. The observations of the DG from the statements of various OPs are summarised below:-

*Statement of Shri Manoj Kumar Gupta, Proprietor of OP-6*

- i. Shri Manoj Kumar Gupta, proprietor of OP-6 in his statements submitted that OP-6 had participated in the Tender nos. 62 and 63 of 2014 of PMC, despite having no expertise in the area of solid waste management. He explained that he knew Shri Bipin Vijay Salunke through his brother-in-law Shri Rajesh Goyal, who was a close friend of Shri Bipin Vijay Salunke.
- ii. In response to the evidence of cartelisation *i.e.* the transfer of money to joint bank account of Shri Vijay Raghunath Salunke and Smt. Sulabha Salunke for preparation of DDs and IP addresses through which the documents were uploaded, Shri Manoj Kumar Gupta admitted that OP-6 was a part of cartel.
- iii. He also disclosed the *modus operandi* of the cartel and admitted that OP-6 was a proxy bidder, with aim to ensure that there were at least three (03) eligible bidders in the first round of bidding. He also stated that the relevant documents were provided by him for filing the tender and uploading of documents *etc.* and other work was done by Shri Bipin Vijay Salunke.
- iv. Further, as regards the preparation of DD required for EMD, Shri Manoj Kumar Gupta stated that since he did not have a bank account with a nationalized bank, therefore, he transferred an amount of Rs.10 lakhs to the account of Shri Vijay Raghunath Salunke.
- v. He also stated that he did not receive any consideration or benefit for participation in the tender and it was done solely for the purpose of benefiting Shri Bipin Vijay Salunke.



- vi. Further, Shri Rajesh Goyal also filed an Affidavit confirming that he had introduced Shri Manoj Kumar Gupta to Shri Bipin Vijay Salunke, and Shri Manoj Kumar Gupta helped Shri Bipin Vijay Salunke only out of his own request without any consideration. Thus, the statement of Shri Manoj Kumar Gupta and existence of cartel was further corroborated *vide* the affidavit of Shri Rajesh Goyal.

*Statement of Shri Sanjay Harakchand Gugle, Partner of OP-5*

- i. In response to the evidence of cartelisation *i.e.* the contact person details and the IP addresses through which the documents were uploaded, Shri Sanjay Harakchand Gugle admitted that OP-5 was a part of the cartel.
- ii. He also disclosed the *modus operandi* of the cartel and admitted that OP-5 submitted bid as a proxy bidder, so that it was ensured that there were at least three eligible bidders in the first round of bidding itself and tender would ultimately be awarded to OP-2. He also admitted that he only provided the relevant documents for filing the tender and the uploading of the documents *etc.* and other work was done by Shri Bipin Vijay Salunke.
- iii. He submitted that he was introduced to Shri Bipin Vijay Salunke through his nephew, Shri Ranjit Gugle who was a close friend of Shri Bipin Vijay Salunke. Thereafter, he provided all the relevant documents to Shri Bipin Vijay Salunke for tender bidding process. In addition, the DD required for EMD was prepared by him through Central Bank of India.
- iv. He also stated that he did not receive any consideration or benefit for participation in the tender and it was done solely for the purpose of benefiting Shri Bipin Vijay Salunke.



- v. Further, Shri Ranjit Gugle filed an Affidavit confirming that he had introduced Shri Sanjay Harakchand Gugle to Shri Bipin Vijay Salunke, and that Shri Sanjay Harakchand Gugle helped Shri Bipin Vijay Salunke only out of his own request without any consideration.

Statement of Shri Saiprasad S. Prabhukhanolkar, Director of OP-4:

- i. On being confronted with evidences, Shri Saiprasad S. Prabhukhanolkar admitted that OP-4 was a part of the cartel. He also disclosed the *modus operandi* of the cartel and disclosed that OP-4 was a proxy bidder, so that it was ensured that there were at least three eligible bidders in the first round of bidding itself.
- ii. He submitted that he only provided the relevant documents for filing the tender and the uploading the documents, *etc.* and other work was done by Shri Bipin Vijay Salunke. He claimed that Shri Bipin Vijay Salunke requested him to provide documents required for the bid in the tenders and the DDs for the EMD were prepared by OP-2 directly without the knowledge of OP-4. Further, no money either in cash, cheque or otherwise was provided to Shri Bipin Vijay Salunke or OP-2 for the said purpose.
- iii. In addition to this, he stated that he did not receive any consideration or benefit for participation in the tender and it was done solely for the purpose of benefiting Shri Bipin Vijay Salunke.

Statement of Shri Vijay Raghunath Salunke, Director of OP-7:

- i. In the statement, Shri Vijay Raghunath Salunke accepted that OP-7 had authorized different entities as its authorized distributors for different tenders. He also accepted that two DDs were prepared from his bank account for OP-6. He stated that Shri Bipin Vijay Salunke had informed him that





since OP-6 did not have bank account with nationalized bank, he would be transferring Rs 10 lakhs in his account for EMD for the tender.

- ii. He denied being aware of details of the cartel and also denied being offered any consideration for the same. He claimed that this was done at the behest of Shri Bipin Vijay Salunke. Further OP-7 had given authorization to OP-1 as at that time OP-1 was not engaged in manufacture of composting machines. This help was rendered by OP-7 at the behest of Shri Bipin Vijay Salunke to ensure that at least three eligible bids were placed for the tenders.

*Statement of Shri Bipin Vijay Salunke, Proprietor of OP-1 & Director of OP-2:*

- i. Shri Bipin Vijay Salunke admitted to the existence of cartel and rigging of tender nos. 34, 35, 44, 62 and 63 of 2014. Further, he admitted that he had a lead role in bid rigging and other entities *i.e.* OP-1, OP-4, OP-5 & OP-6 were propped up as proxy bidders to enable OP-2 to win the tenders.
- ii. The statements given by Shri Bipin revealed that the relevant documents for the tenders were provided by the proxy bidders, while the demand drafts for EMD for the tenders were prepared by Shri Parimal Salunke, on his instructions, on behalf of the proxy bidders.
- iii. In addition to the above, the DG found from the statement of Shri Bipin Vijay Salunke that his relative Shri Parimal Salunke was also coordinating with other bidders in the cartel. On instructions of Shri Bipin Vijay Salunke, he had procured the digital keys from the office of PMC and also prepared the DDs for EMD on their behalf for the said tenders. Further, the technical and price bids of various proxy bidders were also scanned and uploaded by Shri Parimal Salunke from the office of OP-2. Shri Parimal Salunke accepted in totality the relevant statements of Shri Bipin Vijay Salunke and his role in it.



35. Thus, from the evidences gathered during the investigation and the statements of person(s)/ officer(s) of OP-1, OP-2, OP-4, OP-5, OP-6 and OP-7, the DG concluded that there was bid rigging/ collusive bidding in the Tender nos. 34, 35, 44, 62 and 63 of 2014 for 'Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s)' in contravention of Section 3(3)(d) read with Section 3(1) of the Act. Further, the DG concluded that there was also meeting of minds and co-ordination between various individuals which included the proprietor/ partner/ director of OP-1, OP-2, OP-4, OP-5, OP-6 and OP-7. Accordingly, the DG identified such person(s)/ officer(s) to be liable under Section 48(2) of the Act.
36. Finally, the DG observed that there were systemic failures in PMC, which were evident from the fact that the parties under common management were applying for the tender as two different legal entities and the various bidders were using the same IP address for uploading the tender. An examination of these facts would have easily revealed the existence of cartel and would have prevented such cartels from operating in further tenders.
37. The Commission considered the investigation report of the DG on 30.08.2017 and decided to forward the same to the Informant, the OPs and also to their person(s)/ officer(s) found to be liable under Section 48 of the Act by the DG *i.e.* (i) Shri Bipin Vijay Salunke (for OP 2); (ii) Shri Parimal Salunke (for OP 2); (iii) Shri Saiprasad Sharadchandra Prabhukhanolkar (for OP-4); (iv) Shri Sanjay Harakchand Gugle (for OP-5) and (v) Shri Vijay Raghunath Salunke (for OP 7), for filing their objections/ suggestions, if any. On 16.11.2017, the Commission heard the matter. The submissions of the OPs are summarised below.



