



## COMPETITION COMMISSION OF INDIA

*Suo Motu Case No. 09 of 2014*

*In Re: Formation of cartel in the supply of 14.2 kg LPG cylinders fitted with S. C. valves procured by BPCL through Tender No.1000125304 dated 13.08.2010*

**Ginni Industries,**  
42 & 43, Chauhan Arcade, 3<sup>rd</sup> Floor, Lalji  
Hirji Road, Ranchi – 834001 **Opposite Party No.1**

**Pankaj Gas Cylinders Ltd.,**  
138, UGF, World Trade Centre,  
Babar Road, New Delhi – 110001 **Opposite Party No.2**

**Redson Engineers Pvt. Ltd.,**  
F-9/B, Phase I, IDA Jeedimetia,  
Hyderabad, Andhra Pradesh – 500055 **Opposite Party No.3**

**Shiv Cylinders,**  
81, Indrapuram, Partapur,  
Industrial Area, Delhi Road, Meerut **Opposite Party No.4**

**Maharashtra Cylinders Pvt. Ltd.,**  
404 Satyam Apartment,  
8 Wardha Road, Dhantoli, Nagpur **Opposite Party No.5**

**Supreme Cylinders Ltd.,**  
2<sup>nd</sup> Floor, 12 Community Centre Ashok  
Vihar II, Delhi – 110052 **Opposite Party No.6**

**Daya Industries,**  
SCF 28 Sector 22-D,  
Chandigarh – 160022 **Opposite Party No.7**

**Intel Gas Gadgets Pvt. Ltd. (Unit II),**  
Plot Number- 182/63, Industrial Area,  
Phase-I, Chandigarh **Opposite Party No.8**

**JKB Gas Pvt. Ltd.,**  
26/5/A, A.M. Ghosh Road Budge-Budge,  
South 24 Parganas, **Opposite Party No.9**



Kolkata – 700137

**Nandi Cylinders Pvt. Ltd.,**  
Flat No. A, Kanakadurga Bhavan,  
Kachiguda, Hyderabad

**Opposite Party No.10**

**Prathima Industries Pvt. Ltd.,**  
“PRATHIMA” 213, Jubilee Hills,  
Road No. 1, Film Nagar, Hyderabad –  
500096

**Opposite Party No.11**

**Prestige Fabricators (Pvt) Ltd.,**  
30, Jaora Compound, MYH Road,  
Indore – 452001

**Opposite Party No.12**

**Saboo Cylinders Pvt. Ltd.,**  
Trilokpur Road, Kala AMB, Distt.  
Sirmour, Himachal Pradesh – 173030

**Opposite Party No.13**

**Shri Sai Balaji Gas Cylinders Pvt. Ltd.,**  
30/21, Dev Apartments, 1<sup>st</sup> Main Road,  
Gandhi Nagar, Adyar, Chennai

**Opposite Party No.14**

**Southern Cylinders Pvt. Ltd.,**  
2<sup>nd</sup> Floor, Block ‘A’, Shanti Shikara  
Apts., Rajbhavan Road, Somajiguda,  
Hyderabad – 500082

