



**COMPETITION COMMISSION OF INDIA**

**Case No. 53 of 2017**

**Starlight Bruchem Ltd.**

**PO Sugar Factory, Nawabganj, Gonda**

**Uttar Pradesh-271304**

**Informant**

**And**

**Flora and Fauna Housing & Land Developments**

**Private Limited**

**P-41, Ground Floor**

**Pandav Nagar**

**Mayur Vihar, Phase-1**

**Delhi-110091.**

**Opposite Party No. 1**

**Patiala Kings Liquor Pvt. Ltd.**

**A-9, 2<sup>nd</sup> Floor Siddhartha Nagar**

**Near Hari Nagar Ashram**

**New Delhi-110014.**

**Opposite Party No. 2**

**Royal Beverages Pvt. Ltd.**

**65, I Block, BRS Nagar**

**Ludhiana**

**Punjab-141008.**

**Opposite Party No. 3**

**Kiwi Wines and Beverages Pvt. Ltd.**

**9-B, Office No-201 Nehru Complex**

**Pandav Nagar Delhi-110092.**

**Opposite Party No. 4**



**Chadha Holdings Pvt Ltd.**  
**M-4, Mezzanine Floor, South Extension Part-II**  
**New Delhi.**

**Opposite Party No. 5**

**Government of Uttar Pradesh**  
**Through its Chief Secretary**  
**1st Floor, Room No. 110**  
**Lal Bahadur Shastri Bhawan**  
**Secretariat, Lucknow**  
**Uttar Pradesh – 226001**

**Opposite Party No. 6**

**CORAM**

**Mr. Devender Kumar Sikri**  
**Chairperson**

**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

**Mr. U. C. Nahta**  
**Member**

**Appearances:**

*For Informant*      Mr. K. K. Sharma, Advocate  
                                 Mr. Bunmeet Singh Grover, Advocate  
                                 Ms. Mohika Jain, Advocate



<i>For OP-1</i>	Mr. P. K. Tandon, Chartered Accountant Mr. G.C. Srivastava, Advocate
<i>For OP-2</i>	Mr. Suvinay Kumar Dash, Advocate
<i>For OP-3</i>	Mr. Gaurav Bhuddi, Chartered Accountant Mr. Parichay Solanki
<i>For OP-4</i>	None
<i>For OP-5</i>	Mr. G. C. Srivastava, Advocate
<i>For OP-6</i>	Mr. Rajkamal Singh, Excise Inspector Mr. Ankit Kher, Advocate

### **ORDER UNDER SECTION 26 (1) OF THE COMPETITION ACT, 2002**

1. The present information has been filed by Starlight Bruchem Ltd. (**Informant**) under Section 19(1)(a) of the Competition Act, 2002 (**Act**) against Flora and Fauna Housing & Land Developments Private Limited (**OP-1**), Patiala Kings Liquor Pvt. Ltd. (**OP-2**), Royal Beverages Pvt. Ltd. Ltd. (**OP-3**), Kiwi Wines And Beverages Pvt. Ltd. (**OP-4**), Chadha Holdings Pvt Ltd. (**OP-5**) and Government of Uttar Pradesh (**OP-6**), alleging *inter alia* contravention of the provisions of Section 3 and 4 of the Act. (Hereinafter, OP-1 to OP-5 are referred to as '**OPs**').
2. The Informant, formerly known as Narang Distillery Limited, is a public limited company incorporated on 01.11.2000. As per the information, the original promoters of the company have been engaged in the business of manufacturing and trading liquor in North India since 1942 and have presence in the states of Uttar Pradesh, Madhya Pradesh, Punjab, and Haryana among others.
3. OP-1 to OP-4 are the exclusive licensees for wholesale of country liquor in the State of Uttar Pradesh. These are alleged to be enterprises owned or



controlled by a common parent holding company *i.e.* OP-5. OP-5 is a private limited company incorporated on 25.10.2005 under the Companies Act, 1956. As per the information, OP-5 is the holding company for Chadha Group. It has also set up/ bought distilleries *viz.* Wave Distilleries and Breweries Limited and Lords Distilleries Limited. OP-6 is the Government of the State of Uttar Pradesh which is responsible for framing policy for the manufacture, sale and distribution of liquor in the State of Uttar Pradesh under the powers granted by the United Provinces Excise Act, 1910 (UPE Act). It is also empowered to grant licenses under the UPE Act.