### **Submissions of the OPs to the DG Report**

#### **OP-1 and Shri Bipin Vijay Salunke (Proprietor of OP-1)**

38. OP-1 has stated that it has no objection to the conclusion arrived at in the investigation report of the DG and has already admitted to its role in the bid-rigging through its Lesser Penalty Application.
39. OP-1 has averred that the DG came to know about the details of the mode and manner of the actions complained of through the Lesser Penalty Application filed by OP-1, which also disclosed the objective of alleged cartelisation *i.e.* to ensure that PMC does not extend the tender period and that the bid placed by OP-2 was considered without extension.
40. OP-1 has submitted that as it was not aware of provisions of the Act, it ended up inadvertently contravening the same by assisting OP-2 with setting up other OPs as bidders to ensure that the extension clause was not triggered. OP-1 has averred that this was done *bona fide* as it is a matter of record that that apart from OP-2, no other eligible bidder participated in the PMC tenders during 2013-2015. As such, no actual loss was caused to PMC nor did OP-2 foreclose the market to other competitors. Moreover, no consideration was received or offered to the cover bidders including OP-1 for submitting their bids. The assistance was provided by other OPs due to personal relationship with OP-2 and Shri Bipin Vijay Salunke.
41. In addition to above, OP-1 has stated that as confidentiality was not granted to the statement of Shri Bipin Vijay Salunke recorded during investigation, its rights and reputation had been adversely affected.
42. OP-1 has prayed that on a holistic evaluation of substantial value addition done by it as well as by the prejudice caused to it due to above procedural flaws in the



DG report, a maximum reduction of penalty be granted to OP-1.

OP-2 and Shri Bipin Vijay Salunke (Director of OP-2)

43. At the outset, OP-2 in its combined written submission with Shri Bipin Vijay Salunke has stated that it has no objection to the conclusion arrived at in the investigation report of the DG. Moreover, it has already admitted to its role in the acts investigated by the DG in its Lesser Penalty Application.
44. Further, it has cooperated with the DG in the investigation and honestly disclosed its entire role in the alleged bid rigging of tenders and had also given new information about other tenders regarding which the DG and the Commission had no prior information.
45. OP-2 has submitted that it has made comprehensive disclosures of *modus operandi* adopted by it to coordinate between various OPs as bidders for tenders. The documentary evidence given by it was not available with the DG previously and included *inter alia* disclosure of bank statements, emails, affidavits, authorization letters and physical digital keys/ pen drives obtained from OP-3.
46. OP-2 has submitted that the sole purpose of alleged cartelisation was to ensure that PMC did not extend tender period and bid placed by OP-2 was considered. As OP-2 was not aware of provisions of the Act, it inadvertently contravened the same by setting up other OPs as bidders to ensure that the extension clause was not triggered and bid period was not extended. OP-1 has averred that this was done *bona fide* as it is a matter of record that that apart from OP-2, no other eligible bidder participated in the PMC tenders between 2013-2015, even after extension of period of bidding. As such, no actual loss was caused to PMC nor did OP-2 foreclose the market to other competitors. Moreover, OP-2 did not give any consideration to cover bidders for submitting their bids and this fact is revealed by the statements of cover bidders recorded by the DG.



47. Apart from above, OP-2 has pointed out some procedural and substantive errors in the investigation by the DG, which have adversely affected its reputation. OP-2 has contended that when Shri Bipin Vijay Salunke was summoned by the DG to record his statement it was deduced that his oral statement would also be accorded the same confidentiality in the investigation report as mandated by Regulation 6 of the Lesser Penalty Regulations. However, the entire statement of Shri Bipin Vijay Salunke, Director of OP-2 was appended in the public version of the DG report and it was incorrectly stated that no confidentiality was claimed. Further, the DG report did not make clear what evidence were discovered by the DG's own investigation and what formed part of disclosures in the Lesser Penalty Application.
48. In view of above, OP-2 has requested for grant of maximum reduction of penalty for OP-2 on an evaluation of substantial value addition done by OP-2 through its Lesser Penalty Application.

OP-4 and Shri Saiprasad Saradchandra Prabhukhanolkar(Director of OP-4):

49. OP-4 and Shri Saiprasad Saradchandra Prabhukhanolkar in their combined written submission have contended that the case in hand is an aberration and they have never been involved in any kind of cartelisation, bid rigging, proxy bidding or any such activity before. Further, they undertake not to indulge in any such activity in future.
50. Further, OP-4 has stated that it had filed a Lesser Penalty Application and pursuant to the application, fully cooperated with the investigation, made full and complete disclosures and provided the information and documents in its possession clearly disclosing the names, relevant e-mail ids, phone numbers and e-mail dated 18.12.2014 in context of Tender nos. 34, 35 and 44 of 2014. OP-4 has further submitted that, from the report of the DG, it appears that its



cooperation has been valuable in understanding the *modus operandi* of the cartel, knowing the persons involved and confronting the main OPs with such information, which they have admitted as per the report of the DG. Thus, the cooperation of OP-4, the information and documents provided, have valuably contributed to the speedy conclusion of the investigation and establishing a case of proxy bidding. However, it has been denied the right of confidentiality on the information and documents provided by it, which were disclosed to the other parties even before the Commission considered the matter.

51. OP-4 has stated that he did not get any monetary benefit out of this entire process as he did it only as a friendly gesture to Shri Bipin Vijay Salunke, who assured that his name was included merely for completing the qualifying number of bidders in order to avoid any cancellation of such bids for want of minimum number of bidders.
52. On the basis of above, OP-4 has prayed that if the Commission finds it guilty for contravention of provisions of the Act lesser penalty be imposed on it under the Regulation 5(1) Lesser Penalty Regulations read with Section 46 of the Act.

OP-5 and Shri Sanjay Harakchand Gugle (Partner of OP-5):

53. OP-5 and Shri Sanjay Harakchand Gugle in their combined written submission have contended that the present case does not fall under the ambit of Section 3 of the Act as the OPs are not engaged in 'identical or similar trade of goods or provision of services' nor are they competitors of each other. OP-5 is engaged in business of Pharmaceuticals, trading of medicines, cosmetics, which is a completely different line of business from that of OP-2. Furthermore, the OPs have in no manner restricted competition. As Tender no. 62 and 63 of 2014 were e-auction tenders open for all bidders, entry was not restricted in any manner by any alleged agreement/ cartel, which can be presumed to have an appreciable adverse effect on competition.



54. It has also been submitted that OP-5 is not a competitor of OP-2 and the only consideration for participation in the tenders was a kind gesture towards Shri Bipin Vijay Salunke. Its extent of involvement was limited to providing documents for participation, which was granted as an unconditional favour to Shri Bipin Vijay Salunke as he was related to nephew of Shri Sanjay Harakchand Gugle *i.e.* Shri Ranjit Gugle. Further, no consideration was received by Shri Sanjay Harakchand Gugle or by OP-5 for participating in Tender no. 62 and 63 of 2014. OP-5 participated only for the reason that OP-3 did not extend the bidding time.
55. Further, it has been submitted that the DG had acted in breach of confidentiality and submitted a single version of the investigation report, which disclosed information provided by OP-5 in its Lesser Penalty Application, which caused immense loss to OP-5 and its partners. Thus, if it is held that there has been a contravention of Section 3 of the Act, then in view of the loss suffered by OP-5, the penalty leviable, if any, on OP-5 may be waived/ determined accordingly. Further, as the investigation report does not deal with the co-operation and assistance extended by OP-5 by way of its Lesser Penalty Application/ depositions/ submission of documents pertaining to Tender no. 62 and 63 of 2014, the report ought not to be considered by the Commission.
56. OP-5 has prayed the present written submission be treated confidential. Further, it has submitted that the Commission may while determining the imposition of penalty on OP-5 keep in view the guiding principles laid down by the Hon'ble Supreme Court in *Excel Crop Care Limited versus Competition Commission of India and Anr.* 2017 Comp. LR 0355 (SC) on the aspect of 'relevant turnover'. OP-5 has averred that in the present case even the concept of relevant turnover is not applicable to it as it is engaged in the business of pharmaceuticals and not the purported infringing product *i.e.* Solid Waste management Plant.



Accordingly, in the event, the Commission concludes that there is contravention of Section 3 of the Act, the Commission is requested to consider the aforesaid aspect while determining imposition of penalty on OP-5.