**Opposite Party No.15**

**Tirupati Containers Pvt. Ltd.,**  
188, Loha Mandi, Bulandshar Road,  
Industrial Area, Ghaziabad – 201001

**Opposite Party No.16**

**Winfab Equipments Pvt. Ltd.,**  
8-3-166/D/3, Erragadda,  
Hyderabad - 500018

**Opposite Party No.17**

**CORAM**

**Mr. Ashok Kumar Gupta**  
**Chairperson**

**Ms. Sangeeta Verma**  
**Member**



**Mr. Bhagwant Singh Bishnoi**  
**Member**

**Order**

1. The Commission took *suo motu* cognizance of the matter which related to the alleged cartelization by the manufacturers of 14.2 kg LPG cylinders in response to the Tender No. 1000125304 dated 13.08.2010 (“**Tender dated 13.08.2010**”). The Tender dated 13.08.2010 was floated by Bharat Petroleum Corporation Limited (“**BPCL**”) for supply of 14.2 kg LPG cylinders. In this tender BPCL invited bids for its 55 plants spread across 18 states. 75 bidders participated in the Tender dated 13.08.2010 and 72 bidders were declared successful in the bidding process.
2. The Commission *vide* order dated 01.10.2014, noted that the analysis of price bids submitted by bidders were either identical or near identical in various LPG Plants. The Commission was also of the view that the bidding patterns indicated cover bidding or complementary bidding by certain bidders. Accordingly, the Commission was of the *prima facie* view that such bidders in the Tender dated 13.08.2010 appeared to have contravened the provisions of Section 3(3)(d) read with Section 3(1) of the Competition Act, 2002 (“**Act**”). The matter was, thus, referred to the Director General (“**DG**”) for investigation.
3. In the meantime, writ petition was filed before the Hon’ble High Court of Delhi by one LPG cylinder manufacturer, namely, Tirupati LPG Industries Ltd. being WP(C) No. 5020 of 2015 challenging the order dated 01.10.2014, passed by the Commission on the ground that it was already investigated for cartelization by the Commission in *Suo Motu* Case No. 03/2011 and punitive measures were ordered against it in the said case. It was thus contended before the Hon’ble Delhi High Court that it was unreasonable on the Commission’s part to once again direct investigation against the said company on the same set of allegations. The Hon’ble Delhi High Court *vide*



its order dated 19.07.2017, accordingly set aside the Commission's order dated 01.10.2014, and remanded the case back to the Commission for fresh consideration.

4. The Commission considered the matter afresh and *vide* order dated 22.12.2017, noted that the main contention of Tirupati LPG Industries Ltd. was that the Commission had already inquired into its alleged anti-competitive practices for the period 2009-2011 for the same product (14.2 kg LPG cylinders) and had passed a detailed order dated 06.08.2014 under Section 27 of the Act in *Suo Motu* Case No. 03 of 2011. Thus, the said company could not be subjected to yet another investigation with respect to the Tender dated 13.08.2010. The Commission found merit in the above stated contention of the company and observed that apart from the said company, there were other entities also against whom investigation was ordered in the present matter and found it appropriate not to investigate those entities for the same conduct. Thus, while excluding 56 entities from the purview of investigation in the present case, the Commission observed that since the conduct of 17 Opposite Parties namely, Ginni Industries, Pankaj Gas Cylinders Ltd. ("**Pankaj Gas**"), Redson Engineers Pvt. Ltd. ("**Redson Engineers**"), Shiv Cylinders, Maharashtra Cylinder Pvt. Ltd. ("**Maharashtra Cylinders**"), Supreme Cylinders Ltd. ("**Supreme Cylinders**"), Daya Industries, Intel Gas Gadgets Pvt. Ltd. (Unit – II) ("**Intel Gas**"), JKB Gas Pvt. Ltd. ("**JKB Gas**"), Nandi Cylinders Pvt. Ltd. ("**Nandi Cylinders**"), Prathima Industries Pvt. Ltd. ("**Prathima Industries**"), Prestige Fabricators (Pvt.) Ltd. ("**Prestige Fabricators**"), Saboo Cylinders Pvt. Ltd. ("**Saboo Cylinders**"), Shri Sai Balaji Gas Cylinders Ltd. ("**Shri Sai Balaji Gas**"), Southern Cylinders Pvt. Ltd. ("**Southern Cylinders**"), Tirupati Containers Pvt. Ltd. ("**Tirupati Containers**") and Winfab Equipments Pvt. Ltd ("**Winfab Equipments**") was not investigated by the DG in *Suo Motu* Case No. 3 of 2011, *vide* order dated 22.12.2017, the



Commission directed the DG to investigate the conduct of these 17 Opposite Parties under Section 26(1) of the Competition Act, 2002 (“Act”). The DG was also directed to investigate the role (if any) of the persons who were in-charge of and responsible to the companies for the conduct of their business.

