



**COMPETITION COMMISSION OF INDIA**

**(Case No 89/2013)**

**In Re:**

**Sh. Surinder Saini.**

**S/o Late Sh. Kundan Lal Saini.**

**R/o 37/16, Ground Floor, West Patel Nagar,**

**Delhi-110008.**

**-Informant**

**And**

- (i) **Delhi Metro Rail Corporation Ltd.,**  
**Metro Bhawan, Fire Brigade Lane,**  
**Barakhamba Road, New Delhi.** **-Opposite Party No. 1**
- (ii) **Jammu & Kashmir Projects Constructions Corporation Ltd.,**  
**(J & K Government undertaking)**  
**Haftchinar, Srinagar, Kashmir.** **-Opposite Party No. 2**
- (iii) **Pt. B. D. Sharma University of Health Sciences,**  
**Rohtak, Haryana.** **-Opposite Party No. 3**
- (iv) **Ahmedabad Municipal Corporation,**  
**Sardar Patel Bhawan, Ahmedabad.** **-Opposite Party No. 4**
- (v) **Telecommunications Consultants India Ltd.,**  
**(A Govt. of India Enterprise)**  
**TCIL Bhawan, Greater Kailash – I,**  
**New Delhi – 110048.** **-Opposite Party No. 5**



(vi) **AIIMS, Sijua,  
Bhuvneshwar– Odisha.**

**-Opposite Party No. 6**

**CORAM**

**Mr. Ashok Chawla**

**Chairperson**

**Dr. Geeta Gouri**

**Member**

**Mr. M. L. Tayal**

**Member**

**Mr. Justice (retd.) S.N. Dhingra**

**Member**

**Mr. S. L. Bunker**

**Member**

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

The information in the present case has been filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by Shri Surinder Saini ('Informant') who is stated to run a firm viz. M/s Medical Product Services. Informant's firm & two other companies namely M/s MDD Medical Products Pvt. Ltd and M/s PES Installations Pvt. Ltd were found guilty of contravening the provisions of Section 3 (3) (d) of the Act by the Competition Commission of India (CCI or Commission) in Case No. 43/2010 and 40/2010. The Commission had imposed a penalty of 5% of the average turnover of last 3



years on the contravening parties. In appeal before the Competition Appellate Tribunal, the Appellate Authority vide order dated 25.02.2013 exonerated the Informant and other two companies of charges levelled in Case No. 40/2010, while in Case No. 43/2010, the order of the Commission about contravention was upheld, only the penalty amount was reduced.

2. The Informant has alleged that the Opposite Parties have carried out a practice or taken a decision whereby the entry of firms penalised by CCI, has been restricted from participating in the tenders for the supply of Medical Operation Theatre (MOT) and Medical Gas Pipeline System (MGPS). As per the Informant, in the tenders floated by the Opposite Parties for the procurement of MOT and MGPS, the eligibility criteria provides for non-entitlement of parties who were found guilty of bid-rigging/cartelisation for being considered for the tenders.
3. The Informant submitted that MOT and MGPS were life-saving equipments and essential part of any medical institute/hospital. It is stated that in India there were overall 5-6 major players having extensive experience/expertise in the installation and supply of MGPS/MOT. Most of the tenders for the aforesaid medical equipments were meted by such companies which hold reputation of successfully completing projects. Other small time players had insignificant role to play.
4. The Informant submitted that in view of the limited market players in the field of supply of MOT and MGPS, a condition in the tenders ousting majority players would not only be anti-competitive but would also effect the ex-chequer as there was a probability of remaining players exploiting the monopolistic regime. The Informant further submitted that neither the Commission while passing an order under Section 27 of the Act nor the Appellate Tribunal either directed or observed that the Informant or the other two companies be denied participation in future tenders of MOT or MGPS. However, as per the Informant, various tendering authorities/Opposite Parties, in a concerted manner, have resorted to penalizing the Informant by restricting its entry to even apply for the tenders.



5. The Informant alleged that an understanding has been reached among various tendering authorities/Opposite Parties to limit and control the supply of services by introducing unfair/arbitrary terms in the tenders floated by them. The Informant has also alleged that the Opposite Parties hold a dominant status for the reason of their being government procurement agencies. Opposite Parties also tend to influence the decision of other tendering agencies and also serve as an instrument in the hands of business rivals to limit competition. Thus, it is alleged that introduction of anti-competitive terms by the Opposite Parties was totally unfair/arbitrary and was aimed at reducing competition in the market. It was a clear case of abuse of dominant position.
6. The Commission has carefully perused the information filed by the Informant and the documents annexed. The Informant is aggrieved by insertion of a clause in the tender document for procurement of MOT and MGPS by the Opposite Parties herein whereby and where under the vendors found guilty of contravention of the provisions of Competition Act, 2002 were debarred from participating in the tenders.
7. The Opposite Parties, in this case, are buyers /consumers, and a purchaser / buyer has right to prescribe such terms and conditions for purchase of commodities in the market which it considers apt. A restraint prescribed in the tender document which is applicable uniformly can never be construed as discriminatory or unfair. It is a reasonable practice followed by the Opposite Parties to safe guard their interest and also the interest of the public at large.
8. The Commission also observes that order of the Commission imposing penalty on Informant was known to the public at large. An action on the part of the Opposite Parties to insert the impugned clause in the tender document based on the order of the CCI cannot be deemed as concerted action.
9. In view of the above discussion, the Commission is of the view that the allegations of the Informant against the Opposite Parties are thoroughly misplaced and cannot be examined either under Section 3 or Section 4 of the Act.



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10. Accordingly, the Commission is of the considered view that the allegations made in the information do not fall within the mischief of either Section 3 or Section 4 of the Act and the information filed by the Informant do not provide basis for forming a, *prima facie*, opinion for referring the matter to the Director General (DG) to conduct the investigation. The matter is therefore, liable to be closed at this stage forthwith.
11. In view of the above discussion, the matter relating to the information is hereby closed under Section 26 (2) of the Act.
12. Secretary is directed to inform the Informant accordingly.

New Delhi:

Date: 02-01-2014

Sd/-  
Ashok Chawla  
Chairperson

Sd/-  
Dr. Geeta Gouri  
Member

Sd/-  
M. L. Tayal  
Member

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

Sd/-  
S. L. Bunker  
Member