OP-6 and Sh. Manoj Kumar Gupta (Sole Proprietor of OP-6)

57. OP-6 and Shri Manoj Kumar Gupta in their combined written submission have contended that during the course of oral deposition on 17.06.2016, it was perceived that certain acts committed by OP-6 in course of submission of bids for Tender nos. 62 and 63 of 2014 floated by PMC may be in violation of Section 3(3) of the Act. Therefore, a Lesser Penalty Application was filed on 02.08.2016. OP-6 has submitted that though the DG had obtained the primary evidences and information relevant to OP-6 through other sources, but complete and vital disclosure of the facts were perceived only after the filing of Lesser Penalty Application.
58. OP-6 has submitted that it has made comprehensive disclosures of *modus operandi* of the cartel and *inter alia* disclosed that his participation was at the behest of his brother-in-law Shri Rajesh Goyal who was on close friendly terms with Shri Bipin Vijay Salunke. Further, OP-6 placed on record the vital and material information including the fact that Shri Bipin Vijay Salunke had deputed Shri Tushar Gorane to take care of logistical requirements with regard to submission of said bids and requested OP-6 to authorise Shri Tushar Gorane to sign and submit bids on behalf of OP-6.
59. OP-6 has also submitted that on 26.09.2016 when its oral deposition was recorded before the DG, it reiterated the facts stated in the Lesser Penalty Application. Moreover, additional documents/evidences were placed on record by OP-6 in order to substantiate the information provided in Lesser Penalty Application. However, the DG report did not mention the Lesser Penalty Application filed by OP-6 and the information and evidences provided by him





thereby and thereafter. Further, the DG report had failed to segregate the information and evidences received from the Informant, the evidence obtained by the DG through independent investigation and the information and evidence submitted by OP-6.

60. OP-6 has also submitted that the DG had erroneously mentioned that no confidentiality was claimed by OP-6 and submitted a single version of the report. Further, OP-6 has stated that it has already suffered on the account of present proceedings on account of breach of confidentiality and, therefore, it should be discharged without imposing any penalty.
61. OP-6 has further submitted that the facts and circumstances of the case and the activities disclosed by OP-6 in respect of co-ordination between himself and Shri Bipin Vijay Salunke did not constitute a violation of the provisions of the Act as OP-6 and Shri Bipin Vijay Salunke (proprietor of OP-1 and Director of OP-2) were not engaged in identical or similar trade of goods or provision of services. As such the conclusion reached by the DG that OP-6 had indulged in bid-rigging and collusive bidding in response to the said tenders of OP-3 is in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act is incorrect and untenable. Also, OP-6 is not engaged in any manufacture, trade or service pertaining to solid waste management, which were subject matter of the said tenders. As such, keeping in view the decision of Hon'ble Supreme Court in *Excel Crop Care (supra)* where "turnover" appearing in Section 27 of the Act has been interpreted to mean "relevant turnover", OP-6 does not have any "relevant turnover" in the present case. Also, OP-6 has no "relevant profit" as OP-6 has not benefitted in any manner from the acts of coordination described hereinabove.
62. Without prejudice to the above, OP-6 has submitted that at the time of involvement of OP-6 in the alleged cartel, he did not fully realize the



ramifications of his actions. The acts of coordination between OP-6 and Shri Bipin Vijay Salunke were only aimed at pre-empting extension of time for submission of bids and increasing chances of OP-2 becoming successful bidder. As the process of submission of bids was electronic, the acts of coordination between OP-6 and Shri Bipin Vijay Salunke could neither have excluded or prevented other genuine bidders from participating.

OP -7 and Shri Vijay Raghunath Salunke

63. OP-7 and Shri Vijay Raghunath Salunke in their combined written submission have submitted that they have no objection to the conclusion arrived at in the investigation report of the DG. Further, they also submitted a Lesser Penalty Application giving precise details of the mode, manner and the actions complained of along with attached documents and the oral statements which significantly added value. Also, Shri Vijay Raghunath Salunke, Director of OP-7, disclosed that on the insistence of his son Shri Bipin Vijay Salunke, he agreed to give authorization to other OPs as authorized distributor of OP-7 to help them qualify for PMC tenders. It has been stated by OP-7 that the objective of alleged cartelisation was *bona fide* so as to ensure that PMC does not extend the tender period and the bid placed by OP-2 should be considered without extension.
64. OP-7 has further stated that it co-operated fully with the DG in the investigation and with regard to tender no. 34, 35 and 44, submitted authorization letters issued by OP-7 in favour of OP-1 appointing it as an authorized distributor of OP-7 for all three tenders. Further, with respect to Tender no. 62 and 63 of 2014, OP-7 submitted authorization letters issued by it in favour of OP-6 appointing it as an authorized distributor of OP-7. Not only that, Shri Vijay Raghunath Salunke also furnished his bank statement, which reflected the receipt of Rs. 10,00,000/- from OP-6 for preparation of DDs for Tender no. 62 and 63 of 2014. The amount was given on understanding that it would be returned after the bid was unsuccessful. Eventually, this amount was refunded to OP-6 as revealed by the bank statement.



65. Further, OP-7 has stated that the DG report completely ignored the fact that Lesser Penalty Application had been filed. Only one public version was circulated which appended the entire statement of Shri Vijay Raghunath Salunke in breach of his confidentiality. Also the DG denied that confidentiality was claimed in respect of any evidences or statements of OPs.
66. OP-7 has prayed that on a holistic evaluation of substantial value addition done by OP-7 by the facts/ documents disclosed in Lesser Penalty Application as well as by prejudice caused to OP-7, it be granted maximum reduction of penalty.

**Analysis:**

67. Before proceeding to decide the case on merits, the Commission deems it appropriate to address certain legal and procedural issues raised by some of the OPs.

**Legal Issue:**

*Whether Section 3(3) of the Act is applicable in the instant case when not all OPs are engaged in 'identical or similar trade of goods or provision of services'.*

68. In this regard, it is observed that a plain reading of Section 3(3) of the Act shows that any agreement, practice, or decision, including cartels, by enterprises, persons or association thereof is amenable to the jurisdiction of the Commission if the parties that are engaged in identical or similar trade of goods of provision of service are directly or indirectly engaged in bid rigging/ collusive bidding, which means that they are competitors in the market. Some OPs herein, however, contend that they are not competitors as they are engaged in different trades and are, therefore, not covered by the provision of Section 3(3) of the Act.



69. In such a scenario, the issue that arises before the Commission is that when bid rigging is alleged in the tender process after the same has taken place, should it be open for any of the bidders to contend that they would not be covered by the provisions of the Act as they had not started that business activity at all at the time of bidding whereas the other bidders were well established players. In other words, whether in the context of Section 3(3)(d) of the Act the phrase ‘engaged in’ ought to be accorded the literal meaning or a meaning that advances the objectives of the Act. In this regard, the Commission notes that it is a well settled principle of law that when two interpretations are feasible, that which advances the remedy and suppresses the evil has to be preferred as envisioned by the legislature.
70. In the instant case, the Commission is of the view that it is the business activity of the parties that they are actually bidding for and the one regarding which the violation of law has been alleged which is relevant for the purpose of the applicability of Section 3(3)(d) Act rather than any other business activity(s) parties ‘were’ or ‘are’ engaged in. If the parties were allowed to escape the grasp of the Act by considering them as not competitors on the pretext that they are actually engaged in varied businesses, it may defeat the very purpose of the provisions of Section 3(3) (d) of the Act. Any construction other than this would mean that new entrants are totally exempt from the provisions of bid rigging for the reason that they are or were not involved in that business at the time of bidding. This would not only render the provision of Section 3(3)(d) nugatory but would make it totally redundant, thus taking out a large segment of the agreements related to bidding out of the purview of the Act.

Procedural Issues:

A. *Breach of confidentiality by the DG/ Commission*

71. It is noted that one objection that almost all OPs have taken is the issue of breach of confidentiality by the DG/ Commission. The OPs have claimed that DG, by



disclosing the contents of their statements made before it in the investigation report as non-confidential information, has in effect disclosed the contents of their respective Lesser Penalty Application in breach of confidentiality accorded in terms of the Lesser Penalty Regulations. Further, the Commission by forwarding such report to the OPs has aided the breach of confidentiality.