5. The DG pursuant to its investigation submitted the Investigation Report to the Commission on 13.02.2020. The major findings recorded in the Investigation Report are summarised as under:

- a. 14.2 Kg LPG cylinders are used only for domestic consumers. These cylinders cannot be supplied by the manufacturers in the open market. Further, these cylinders are solely procured by the Oil Marketing Companies (“OMCs”). The LPG cylinder manufacturers have to adhere to the regulatory framework related to manufacture of 14.2 Kg LPG cylinders. The distribution and marketing channel for the sale and purchase of 14.2 Kg cylinders is strictly demarcated with no scope for any deviation as per structure stipulated by OMCs. Further, the statutory and licensing requirements do not permit the manufacturers of LPG cylinders to sell their product to any party other than OMCs.
- b. The market for LPG in general and 14.2 Kg LPG cylinders in particular is a demand driven market of the OMCs. OMCs then cater to the demand of the public through their authorised agents/distributors. This demand is catered on the supply side by authorised LPG Cylinders manufacturers.
- c. Due to stringent specifications for manufacturer of cylinders, there is hardly any incentive for manufacturers to improvise or innovate. As every LPG cylinder manufacturer has to adhere to the technical



and other specifications as specified by the OMCs, there is no scope to improvise/innovate on the part of the manufacturers of 14.2 kg LPG Cylinders.

- d. Buyers in this market comprise three state owned OMCs viz. HPCL, BPCL and IOCL. These OMCs issue public tenders for procurement of 14.2 Kg LPG cylinders. OMCs determine the indicative prices at which 14.2 Kg LPG cylinders is to be procured. They do this by releasing the estimates of Net Delivered Price (NDP) of cylinder for each state for every month. After L-1 price has been declared, the OMCs negotiate in their tenders with manufacturers to further reduce the quoted L-1 prices through negotiation meeting organised by OMCs.
- e. The Tender dated 13.08.2010 was issued by BPCL for procurement of 40.33 lakhs LPG Cylinders at the estimated cost of Rs. 467.9 crores in 55 plants across 18 states. 75 LPG Cylinder manufacturers participated in the tender. All the 75 LPG Cylinder manufacturers qualified for opening of their price bid and 72 of them qualified for orders.
- f. The conduct of 6 Opposite Parties namely, Ginni Industries, Pankaj Gas, Redson Engineers, Shiv Cylinders, Maharashtra Cylinders, Supreme Cylinders has been investigated, in terms of order dated 22.12.2017, passed by the Commission. However, 11 Opposite Parties namely, Daya Industries, Intel Gas, JKB Gas, Nandi Cylinders, Prathima Industries, Prestige Fabricators, Saboo Cylinders, Shri Sai Balaji Gas, Southern Cylinders, Tirupati Containers and Winfab Equipments were excluded from the scope of investigation as the said Opposite Parties had been penalised by the Commission in *Suo-Motu* Case No. 1 of 2014.



- g. Accordingly, the bid pattern of 6 Opposite Parties namely, Ginni Industries, Pankaj Gas, Redson Engineers, Shiv Cylinders, Maharashtra Cylinders, Supreme Cylinders was examined by investigation across 55 plants in 18 states.
- h. *Ginni Industries*: The bid rates quoted by Ginni Industries were not found identical with any other bidder across 55 plants. Accordingly, no case of contravention of provisions of Section 3 of the Act was found against Ginni Industries.
- i. *Shiv Cylinders*: The bid rates quoted by Shiv Cylinders were found identical with various parties across 7 states viz. Chhattisgarh, Gujarat, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and Uttaranchal. The investigation revealed that Mr. R.K Gupta, Director of Shiv Cylinders admitted interacting with other LPG cylinder manufacturers. Such interaction was seen as an indicator of talks which would revolve around business. Mr. Gupta also stated that the bid prices of his company were quoted by taking into account the ceiling and floor price along with the costs incurred by the company and freight rates were quoted by Shiv Cylinders on the basis of quotations given by transporters and were generally within the NDP rates declared by the OMCs. He also stated that Mr. Rajagopalan worked as a liaison agent for his company. He also clarified that he used to quote floor price for states located close to his manufacturing plant and for distant states he used to quote at ceiling prices. He stated that Shiv Cylinder was a new vendor in this tender and, therefore, it did not submit price bids. He, however, was unable to prove it. After seeing BPCL records, which stated that there was no clause classifying tenderers/manufacturers in two categories 'existing'



