



COMPETITION COMMISSION OF INDIA

Case No. 57 of 2015

In Re:

**Sai Galvanizers& Fabricators Pvt. Ltd.
2002, Tilia, Naharamrit Shakti Society,
Chandivali, Andheri (E), Mumbai.**

Informant

And

- 1. KEC International Ltd.
Ceat Mahal, Dr. Annie Basant Road,
Worli, Mumbai** **Opposite Party No. 1**
- 2. Karamtara Engineering Pvt. Ltd.,
705, Morya Landmark II, New Link Road,
Andheri [W], Mumbai** **Opposite Party No. 2**
- 3. Government of Maharashtra
Industry DPT-Sick Industry Cell** **Opposite Party No. 3**
- 4. Mr. Vinay Bansal
Ex. Secretary- Industry Dept,
Government of Maharashtra** **Opposite Party No. 4**
- 5. SICOM Ltd.
1st Floor, Nirmal,
Nariman Point, Mumbai** **Opposite Party No. 5**



CORAM:

Mr. Ashok Chawla
Chairperson

Mr. S.L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U.C. Nahta
Member

Mr. M.S. Sahoo
Member

Present: Shri Moti Kriplani, Managing Director of the Informant.

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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the 'Act') by Sai Galvanizers & Fabricators Pvt. Ltd. (hereinafter referred to as the 'Informant') against KEC International Ltd. ('OP 1'), Karamtara Engineering Pvt. Ltd. ('OP 2'), Government of Maharashtra ('OP 3'), Mr. Vinay Bansal ('OP 4'), and SICOM Ltd. ('OP 5') alleging, *inter-alia*, contravention of the provisions of sections 3 and 4 of the Act.



सत्यमेव जयते



2. As per the information, the Informant is a company, registered under the Companies Act, 1956 and is engaged in the business of manufacturing of Transmission Line Towers, Gratings, and other allied structures.
3. OP 1 is stated to be a multinational company being the largest manufacturer of “Transmission Line Towers” in India. OP 2 is a private limited company incorporated in 1996 and was formed by OP 1 to take over the possession of the Unit of the Informant situated at Tarapore. OP 3 is a Sick Industry Cell of the Department of the Government of Maharashtra. OP 4 is a retired IAS officer who worked as a Secretary (Industry) in Government of Maharashtra. OP 5 is the nodal agency to render financial assistance to the entrepreneurs to establish industries on the basis of incentives offered under the Package Scheme of Incentive, 1983 in the state of Maharashtra.
4. It is stated that in order to promote industrial growth, develop backward areas and generate employment in Maharashtra, Government of Maharashtra invited Non-Resident Indian (NRI) entrepreneurs and industrialists to establish industries on certain designated areas under the Package Scheme of Incentives, 1983 wherein OP 5, acting as a nodal agency, was to render financial and other assistance to the investors as a “Single Window Agency”. The Informant is alleged to have been assured by the delegates of the Government of Maharashtra that 33% of the indented quantity from all government and statutory bodies/ undertakings would be purchased from units set up under the said scheme at the lowest acceptable prices prevailing in open market tenders for a period of five years.
5. It is further stated that under the said scheme the Informant was the only Small Scale Industry (SSI) unit holding the eligibility certificate for the manufacture of Transmission Line Towers in the designated backward area of Maharashtra and were also found to be eligible for availing the benefits under the said scheme. Thus, the Informant is stated to have been entitled to the entire 33%



of the indented quantity of Maharashtra State Electricity Board (MSEB) for 5 years.

6. It is stated in the information that after considering the eligibility and the entitlement certificates, OP 5 sanctioned and disbursed loans in favour of the Informant *vide* sanction letter dated 21.04.1984. During 1984-87, OP 5 is stated to have disbursed Rs. 84.35 lakhs to the Informant.
7. It is, however, alleged that the Informant did not receive timely payments from MSEB and GEB. Thus, it is stated to have suffered liquidity problems on account of delayed payments and continued outstanding amounts. In 1992-93, the outstanding dues of MSEB and GEB were alleged to be to the tune of Rs.78 lakhs and Rs.56 lakhs, respectively. It is further alleged that the Informant did not receive any payment since 1992-93 either from MSEB or GEB. Furthermore, OP 5 did not even fulfil its assurance of timely payments from MSEB. Thus, in order to sustain, the Informant was allegedly forced to opt for job-work and pay the salaries of its 150 workers. The Informant is further said to have approached OP 1 for the job-work.
8. The Informant has also detailed a chronology of events in the information to evidence as to how OP 1 with the help and assistance of OP 2 to OP 5 caused the destruction of the business of the Informant and drove it out of the market to wipe out the competition.
9. Based on the above averments and allegations, the Informant has alleged that OP 1 abused its dominant position by obliterating the business of the Informant and by taking possession of the Informant's unit by force and thereby driving it out of the market. Accordingly, it was prayed that an investigation be initiated against OP 1. No relief, however, was sought against OP 2 to OP 5.



10. The Commission has perused the information and the documents filed therewith besides hearing the representative of the Informant who appeared before the Commission on 18.08.2015 and made submissions on its behalf.
11. The Informant appears to have availed a loan from OP 5 in the year 1984 vide sanctioned letter dated 21.04.1984 under the Package Scheme of Incentives, 1983 promoted by the Government of Maharashtra and OP 5 to invite NRI entrepreneur and industrialists to establish industries in Maharashtra. Thereupon, the Informant executed various jobs and orders to their customers including MSEB as per the details given in the information. It is the case of the Informant that the government bodies such as MSEB did not make timely payments to the Informant which resulted into liquidity problems due to delayed payments. It is the grievances of the Informant that OP 5 despite being a nodal agency under the scheme did not fulfill its assurances to ensure timely payments from MSEB to the Informant. From the chronology given by the Informant, it seems that OP 5, on the Informant failing to repay the outstanding amount, issued the notice dated 03.07.1996 and forcibly took over the possession of the Informant's unit on 19.07.1996. Subsequently, OP 5 issued a public notice for auction of the said unit on 11.10.1996 and handed the possession thereof to OP 2 on 23.12.1996.
12. A bare perusal of the fact as adumbrated above would reveal a clear attempt by the Informant to project the concluded commercial transactions as a competition issue. The events highlighted by the Informant were completed much before the notification of the relevant provisions of the Act (*i.e.*, 20.05.2009) which are alleged to have been infringed by the Opposite Parties. The Informant has failed to make out any case much less a case of violation of competition law or to demonstrate any effect whatsoever which continue till date out of the impugned completed transactions which may have a bearing upon competition in the markets. It is also of significance to mention that the Informant had taken out writ proceeding before the High Court. Also, even civil suit appears to have been filed by the Informant challenging the auction



proceedings. It is unnecessary to dilate any further on these aspects for the reasons noted above.

13. In view of the above, the Commission is of the view that no case is made out against the Opposite Parties for contravention of the provisions of section 4 of the Act and the information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.

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

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

New Delhi

Date: 15.10.2015