72. The Commission, on careful consideration, finds this contention of the OPs to be misconceived. It is noted that application by an Applicant under Lesser Penalty Regulations and statements of the OPs before the DG, are separate set of evidences. The application under Section 46 of Act is filed before the Commission in terms of the Lesser Penalty Regulations. The confidentiality on such an application is governed in terms of the said Regulations. The confidential treatment granted under Lesser Penalty Regulations does not extend to evidence obtained or collected by the DG, even if such an evidence is obtained from a Lesser Penalty Applicant. Therefore, statements of the OPs recorded by DG are an independent evidence. These may or may not contain the information submitted in the Lesser Penalty Regulations. The confidentiality on such an evidence can only be in terms of Regulation 35 of the General Regulations, for which the tests laid down in Regulation 35(3) and 35(9) of the General Regulations have to be satisfied. There is nothing on record to show that the OPs sought confidential treatment on their statements or the same was granted by the DG under those Regulations. It goes without saying that if confidential treatment is neither sought nor granted on any evidence, same shall be treated as non-confidential for the purposes of the case. In such a scenario, including this material evidence in the investigation report is essential to enable the parties to the case to exercise their right of defence.

73. At the same time, it is pertinent to note that even in the case of information submitted under the Lesser Penalty Regulations, where confidentiality granted to information is over and above that granted under Regulation 35 of the General



Regulations, the confidentiality will remain subject to the provisions of Section 57 of the Act under which the Commission can disclose such information for the purposes of the Act.

74. Be that as it may, in the instant case, crux of the matter is that OPs are claiming reputational harm not simply because some confidential information was disclosed in the investigation report of the DG but more because such information was disclosed to the public at large. In this regard, the Commission observes that it is well recognized fact that the investigation report is not a public document and is not to be shared with public. This aspect is enshrined in Regulation 47 of the Competition Commission of India (General) Regulations, 2009 (hereinafter, 'General Regulations'), which clearly provides that the proceedings before the Commission are not open to public, except where the Commission so directs. In the instant case, there being no direction to make proceedings open to public, there was no question of sharing the investigation report of the DG with public.
75. However, despite this regulatory provision, the Informant shared the investigation report with the media for which, Shri S.C.N. Jatar, the President of the Informant, was directed to file an undertaking that the contents of the investigation report as well as other information, documents and evidence obtained during proceedings would not be disclosed to any person who is not a party to the proceedings or used for a purpose other than the proceedings under the Act, which was subsequently filed.
76. In view of the foregoing, contention of the OPs that reputational harm has been caused due to action/ omission of the DG/ Commission appears to be misplaced. Such harm, if any, has been caused either due to disclosure of the contents of the investigation report of the DG by the Informant or due to OPs own acts of collusion in contravention of the provisions of the Act. The allegation against



the DG/ Commission is nothing more than a ruse to get reduction or discharge from imposition of penalty under the Act.

*B. The Investigation report of the DG does not reveal the fact that Lesser Penalty Applications had been filed by various OPs in the matter or the value addition provided by such Applications:*

77. Some OPs have contended that the investigation report did not adequately deal with and distinguish between the evidences/ information that had been gathered by the DG on its own *vis-à-vis* those that had been furnished by the Lesser Penalty Applicant. Further, it is averred that by excluding the fact that OPs had filed a Lesser Penalty Application as well as the value addition that was provided by their information, investigation report has remained incomplete.
78. In this regard, the Commission observes that what OPs have referred to as incompleteness, in fact protects identity of the Lesser Penalty Applicants. If the investigation report were to identify the evidences furnished by the Lesser Penalty Applicant(s), it would not only disclose the identity of such Applicant(s) but also the contents of Lesser Penalty Application, on which OPs have themselves vehemently claimed confidentiality. Further, the decision on significant value addition by the Lesser Penalty Applicant and consequent reduction in penalty to the Applicant is something which the Commission would decide and not the DG. Such a decision would be made looking into the contents of the Lesser Penalty Application, documents/ evidence obtained during investigation by the DG, investigation report of the DG and submissions of the OPs thereon. The observation in this regard would form part of the order of the Commission and not the investigation report of the DG. Hence, the Commission finds no inconsistency or incompleteness in the investigation report of the DG.



**Establishment of Violation:**

79. On perusal of the facts, the investigation report of DG, submissions made in Lesser Penalty Applications and submissions of the OPs thereon, the Commission observes that information provided by the Informant, evidence adduced by the DG during investigation and admissions of the OPs under Section 46 of the Act establish cartelisation and bid rigging in Tender nos. 34, 35, 44, 62 and 63 of 2014 of PMC for 'Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s)'. The investigation further reveals that lead role in the cartel was played by Shri Bipin Vijay Salunke, who is the director in OP-2 and L1 bidder in all the five tenders. He is also the sole proprietor of OP-1. The motive of cartelisation and bid rigging was to ensure that OP-2 emerged as L1 and won the tenders issued by PMC. To achieve this, Shri Bipin Vijay Salunke ensured that there were minimum three eligible bidders for each of the five tenders as the tender process guidelines laid down minimum of three technically qualified bidders for each bid. For this, Shri Bipin Vijay Salunke approached the directors/ partners/ proprietors of other OPs *i.e.* Lahs Green India Pvt. Ltd. (OP-4), Sanjay Agencies (OP-5) and Mahalaxmi Steels (OP-6) to bid as proxy bidders and file documents in Tender nos. 34, 35, 44, 62 and 63 of 2014. He also propped up OP-1 as proxy bidder in Tender nos. 34, 35 and 44 of 2014.
80. Two of the proxy bidders *i.e.* OP-1 and OP-6, did not have any experience or background in solid waste management and were thus, not eligible. However, Shri Bipin Vijay Salunke arranged for false authorization certificates for them from OP-7 in which his father Shri Vijay Raghunath Salunke was a Director, thus, projecting them to be the authorized distributors of composting machine when in reality none of them was. Further, Shri Bipin Vijay Salunke prepared DDs for EMD for some of the proxy bidders. For participation in Tender nos. 34, 35, 44, 62 and 63 of 2014, he obtained the relevant documents from proxy bidders *i.e.* OP-4, OP-5 and OP-6 and uploaded them on their behalf for the





online tender. He decided and quoted the bid rates in the tenders filed on their behalf. All this was orchestrated by Shri Bipin Vijay Salunke though duly assisted by OP-4, OP-5 and OP-6 in the process.

81. Thus, there is no doubt whatsoever on the meeting of minds and collusion amongst OP-1, OP-2, OP-4, OP-5 and OP-6 to rig the bid in Tender nos. 34, 35, 44, 62 and 63 of 2014 floated by PMC.
82. As regards the role of OP-7, it is observed that OP-7 certified OP-1 and OP-6 as authorized distributor of composting machines to enable them to participate in the two tenders. In his statement on oath, Shri Vijay Raghunath Salunke, director of OP-7 accepted that he was aware that Shri Bipin Vijay Salunke would be taking help of other bidders for submission of tenders. Not only that, Shri Vijay Raghunath Salunke prepared two DDs on behalf of OP-6 from his bank account. These evidences show that OP-7 not only aided OP-1 and OP-6 to bid for tender but also played a pivotal role in the operation of the cartel. Strangely, despite having the requisite experience, OP-7 did not participate in the tender itself, which also assisted OP-2 to win the tenders. Thus, the Commission finds that contravention of provisions of Section 3(3)(d) of the Act is made out in instant case not only against OP-1, OP-2, OP-4, OP-5 and OP-6 but also against OP-7.
83. Additionally, the Commission notes that some of the OPs have averred that no appreciable adverse effect on competition in India has been caused by way of any alleged meeting of minds in this case, as the tenders that are under investigation were e-auction tenders open for all bidders. Therefore, the entry was not restricted in any manner due to the alleged agreement/ cartel and no actual loss was caused to PMC. Moreover, no consideration was derived from OP-2 by other bidders for submitting their bids, therefore, the latter did not even benefit from bid rigging.



84. In this regard, the Commission observes that under the provisions of Section 3(3)(d) of the Act, bid rigging shall be presumed to have adverse effect on competition independent of duration or purpose and, also, whether benefit was actually derived or not from the cartel. In terms of the provisions contained in Section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Section 3(2) of the Act declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. Further, by virtue of the presumption contained in subsection (3), any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which - (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.
85. Thus, in case of agreements listed under Section 3(3) of the Act, once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition; the onus to rebut the presumption would lie upon the OPs.