and 'new' in the tender, he refused to comment on the documents. The investigation revealed that Mr. Gupta could not justify quotation of identical prices with other bidders. Accordingly, the investigation found Shiv Cylinders to be in contravention of the provisions of Section 3 of the Act.

j. *Redson Engineers*: The price bids quoted by Redson Engineers were found identical with price bids quoted by several other bidders in 3 states being Tamil Nadu, Andhra Pradesh and Kerala. Mr. P.S. Rao, Director of Redson Engineers was questioned about the rationale behind the bid rates quoted by it which were found to be identical with several other vendors in various plants across these states. Investigation revealed that Mr. Rao during his deposition could not provide any plausible explanation regarding identical prices quoted by Redson Engineers. Mr. Rao also could not explain as to why the company had quoted freight rates less for the LPG plants located in Tamil Nadu and Kerala as compared to high freight rates for nearby plants. Further, it was found that Mr. Rao admitted that there might have been some advice to him by other LPG cylinder manufacturers regarding price bids. Accordingly, investigation brought out that Redson Engineers had contravened provisions of Section 3 of the Act.

k. *Pankaj Gas*: The bid rates quoted by Pankaj Gas was found identical with the bids quoted by several bidders in 26 plants in the Tender dated 13.08.2010. In 14 out of these 26 plants, Pankaj Gas had quoted at the floor rate of the price band. Floor rate is the minimum rate at which a bidder can compete and it indicates that the bidder intends to compete to get supply orders. Therefore, as per investigation, quoting at the floor rate could not be presumed to be the outcome of any collusive behaviour. For 9 plants, Pankaj





Gas had quoted a random price with a random freight rate of Rs.100 irrespective of the distance criteria and these rates were beyond the ceiling price as it was not interested to supply cylinders to these plants. In the remaining 3 plants viz. Surat, Nagpur and Trivandrum, Pankaj Gas quoted bid prices within price band at ceiling level and these bids were found identical with 15 other parties in Surat plant, 10 other parties in Nagpur plant and with 2 other parties in Trivandrum plant. Mr. S.P. Aggarwal, Director of Pankaj Gas was not able to provide any plausible explanation for quoting at ceiling rate in these 3 plants. He merely stated that his company was interested in supplying LPG cylinders to these 3 plants only at ceiling price. He was not able to explain the rationale behind the bid prices quoted by his company in these 3 plants located at far off distance from his manufacturing unit. The investigation revealed that the identical bid prices quoted at ceiling level for these 3 plants were due to a collusive arrangement with other bidders. Therefore, Pankaj Gas was found to be in contravention of Section 3 of the Act.

1. *Supreme Cylinders*: Supreme Cylinder's bid rates were found identical across 9 states viz. Goa, Gujarat, Haryana, Maharashtra, Madhya Pradesh, Punjab, Uttar Pradesh, Uttaranchal and West Bengal. Investigation revealed that Supreme Cylinders, in 11 plants located, in the states of Goa, Gujarat, Maharashtra and Madhya Pradesh had quoted beyond the ceiling limit prescribed in the price band and, therefore, such bids were disqualified for getting any supply orders. In four states namely, Haryana, Punjab, Uttaranchal and Uttar Pradesh, price bids of Supreme Cylinders were found identical with many other bidders. The investigation revealed that Mr. Fatehpuria of Supreme Cylinders could not



provide a logical explanation regarding quotation of identical prices and merely mentioned that bid rates were identical because there was price band in the Tender dated 13.08.2010. Accordingly, the investigation found that Supreme Cylinders is in contravention of the provisions of Section 3 of the Act.