4. The Informant has alleged that OP-1 to OP-4 have been following a non-transparent policy of procurement, based on an arrangement, agreement or understanding to buy from only certain manufacturers who belong to the same group, or from some 'favoured' manufacturers. Since the manufacturers/ distillers cannot sell liquor directly to the retailer or end-consumer, such conduct of denial of market access to the other manufacturers from selling their produce has resulted in the other manufacturers facing severe losses and in many cases shutting down their units.
5. Further, it is alleged that OP-5, which owns or controls OP-1 to OP-4, has used its dominant position in wholesale of liquor to enter into and enhance its market share for manufacturing country liquor by setting up/ acquiring Wave Distilleries and Breweries Ltd. and Lords Distilleries Ltd., from which OP-1 to OP-4 buy bulk of their requirements.
6. Additionally, the Informant is also aggrieved with OP-6 *i.e.* the State Government of Uttar Pradesh, which is statutorily empowered to award licenses to sell liquor within the State. As per the information, OP-6



framed a policy stipulating that one single wholesaler would be granted license in each zone of the State, without any safeguards to ensure that not all the wholesale licenses end-up in the hands of a single group. Further, the conditions for eligibility to apply for licenses were so restrictive that only a certain business group could apply for license, thus creating conditions whereby OP-5 group became a monopsony *i.e.* sole buyer.

7. Elaborating upon the policy of the Government of Uttar Pradesh, the Informant has stated that from the year 2001 till 2007, the Policy provided a direct method for the wholesale of country liquor in which a licence named C.L.-2 was granted to licensed distilleries/manufacturers of country liquor to supply the produce to retailers in the State of Uttar Pradesh. The Policy was amended from time to time. In July, 2007, the Policy was amended to introduce a new category of licence named C.L.-A1 in favour of a co-operative society, Uttar Pradesh Sahkari Chini Mill Sangh, with the aim of stopping the smuggling and theft activities in liquor trade. The system of procuring country liquor, foreign liquor and beer was modified through which the wholesale vendors would have to procure the liquor indirectly *via* Uttar Pradesh Sugar Mills Corporation/ Uttar Pradesh Sahkari Chini Mill Sangh, instead of directly from the distilleries. Thereafter the Policy was again amended for the year 2008-2009 through which the newly created C.L.-A1 licence was abolished and the erstwhile system of granting C.L.-2 category licences to licensed distilleries was resumed.
8. However, in 2009, the system of granting C.L.-2 licences within the state was abolished and two new categories of licences, C.L.-1B and C.L.-1C were introduced. As per this Policy, the State of Uttar Pradesh was divided into 4 zones, *viz.*, Lucknow (excluding the territory of Bareilly), Agra, Varanasi, and Meerut (including the territory of Bareilly), with Meerut



being demarcated as a “special zone”. It further mandated that for every zone, one single wholesaler would be granted a C.L.-1B licence, thereby, allowing a maximum of 4 wholesale licences and licence-holders in the entire State. According to the amended policy, C.L.-1B licence holder would have to obtain a C.L.-1C licence for every district within its zone by payment of licence fee and security money as may be fixed by the State Government from time to time. Only holders of these C.L.-1B licences were allowed to directly procure country liquor from distilleries. Consequently, distilleries could not sell directly to retail vendors or end-customers but had to necessarily depend on the exclusive wholesalers in the zones for the off-take of their produce.

9. As per the information, the Policy further imposed criteria for applying for a liquor license, under which only a business with a minimum turnover of Rs. 400 crores in one of the three previous years, with prior experience as a wholesaler of country liquor but not a producer of alcohol or liquor could apply for license. As a result, only two companies applied before the excise department for the C.L.-1B licence *i.e.* OP-1 and OP-3. A selection committee was appointed for scrutinising the applications and, after scrutiny, all the four C.L.-1B licences for each zone were issued in favour of the OP-1. Since every C.L.-1B holder had to obtain C.L.-1C licence for every district of the zone, all the C.L.-1C licences also came within the hold of OP-1. Further, the wholesale licences issued to OP-1 were renewed for another excise year, *i.e.* 2010-2011.
10. In 2011, the Policy was further amended to include a fifth zone, Gorakhpur, and it also stipulated that there may be more than one C.L.-1B licensees in every excise zone. Only four companies *i.e.* OP-1 to OP-4 applied for wholesale licenses and were granted the same for five



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zones. The four companies which, amongst themselves, got all the five licences were :

- i Flora & Fauna Housing and Land Developments Pvt. Ltd. (OP-1) – Special Meerut Zone
- ii Flora & Fauna Housing and Land Developments Pvt. Ltd. (OP-1) – Lucknow Zone
- iii Patiala Liquors Pvt. Ltd. (OP-2) – Gorakhpur Zone
- iv Royal Beverages Pvt. Ltd.(OP-3) – Agra Zone
- v Kiwi Wines Beverages Pvt. Ltd. (OP-4) – Varanasi Zone.