86. In the present case, OPs have neither been able to rebut the said presumption nor been able to show how the impugned conduct resulted into accrual of benefits to consumers or made improvements in production or distribution of goods in question.
87. Further, with respect to the averment of OPs that as bid rigging has not restricted entry there is no appreciable adverse effect on competition and, hence, no contravention of the provisions of Section 3(3) of the Act, the Commission observes that mere possibility that other bidders could have bid for the tender cannot absolve the colluding OPs from their conduct of bid rigging. Explanation to Section 3(3) of the Act makes it clear that bid rigging even includes an agreement that has the effect of reducing competition for bids or adversely affecting or manipulating the process of bidding. Therefore, even if a subset of bidders collude amongst themselves to rig or manipulate bidding process, it would be a violation of Section 3(3)(d) of the Act.
88. In view of the forgoing, the Commission finds that OP-1, OP-2, OP-4, OP-5, OP-6 and OP-7 have indulged in bid rigging/ collusive bidding in the aforesaid tenders of OP-3 in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act.
89. With respect to the role of OP-3, it is noted that the DG has found evidence, which shows that OP-3 failed to detect cartelisation in its own tenders. Evidence such as uploading of one of the tenders by OP-2 from the IP address of OP-3, call data records of communication between some of the officials of OP-3 with the L1 bidder and other systemic failures on part of OP-3 indicate that the conduct of OP-3 may have facilitated bid-rigging in these five tenders.
90. It is clear from investigation that that OP-3 did not exercise due diligence while scrutinizing the bid documents. Even though there were several apparent



indications of collusion like same IP addresses, common proprietor/ director, same office address, consecutive serial number for DDs *etc.*, these were not taken into consideration by OP-3 while determining the eligibility of the bidders. Further, in Tender no. 62 and 63, OP-5 was considered an eligible bidder despite the fact that it neither had requisite experience in solid waste management, as required under tender conditions, nor had been authorized to supply composting machines by any manufacturer. Thus, there are glaring acts of omission and commission on part of OP-3, which intentionally or otherwise aided the bidders in cartelisation. However, this conduct cannot be said to be in contravention of the provision of Section 3(3)(d) of the Act and, thus, OP-3 cannot be held liable under the provisions of Section 3 of the Act.

91. So far as the individual liability of person(s)/ officer(s) under Section 48 of the Act is concerned, the Commission notes that the DG has identified Shri Bipin Vijay Salunke (OP-1 and OP-2), Shri Parimal Salunke (OP-2), Shri Saiprasad S. Prabhukhanolkar (OP-4), Shri Sanjay Harakchand Gule (OP-5), Shri Manoj Kumar Gupta (OP-6) and Shri Vijay Raghunath Salunke (OP-7) as the person(s)/ officer(s) involved in the cartel under Section 48(2) of the Act.
92. The Commission is in agreement with the findings of the DG on the role and liability of the person(s)/ officer(s) of the OPs under Section 48(2) of the Act. However, the Commission notes that under Section 48 separate liability arises against the officer(s)/ person(s) of the contravening company including partnership firms but not proprietorship firms. In the Explanation to Section 48 of the Act, the word 'Company' is defined to include body corporate or firms or association of firms but not proprietorship firms. Thus, the Commission is of the view that provisions of this section would not apply to proprietorship firms. Accordingly, since OP-1 and OP-6 are proprietorship firms in the present case, the Commission decides not to hold their person(s)/ officer(s) separately liable under Section 48 of the Act. However, person(s)/ officer(s) who are the director/



executive director/ partners of OP-2, OP-4, OP-5 and OP-7, would be liable. The role and liability of these individuals is discussed below:

*a. Role of person(s)/ officer(s) of OP-2:*

*Shri Bipin Vijay Salunke, Director of OP-2*

- i OP-2, being a private limited company registered under the Companies Act, 1956, has two directors, namely; Shri Bipin Vijay Salunke and Smt. Sulabha Vijay Salunke. For OP-2, Shri Bipin Vijay Salunke managed the overall operations and business activity while the role of Smt. Sulabha Vijay Salunke was limited to being the signing authority for compliance of any legal documents.
- ii Shri Bipin Vijay Salunke admitted to having formed a cartel to rig the bid. In his statement on oath he admitted that he knew all the competitors bidding in Tender nos. 34, 35, 44, 62 and 63 of 2014. He stated that Shri Saiprasad Saradchandra Prabhukhanolkar (Managing director of OP-4) was his good friend and gave the documents for submitting cover bid on behalf of OP-4 in Tender nos. 34, 35 and 44 of 2014, based on their friendship and relationship.
- iii Further, Shri Bipin Vijay Salunke stated that he requested Shri Ranjit Gule, a good friend of his, to request his uncle Shri Sanjay Gule (Partner of OP-5) to place cover bid for Tender nos. 62 and 63 of 2014 and also requested Shri Rajesh Goyal, another very good friend, to request his brother-in-law of Shri Manoj Kumar Gupta (Proprietor of OP-6) to place cover bid for tender nos. 62 and 63 of 2014. He admitted that he gave the phone numbers belonging to Shri Parimal Salunke (an employee of OP-2 and his cousin) as contact person for various bidders in the tenders.



- iv Further, he admitted that he sent Shri Parimal Salunke to the PMC for purchasing/ procuring the digital key for OP-1, OP-4, OP-5 and OP-6 by submitting all the relevant documents and registered his mobile number for telephonic verification by the PMC.
- v Shri Bipin Vijay Salunke also admitted that DDs for EMD for various bidders in various tenders were prepared by Shri Parimal Salunke on his instructions by either depositing cash or by debiting to his bank account or bank accounts of Shri Vijay Raghunath Salunke and Smt. Sulabha Salunke (parents of Shri Bipin Vijay Salubke). He also admitted that technical and price bids for various bidders in the above said tenders were scanned and uploaded by Shri Parimal Salunke from the office of OP-2 and hence, the same IP address.
- vi In addition, the partner/ directors/ proprietor of other OPs who were a part of cartel also corroborated in their statements on oath that Shri Bipin Vijay Salunke had requested them to act as proxy/dummy bidders in the said tenders.
- vii Thus, out of the two directors in the company, Shri Bipin Vijay Salunke was found responsible not only for bidding on behalf of the company but also for cartelisation.

*Shri Parimal Salunke, Executive Director of OP-2*

- i For OP-2, apart from the Shri Bipin Vijay Salunke, Shri Parimal Salunke who was Executive Director of OP-2 and cousin of Shri Bipin Vijay Salunke also played an important role in the cartel. The name and contact details of Shri Parimal Salunke were mentioned in tender documents of various bidders for any telephonic verification by PMC.



- ii Further, Shri Parimal Salunke procured the digital keys for various bidders viz., OP-1, OP-4, OP-5 and OP-6 by submitting all the relevant documents in the Pune Municipal Corporation office. Also, DDs for EMD for the various bidders were prepared by Shri Parimal Salunke on the instructions of Shri Bipin Vijay Salunke. Furthermore, relevant documents and the technical and price bids for various bidders in the impugned tenders were scanned and uploaded by Shri Parimal Salunke from the office of OP-2, resulting in uploading of documents from the same IP address.
- iii When Shri Parimal Salunke was confronted with the statement of Shri Bipin Vijay Salunke describing his role in the cartel, he accepted that he assisted Shri Bipin Vijay Salunke in the bid-rigging/cartel with other bidders in the manner as described above.

b. Role of person(s)/ officer(s) of OP-4

For OP-4, Shri Saiprasad Saradchandra Prabhukhanolkar was the main person involved in the cartel. He accepted his role in cartel in the statement on oath. He admitted that he cartelized at the behest of Shri Bipin Vijay Salunke who requested him to provide relevant documents for the bid and for acting as a dummy bidder. He stated that DDs for EMD were prepared by OP-2 directly without the knowledge of OP-4 and no money was given either in cash, cheque or any other manner for the said purpose. His statement was corroborated by Shri Bipin Vijay Salunke.



c. Role of person(s)/ officer(s) of OP-5:

For OP-5, a partnership firm, Shri Sanjay Harakchand Gugle was the key person involved in the cartel. He admitted to have participated in the Tender nos. 62 and 63 of 2014 floated by PMC despite having no expertise in the area of solid waste management. He revealed that his nephew Shri Ranjit Gugle had introduced him to his friend, Shri Bipin Vijay Salunke, who then requested him to submit bids in Tender nos. 62 and 63 of 2014. He also accepted that he forwarded all the relevant documents for the bid by email to OP-2 and prepared DDs for EMD of the tenders.

d. Role of person(s)/ officer(s) of OP-7:

For OP-7, Shri Vijay Raghunath Salunke, father of Shri Bipin Vijay Salunke, was the key person involved in the cartel. He had clear knowledge of different entities being given authorization by OP-7 as its distributor for participating in the tender, despite the fact that these entities did not have any background of solid waste management. In his statement on oath, he accepted that authorization letters/certificates were given by OP-7 to OP-1 and OP-6 but were signed by a former director – Smt. Smita Avinash Shirolkar. Further, DDs for EMD were prepared from his bank account, individual as well as joint, to enable some of the co-bidders to participate in the tender.