- m. *Maharashtra Cylinders*: On being required to furnish information by the DG, reply was furnished by Confidence Petroleum India Ltd., which informed *vide* reply dated 30.11.2014, that pursuant to the Hon'ble Bombay High Court's order dated 18.09.2009, Maharashtra Cylinders Pvt Ltd., Khara Gas Equipments Pvt. Ltd. and Hans Gas Appliances Pvt. Ltd. were amalgamated into a single entity, *i.e.* Confidence Petroleum India Ltd. Therefore, there was one legal entity *i.e.*, Confidence Petroleum India Ltd. Investigation revealed that the bids quoted by Maharashtra Cylinders were found identical/ near identical with 10 other bidders in 7 plants viz. Mumbai, Uran, Nagpur, Patna, Bareilly, Saleempur and Pune. Investigation revealed that the bid rates quoted by Maharashtra Cylinders were identical or near identical with the rates quoted by Om Containers, Super Industries and Tee Kay Metals in several plants which belong to same group (collectively hereinafter referred to as as "**Super Group**") of companies promoted by Mr. Kishore Kela. On being questioned about the rationale for quotation of identical prices with other bidders, Mr. Khara of Maharashtra Cylinders stated that there was a price band given in the Tender dated 13.08.2010 with floor and ceiling price and in order to receive orders, his company had quoted at the lowest price. Regarding existence of identical bid price with other bidders, Mr. Khara stated that other parties might have also followed the same logic while quoting for the tender. On



being specifically asked to explain why bid prices quoted by Maharashtra Cylinders were identical or near identical to Super Industries, Om Containers and Tee Kay Metals in 7 plants, Mr. Khara stated that the identical prices could be due to the same location of the firms. The DG, however, noted that Om Containers, Super Industries and Tee Kay Metals were based in Nashik, Maharashtra and Maharashtra Cylinders was based in Nagpur, though, both are in Maharashtra State but are 600 kms. apart. On being asked whether he knows anyone in Super Group Mr. Khara replied that he knew Mr. Kishore Kela, Director of Om Containers and often met him during OMC meetings. During deposition, Mr. Khara was unable to give any satisfactory explanation regarding the basis on which bid prices were quoted by Maharashtra Cylinders. In view of the above, the DG found the identical bid prices quoted by Maharashtra Cylinders were due to a collusive arrangement with Super Group. Therefore, the conduct of Maharashtra Cylinders was found to be in contravention of Section 3 of the Act. Regarding identical bid prices of Maharashtra Cylinders with other bidders, the DG observed that price bid of Maharashtra Cylinders was found to be identical with 3 bidders in one LPG plant and with 2 bidders in 2 LPG plants, however, the investigation did not reveal any incriminating evidence.

- n. No incriminating evidence was found that could substantiate cover bidding or complementary bidding by the bidders in the present case.
- o. The DG identified officials of Pankaj Gas, Redson Engineers, Shiv Cylinders, Maharashtra Cylinders, Supreme Cylinders, liable for contravention of provisions of the Act.