93. In view of above, the Commission finds Shri Bipin Vijay Salunke (OP-2), Shri Parimal Salunke (OP-2), Shri Saiprasad S. Prabhukhanolkar (OP-4), Shri Sanjay Harakchand Gugle (OP-5) and Shri Vijay Raghunath Salunke (OP-7) each played a key role in manipulation of the bid in Tender nos. 34, 35, 44, 62 and 63 and are, therefore, held to be liable under Section 48(2) of the Act.





## ORDER

### **Computation of Penalty:**

94. As regards the penalty to be imposed under Section 27 of the Act, the Commission finds that OP-1, OP-2, OP-4, OP-5, OP-6 and OP-7 entered into an arrangement to rig the bids pertaining to Tender nos. 34, 35, 44, 62 and 63 of 2014 floated by PMC for 'Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s)', as brought out hereinabove, and are, hence, responsible for infringement of the provisions of Section 3(3)(d) read with Section 3(1) of the Act and are liable for penalty. However, the Commission notes that in the instant case some OPs, namely, OP-5 and OP-6 have contended that they are not engaged in any manufacture, trade or service pertaining to solid waste management, which were subject matter of the said tenders. Therefore, keeping in view the decision of Hon'ble Supreme Court in *Excel Crop Care (supra)* where "turnover" appearing in Section 27 of the Act has been interpreted to mean "relevant turnover", no penalty should be imposed on them as they do not have any "relevant turnover" or "relevant profit".
95. In this regard, the Commission observes that facts before the Hon'ble Supreme Court in that case were altogether different from the facts of this case. The Hon'ble Supreme Court invoked the principle of 'proportionality' and doctrine of 'purposive interpretation' in *Excel Corp Care* case to interpret the term 'turnover' in Section 27 of the Act as 'relevant turnover' to ensure that infringer does not suffer punishment which may be disproportionate to the seriousness of the infringement. This cannot be interpreted to mean that the infringer should not be punished at all. In fact, Hon'ble Supreme Court has stated that the perpetrators of anti-competitive practices need to be indicted and suitably punished and the aim of penal provision is to ensure that it acts as deterrent for



others. The relevant portion of the judgement of Hon'ble Supreme Court is reproduced below:

*“74) ...(vi).... No doubt the objective contained in the Act, viz., to discourage and stop anti-competitive practices has to be achieved and those who are perpetrators of such practices need to be indicted and suitably punished. It is for this reason that the Act contains penal provisions for penalising such offenders. At the same time, the penalty cannot be disproportionate and it should not lead to shocking results...*

*The doctrine of proportionality is aimed at bringing out 'proportional result or proportionality stricto sensu'. It is a result oriented test as it examines the result of the law. In fact the proportionality achieves balancing between two competing interests: harm caused to the society by the infringer which gives justification for penalising the infringer on the one hand and the right of the infringer in not suffering the punishment which may be disproportionate to the seriousness of the Act.*

*No doubt, the aim of the penal provision is also to ensure that it acts as deterrent for others. At the same time, such a position cannot be countenanced which would deviate from 'teaching a lesson' to the violators and lead to the 'death of the entity' itself.....”*

96. In view of the foregoing, Commission is of the view that in the peculiar facts of this case where OPs have admittedly submitted cover bids but are not engaged in the solid waste management *i.e.* the activity relating to which bid-rigging has taken place, interpretation of 'turnover' in Excel Crop Care case would not be applicable. This is because imposition of penalty on the basis of relevant turnover in this case would imply that no penalty would be leviable on several



OPs who have indulged in bid-rigging in contravention of the provisions of the Act. This would result in an anomalous situation and would render the objective of the Act infructuous. Evidently, this cannot be and was not the purpose or intent of the judgement of the Hon'ble Supreme Court.

97. Thus, considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty on OP-1, OP-2, OP-4, OP-5, OP-6 and OP-7 under Section 27 of the Act by taking into consideration the financial statements filed by them at the rate of 10 (Ten) percent of the average turnover of three financial years 2012-13, 2013-14 and 2014-15. The total amount of penalties imposed on the OPs are set out below:

*Amount – in rupees*

S. No.	Opposite Parties	Turnover for 2012-13	Turnover for 2013-14	Turnover for 2014-15	Average Turnover for Three Years	10% of average turnover
1.	Fortified Security Solutions (OP-1)	2,56,55,868	46,55,000	89,06,332	1,30,72,400	13,07,240
2.	Ecoman Enviro Solutions Pvt. Ltd. (OP-2)	4,55,65,642	4,73,92,830	4,26,61,501	4,52,06,658	45,20,666
3.	Lahs Green India Private Limited (OP-4)	2,87,03,056	3,86,10,060	5,87,02,356	4,20,05,157	42,00,516
4.	Sanjay Agencies (OP-5)	14,88,53,862	14,42,12,012	16,01,27,863	15,10,64,579	1,51,06,457
5.	Mahalaxmi Steels (OP-6)	43,99,75,649	29,27,32,614	27,59,01,706	33,62,03,323	3,36,20,332
6.	Raghunath Industry Pvt. Ltd. (OP-7)	Not available	2,64,09,403	3,46,89,461	3,05,49,432*	30,54,943

*\*Average of 2 years turnover considered. As per submissions, OP-7 was incorporated on 24.06.2013 and its first financial year was 2013-14.*



98. So far as the individual liability of the person(s)/ officer(s) of OPs in terms of the provisions of Section 48 of the Act is concerned, the Commission has found Shri Bipin Vijay Salunke (OP-2), Shri Parimal Salunke (OP-2), Shri Saiprasad S. Prabhukhanolkar (OP-4), Shri Sanjay Harakchand Gugle (OP-5) and Shri Vijay Raghunath Salunke (OP-7) liable under Section 48(2) of the Act.

99. Resultantly, considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty on these person(s)/ officer(s) in terms of Section 27(b) of the Act calculated at the rate of 10 (ten) percent of average of their income for last three preceding financial years as follows:

*Amount – in rupees*

S. No.	Individuals	Income for 2012-13	Income for 2013-14	Income for 2014-15	Average Income for 3 Years	@ 10 % of average Income
1.	Shri Bipin Vijay Salunke, Managing Director of OP-2	11,00,000*	12,00,000*	6,00,000*	9,66,667	96,667
2.	Shri Parimal Salunke, Executive Director of OP-2	1,41,221	4,72,083	7,70,900	4,61,401	46,140
3.	Shri Saiprasad S. Prabhukhanolkar, Director of OP-4	3,94,345	2,99,208	3,99,184	3,64,246	36,425
4.	Shri Sanjay Harakchand Gugle, Partner of OP-5	23,37,154	16,34,279	29,57,075	23,09,503	2,30,950
5.	Shri Vijay Raghunath Salunke, Director of OP-7	7,95,899	17,09,425	4,19,093	9,74,806	97,480

\* Salary income from OP-2



### **Evaluation of Lesser Penalty Applications:**

100. In the instant matter, six OPs filed Lesser Penalty Applications with the Commission. With respect to Tender nos. 33, 34 and 44 of 2014, five Lesser Penalty Applications were received. The sequence in which the OPs filed their Lesser Penalty applications was: 1<sup>st</sup> application - OP-6, 2<sup>nd</sup> application OP-5, 3<sup>rd</sup> application OP-2, 4<sup>th</sup> application OP-7 and 5<sup>th</sup> application OP-1. With respect to Tender nos. 62 and 63 of 2014, four Lesser Penalty Applications were received. The sequence in which the OPs filed their Lesser Penalty applications was: 1<sup>st</sup> application - OP-4, 2<sup>nd</sup> application OP-2, 3<sup>rd</sup> application OP-7 and 4<sup>th</sup> application OP-1. The evaluation of their Lesser Penalty Applications is as follows:

#### **OP-6**

101. In the present matter, OP-6 filed an application under Section 46 of the Act, read with Regulation 5 of the Lesser Penalty Regulations on 02.08.2016 at 04:18 P.M. when the investigation was in progress and the Report had not been submitted by the DG.
102. The Commission notes that the OP-6 was the first to accept the existence of a cartel/ bid rigging in Tender no. 62 and 63 of 2014 of PMC and submit information in support thereof. At the time OP-6 approached the Commission, DG had already gathered some evidence which indicated bid rigging/ collusion amongst OPs and which included telephone number given by OP-6 in the contact person detail in the PMC tenders belonged to Shri Parimal Salunke of OP-2, DDs submitted by OP-6 towards EMD for PMC tenders were prepared by Shri Vijay Raghunath Salunke and use of common IP address for uploading of tender documents by OP-2, OP-5 and OP-6.
103. However, OP-6 made a critical disclosure regarding *modus operandi* of the cartel revealing that it was approached by Shri Bipin Vijay Salunke through his





brother-in-law Shri Rajesh Goyal to provide documents for submitting proxy bid. OP-6 disclosed not only the role of persons involved in the cartel such as Shri Rajesh Goyal and Shri Tushar Gorane but also made available copies of email exchange whereby documents were requested by and furnished to Shri Bipin Vijay Salunke (through Shri Rajesh Goyal). OP-6 also provided the bank statements showing transfer of amount from the account of Shri Manoj Kumar Gupta to the account of Shri Vijay Raghunath Salunke and *vice versa* after cancellation of tender.

104. The Commission finds that except for the information regarding preparation of DDs, rest of the information provided by OP-6 made good value addition to the ongoing investigation as it provided a better and clear picture of the operation of cartel. The evidence provided in the Lesser Penalty Application and statement of Shri Manoj Kumar Gupta on 26.09.2016 before the DG accepting the existence of cartel substantiated the evidence in the possession of the DG/ Commission and completed the chain of events. The investigation report of the DG shows that the information and evidence furnished by OP-6 were relied upon to establish the existence of the cartel in Tender no. 62 and 63 of 2014.

105. Further, OP-6 supported the investigation and co-operated fully and expeditiously on a continuous basis throughout the investigation/ inquiry into the matter with the DG as well as the Commission. The Commission is satisfied with the cooperation offered by OP-6 and acknowledges that the evidence and cooperation provided by it helped the Commission's investigation in establishing the existence of a cartel in Tender no. 62 and 63 of 2014. No doubt, OP-6 was first to file an application under Section 46 of the Act. But he came and filed the details not at the very beginning but at a later stage in the investigation, when some evidence was already in possession of the DG.



106. Thus, considering the above, the Commission decides to grant a reduction in penalty of 50% (*fifty percent*) to the OP-6 than would otherwise have been leviable on it.

*OP-5 and Shri Sanjay Harakchand Gugle (Partner of OP-5)*

107. OP-5 filed an application under Section 46 of the Act, read with Regulation 5 of the Lesser Penalty Regulations on 04.08.2016 at 12:19 P.M when the investigation was in progress and the Report had not been submitted by the DG. As OP-5 approached the Commission under Section 46 of the Act after OP-6, it was marked as second in priority status.
108. OP-5 in its Lesser Penalty Application admitted to his involvement in the cartel in Tender no. 62 and 63 of 2014 of PMC and provided details thereof.
109. The investigation report of the DG shows that at the time OP-5 approached the Commission, the DG had already gathered some evidence indicating collusion amongst OPs in Tender no. 62 and 63 of 2014. For example, DG had evidence that telephone number given by OP-5 in the contact person detail in PMC tenders belonged to Shri Parimal Salunke of OP-2, DDs submitted by OP-5 towards EMD for PMC tenders were prepared from Central Bank and common IP address was used for uploading of tender documents by OP-2, OP-5 and OP-6.
110. However, OP-5 disclosed the *modus operandi* by revealing that he was approached by Shri Bipin Vijay Salunke through his nephew Shri Ranjit Gugle to provide documents for submitting proxy bid. He also disclosed the role of other persons involved in the cartel such as Shri Ranjit Gugle and Shri Sushil Kumbhar (an employee of OP-2 authorised by OP-5 to sign bid documents at request of OP-6) and provided the copies of email exchange whereby documents were requested by and sent to Shri Bipin Vijay Salunke.



111. The Commission finds that the disclosures by OP-5 regarding *modus operandi*, role of persons involved in the cartel and copies of email exchange made a good value addition and aided the investigation by revealing the modalities of operation of cartel. The evidence and submission of OP-5 in the Lesser Penalty Application substantiated the evidence in the possession of the Commission. Further, statement by Shri Sanjay Gugle before the DG assisted in establishment of the cartel.
112. The Commission is satisfied with the cooperation offered by OP-5 and acknowledges that the evidence and cooperation provided by it have helped the Commission's investigation in establishing the existence of a cartel in Tender no. 62 and 63 of 2014. However, OP-5 approached the Commission not at the very beginning but at a later stage in the investigation, when some evidence was already in possession of the DG and when OP-6 had already approached the Commission under Section 46 of the Act and disclosed the *modus operandi* of the cartel.
113. Considering the co-operation extended by OP-5, in conjunction with the priority status accorded, the stage at which it approached the Commission and value addition provided by it in establishing the existence of cartel, the Commission decides to grant a reduction in penalty of 40% (*forty percent*) to OP-5 than would otherwise have been imposed on it.

*OP-4 and Shri Saiprasad Saradchandra Prabhukhanolkar (Director of OP-4)*

114. OP-4 filed an application under Section 46 of the Act, read with Regulation 5 of the Lesser Penalty Regulations on 04.08.2016 at 04:18 P.M. In the said application, Shri Saiprasad Saradchandra Prabhukhanolkar admitted to his involvement in the cartel in the Tender nos. 34, 35 and 44 of 2014.
115. At the time OP-4 approached the Commission, DG had already gathered some





evidence regarding involvement of OP-4 in cartelisation which included consecutive or very closely numbered DDs submitted by OP-4 and other bidders towards EMD, preparation of DDs of OP-4 by debiting the account of Shri Bipin Vijay Salunke, call data records of Shri Saiprasad Prabhukhanolkar and Shri Bipin Vijay Salunke and Shri Parimal Salunke showing exchange of several calls between them and use of common IP address for uploading of tender documents by OP-1 and OP-4 in Tender no. 34 and 35 of 2014 and by all three OPs in Tender no. 44 of 2014.

116. However, the *modus operandi* of cartel in Tender nos. 34, 35 and 44 of 2014 was revealed by OP-4, who admitted to its involvement in the same. OP-4 disclosed that it agreed to place proxy bids in the three tenders on instructions of Shri Bipin Vijay Salunke and provided a copy of the e-mail of its account manager, Shri Ashwin Jagtap, through whom the documents were sent by OP-4 to Shri Bipin Vijay Salunke. OP-4 also disclosed that on request of Shri Bipin Vijay Salunke Ms. Nishida Shahjahan, an employee of OP-2, was authorised to sign all documents and submit bids on behalf of OP-4
117. The Commission is satisfied with the cooperation extended by OP-4 and observes that it furnished evidence *viz.* copy of email exchange whereby its documents were transferred to Shri Bipin Vijay Salunke and disclosed the role of other persons such as Shri Ashwin Jagtap and Ms. Nishida Shahjahan. However, evidence of IP addresses and preparation of DDs for EMD for Tender no. 34, 35 and 44 of 2014 were not disclosed by OP-4. These may not have been available with OP-4 as his role was limited to providing the documents.
118. The Commission finds that information and evidence provided by OP-4 substantiated the evidence in the possession of the Commission, disclosed the *modus operandi* and made good value addition to the overall evidence gathered. Moreover, admission of Shri Saiprasad Prabhukhanolkar is an important



evidence indicating cartelisation in Tender no. 34, 35 and 44 of 2014. Further, OP-4 co-operated with the investigation/ inquiry of the DG/ Commission.

119. The Commission notes that though OP-4 was marked as 3<sup>rd</sup> in priority status in the case, it was the first to approach the Commission under Section 46 of the Act read with Regulation 5 of the Lesser Penalty Regulations in relation to cartel in Tender no. 34, 35 and 44 of 2015. It was not found involved in cartelisation in Tender no. 62 and 63 of 2014. Given these facts, the Commission decides to grant first priority status to OP-4 with respect to Tender no. 34, 35 and 44 of 2015. However, it also notes that OP-4 approached the Commission at a later stage in the investigation, when some evidence of collusion amongst OPs was already in possession of the DG.

120. Considering the co-operation extended by OP-4, the stage at which it approached the Commission and the value addition made by it in establishing the existence of cartel, the Commission decides to grant a 50% (*fifty percent*) reduction in penalty to OP-4 than would otherwise have been imposed on it.