6. The Commission, in its meeting held on 26.05.2020, considered the Investigation Report submitted by the DG and decided to pass an appropriate order in due course.
7. The Commission has perused the Investigation Report. On consideration of the aforesaid, the Commission observes that except for Ginni Industries, the investigation has found a case of contravention of provisions of Act against Pankaj Gas, Redson Engineers, Shiv Cylinders, Maharashtra Cylinders, and Supreme Cylinders. The DG has, however, not examined 11 Opposite Parties, which were directed to be investigated by the Commission, *vide* order dated 22.12.2017.
8. The Commission notes that the nature and characteristics of the market of manufacture of 14.2 Kg LPG cylinders has been discussed at length in the judgment of the Hon'ble Supreme Court in the *Rajasthan Cylinders and Containers Limited Vs Union of India and Anr. and other connected appeals in Civil Appeal No. 3546 of 2014* (“**Rajasthan Cylinders case**”). The investigation into the nature of the market in the present case has yielded no different results. The report in this regard based on an examination of the procurer *viz.* BPCL finds that for finalising the L-1 rate, BPCL negotiates with the bidders and, it is the procurer *i.e.* BPCL which decides the price at which the tender has to be awarded.
9. The 14.2 kg LPG cylinder is procured solely by the OMCs as per quantity determined by them. The statutory and licensing requirements do not permit the LPG cylinder manufacturers to sell their product to any third party. It is a market largely driven and controlled by the OMCs and the manufacturers have to adhere to the framework and tender conditions stipulated by OMCs and with no scope for innovation, efficiency gains or product differentiation and price discrimination.



10. With respect to 11 Opposite Parties *viz.* Daya Industries, Intel Gas, JKB Gas, Nandi Cylinders, Prathima Industries, Prestige Fabricators, Saboo Cylinders, Shri Sai Balaji Gas, Southern Cylinders, Tirupati Containers and Winfab Equipments, who were directed to be investigated *vide prima facie* order dated 22.12.2017, the Commission notes that such parties are not covered by the present Investigation Report. The DG has not investigated these Opposite Parties on the premise that they were earlier investigated and penalised in *Suo Motu* Case No. 1 of 2014. The Commission, however, notes that these parties were penalised in Tender No. 2 of HPCL in *Suo Motu* Case No. 1 of 2014, which pertained to the period 2013 and not 2010 (as in present case). Further, these parties were penalised consequent upon the Commission finding evidence of their conduct of withdrawing their respective bids, pursuant to a common understanding to do so which amounted to manipulation of the bid process in violation of provisions of Section 3(3)(d) of the Act. They were not penalised on account of evidence of understanding amongst them relating to quoting same prices for supply of cylinder in their respective bids. Thus, given the fact that alleged conduct of the said parties in the two cases is not same, imposition of penalty in *Suo-Motu* Case No.1 of 2014 cannot be a basis for leaving these parties out from the present investigation. However, considering the finding of the DG in relation to the nature of market and observations by Hon'ble Supreme Court in *Rajasthan Cylinders case (supra)*, the Commission observes that no useful purpose would be served by directing DG to conduct fresh investigation in respect of said parties. The Commission is mindful of the fact that these parties ought to have been investigated for the purpose of completeness of investigation but is adopting another course of action for the special reasons enumerated above. This, however, shall not be treated as a precedent in any manner either by any of the parties herein or any other person or in any other investigation in future.



11. The Commission further decided that, notwithstanding the fact that DG has found contravention against certain parties' viz. Pankaj Gas, Redson Engineers, Shiv Cylinders, Maharashtra Cylinders and Supreme Cylinders, in view of the facts and circumstances of the case, particularly, in the light of the judgment of the Hon'ble Supreme Court in *Rajasthan Cylinders case (supra)*, there shall be no requirement of forwarding the Investigation Report to the said parties and eliciting their comments/objections on such report, followed by a hearing on the report.
12. The Commission further notes that though the Investigation Report *qua* the aforementioned parties has given a finding of price parallelism and that quoting of such identical prices in their respective bids could have been a result of concerted action by the parties. However, the Commission, considering the nature of the market, as disclosed in the Report and in the judgment of the Hon'ble Supreme Court in *Rajasthan Cylinder Case (supra)*, is of the view that the case deserves to be closed at this stage, without delving into the individual conduct of each of the parties.
13. The Secretary is, hereby, directed to inform the parties accordingly.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**Sd/-**  
**(Bhagwant Singh Bishnoi)**  
**Member**

**New Delhi**  
**Date: 26.08.2020**