OP-2 and Shri Bipin Vijay Salunke (Director of OP-2)

121. OP-2 filed an application in the present matter under Section 46 of the Act, read with Regulation 5 of the Lesser Penalty Regulations on 05.08.2016 at 12:40 P.M.

122. In the Lesser Penalty Application, Shri Bipin Vijay Salunke of OP-2 admitted to having orchestrated the cartel in all five tenders that are subject matter of this case *i.e.* the Tender no. 34, 35, 44, 62 and 63 of 2014 floated by PMC. He disclosed the *modus operandi* of the cartel, which confirmed the disclosures made by OP-4, OP-5 and OP-6. He admitted that to ensure award of tender to OP-2 he roped in other cover/ proxy bidders so that it was assured that there were atleast three eligible bidders in first round of bidding itself. He also placed documents/evidences on record in order to substantiate the information provided



in Lesser Penalty Application.

123. The Commission observes that when OP-2 approached the Commission, several evidence indicative of collusion amongst OPs had already been gathered by the DG including contact persons named by OPs in tenders, preparation of DDs for EMDs and uploading of documents from same IP addresses. Further, OP-4, OP-5 and OP-6 had already approached the Commission under Section 46 of the Act read with Regulation 5 of the Lesser Penalty Regulations prior to OP-2. Therefore, almost all the information provided by OP-2, including the details of *modus operandi* of the cartel were already available with the Commission at the date and time of its approaching the Commission.
124. Though the statement of Shri Bipin Vijay Salunke of OP-2 admitting cartelisation and disclosing the role of persons involved in Tender nos. 34, 35, 44, 62 and 63 of 2014 is important, statements of Shri Manoj Kumar Gupta of OP-6, Shri Sanjay Harakchand Gule of OP-5 and Shri Saiprasad Prabhukhanolkar of OP-4 had independently disclosed *modus operandi* of the cartel. Only value addition which was made by disclosure of OP-2, was with respect to purchase/ procurement of digital keys by Shri Parimal Salunke for uploading the documents on website of PMC on behalf of other bidders from the computer of OP-2.
125. The Commission finds that although OP-2 disclosed details of the cartelisation, the value addition made by it was minimal. At the time it approached as Lesser Penalty Applicant, most of the information was already in possession of the Commission. Moreover, it is important to note that Director of OP-2, Shri Bipin Vijay Salunke, orchestrated the entire cartel. As a result of which OP-2 emerged as L1 bidder in all the five tenders. However, the Commission is also cognizant of the fact that OP-2 co-operated on a continuous basis throughout the investigation/ inquiry and accepted information indicating the *modus operandi*



of the cartel and provided all evidence in its possession or available to it.

126. Therefore, considering the stage at which OP-2 approached the Commission, the co-operation extended during investigation, value addition made in establishing the cartel, role played in the cartel and the priority status granted to OP-2 *i.e.* 3<sup>rd</sup> for Tender nos. 33, 34 and 44 of 2014 and 2<sup>nd</sup> for Tender nos. 62 and 63 of 2014, the Commission decides to grant a 25% (twenty-five percent) reduction in penalty to OP-2 than would otherwise have been imposed on it.

*OP -7 and Shri Vijay Raghunath Salunke (Director of OP-7)*

127. OP-7 filed an application under Section 46 of the Act, read with Regulation 5 of the Lesser Penalty Regulations on 05.08.2016 at 02:32 P.M.
128. In the said application OP-7 through Shri Vijay Raghunath Salunke, admitted to assistance provided to the cartel in the tenders floated by PMC. He accepted the existence of cartel but denied that he was a part of or aware of the cartel even though he accepted that he had knowledge of the fact that his son Shri Bipin Vijay Salunke would be taking help of other bidders for the tenders.
129. The Commission notes that prior to the Lesser Penalty Application of OP-7, there were other applicants who had made disclosure about the cartel in the tenders floated by PMC. At the time OP-7 approached under Section 46 of the Act, evidence gathered by the DG including preparation of DDs for EMD and authorization letters by OP-7 to bidders in the tender process which were disclosed by OP-7 in its Lesser Penalty Application, were already available with the Commission. Thus, the documents furnished by OP-7 did not provide significant value addition to the evidence already in possession of the DG.

130. In view of the facts and evidences gathered in the present matter, the Commission is of the view that OP-7 did not provide any value addition in



establishing the existence of cartel. Accordingly, the Commission decides not to grant any reduction in penalty to OP-7.

OP-1

131. OP-1 filed an application under Section 46 of the Act, read with Regulation 5 of the Lesser Penalty Regulations on 20.09.2016 at 03:00 P.M. The Commission notes that OP-1 participated in Tender nos. 34, 35 and 44 of 2014. Shri Bipin Vijay Salunke, Proprietor of OP-1 admitted to orchestrating the cartel and propping up OP-1 and OP-4 as proxy bidders so that tender would ultimately be awarded to OP-2.
132. It is observed that at the time OP-1 furnished evidence and documents under Section 46 of the Act, the Commission was already in possession of evidence gathered by the DG and the evidence provided by OP-4 with respect to tender no. 33, 34 and 44 of 2014. Therefore, Lesser Penalty Application of OP-1 did not make any significant value addition to the evidence gathered during the investigation.
133. The Commission is of the view that OP-1, no doubt, supported the investigation and co-operated with the investigation/ inquiry throughout and accepted information indicating the *modus operandi* of the cartel and evidence in its possession or available to it. But all this made no significant value addition to the evidence gathered.
134. In view of the foregoing, the Commission decides not to grant any reduction in penalty to OP-1.



**Remedies including imposition of fines:**

135. In view of the finding of contravention against OP-1, OP-2, OP-4, OP-5, OP-6 and OP-7, the Commission directs them to cease and desist from indulging in such anti-competitive conduct in future.

136. Considering that the Commission has decided to grant reduction in penalty to OP-4, OP-5 and OP-6 under Section 46 of the Act, as recorded hereinabove, the total amount of penalty to be paid by respective OPs is as follows:

*Amount – in rupees*

S. No.	Opposite Parties	Penalty as per Para 97 above	Reduction in Penalty	Penalty Imposed and Payable
1.	Fortified Security Solutions (OP-1)	13,07,240	NIL	13,07,240
2.	Ecoman Enviro Solutions Pvt. Ltd. (OP-2)	45,20,666	25%	33,90,500
3.	Lahs Green India Pvt. Ltd. (OP-4)	42,00,516	50%	21,00,258
4.	Sanjay Agencies (OP-5)	1,51,06,457	40%	90,63,874
5.	Mahalaxmi Steels (OP-6)	3,36,20,332	50%	1,68,10,166
6.	Raghunath Industry Pvt. Ltd. (OP-7)	30,54,943	NIL	30,54,943

137. The Commission directs these OPs to deposit the penalty amount within 60 days of receipt of this order.

138. Considering that the Commission has decided to grant 50% (Fifty percent) reduction in penalty to OP-4, 40% (forty percent) reduction in penalty to OP-5, 25% (twenty-five percent) reduction in penalty to OP-2 and NIL reduction in penalty to OP-7 under Section 46 of the Act, as recorded hereinabove, the Commission, also decides to allow the same reduction in penalty to their





person(s)/ officer(s) under Section 46 of the Act. Thus, the total amount of penalty to be paid by them is as follows:

*Amount – in rupees*

S. No.	Individuals	Penalty as per Para 99 above	Reduction in Penalty	Penalty Imposed and Payable
1.	Shri Bipin Vijay Salunke, Managing Director of OP-2	96,667	25%	72,500
2.	Shri Parimal Salunke, Executive Director of OP-2	46,140	25%	34,605
3.	Shri Saiprasad Sharadchandra Prabhukhanolkar, Director of OP-4	36,425	50%	18,213
4.	Shri Sanjay Harakchand Gugle, Partner of OP-5	2,30,950	40%	1,38,570
5.	Shri Vijay Raghunath Salunke, Director of OP-7	97,480	NIL	97,480

139. The Commission directs the parties to deposit the respective penalty amount within 60 days of receipt of this order.

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

Sd/-  
(Devender Kumar Sikri)  
Chairperson

Sd/-  
(Sudhir Mital)  
Member

Sd/-  
(Augustine Peter)  
Member

Sd/-  
(U. C. Nahta)  
Member

New Delhi  
Dated: 01.05.2018