This Policy kept receiving annual renewals until 2016 and, thereafter, got a further extension for two years *i.e.* till 2018. The Informant has averred that this Policy has left the existing manufacturers completely at the mercy of wholesalers and led to a situation where the wholesalers can operate independent of competitive forces and affect the market in their favour, thereby causing appreciable adverse effect on competition.

11. The Informant has alleged that although it has sent several letters to OP-1 to OP-4 (C.L.-1B license holders) requesting that supply indents be issued to it so that its produce can be lifted, no response or action has been forthcoming from them. Also when he wrote to the Excise Commissioner apprising him of denial of market access to him by the licensees and requesting for his intervention, the Excise Commissioner responded by stating that his office cannot direct the licensee to procure country liquor from a particular distillery.
12. The Informant has alleged that after OP-5 set up facilities for the manufacture of country liquor through its subsidiaries, *viz.*, Lords Distilleries Ltd. and Wave Distilleries and Breweries Ltd., OP-1 to OP-4, the four license holders, which are related entities owned or controlled by



OP-5, began procuring their requirements of country liquor predominantly from these entities that are part of the OP-5 Group. Even when the procurement was from non-related manufacturers, the same was on non-transparent basis. It is alleged that OP-1 to OP-4 are operating under a mutual agreement to source their purchases of country liquor only from certain manufacturers to the exclusion of the others, thereby limiting or controlling the market of country liquor in violation of Section 3(1) read with Section 3(3)(b) of the Act.

13. In addition, the Informant has also alleged abuse of dominant position by the OPs under Section 4(2)(a)(i) and Section 4(2)(c) of the Act. For this purpose, the Informant has defined the relevant market as the '*market for purchase of country liquor from licensed manufacturers within the State of Uttar Pradesh*'. Further, it is averred that OP-5 as the holding company for the entire group, owns or controls OP-1 to OP-4 and has exclusive control over purchase and supply of country liquor in wholesale for the entire State of Uttar Pradesh. Thus, OP-1 to OP-5 as a group enjoy an absolute monopsony or dominant position with 100% market share. The Informant has alleged that this group has abused its dominant position by indulging in practices which are totally non-transparent, selective and discriminatory. As a consequence, the produce of only very few manufacturers/distillers are bought, which has resulted in denial of market access to rest of the manufacturers without any intelligible basis. This act of the OPs is in violation of the provisions of Section 4(2)(a)(i) and 4(2)(c) of the Act. It is alleged that such conduct has driven out a number of distillers/ manufacturers of country liquor in the State of Uttar Pradesh.
14. Further, the allegations of the Informant also extend to the abuse of dominant position of OP Group, acting as a wholesale buyer of country





liquor to enter into the market for manufacturing of country liquor in violation of the provisions of Section 4(2)(e) of the Act. Also, OP-6 is alleged to have contravened Section 4(2)(a) of the Act, by imposing a policy that is unfair and discriminatory, to the detriment of the manufacturers such as the Informant, and with a view to grant favour to the companies of OP Group.

15. In view of the above facts, the Informant has prayed that the Commission (a) initiate an investigation under Section 26(1) of the Act against the OPs for violation of provisions of the Act; (b) pass cease and desist order against the acts of the OPs which are in violation of the Act; (c) direct OP-1 to OP-4, by way of an interim order, to procure country liquor from the distilleries in a transparent and competitive open tender method without discrimination henceforth; (d) direct OP-6 to suitably amend the Policy ensuring a competitive market; and (e) pass any other order which the Commission deems fit.
16. In the present matter, the parties were heard by the Commission on 09.05.2018 and during hearing the OPs were directed to submit certain information pertaining to their shareholding and group structure, details of the distilleries manufacturing and selling country liquor in the State of Uttar Pradesh and also the quantity of country liquor procured by each of the OPs from various distilleries. Further, the Informant was also asked to furnish a copy of the license held by it for manufacturing country liquor as well as copies of the applications for issue/ renewal of licenses from 2009-10 onwards.
17. The OPs submitted a consolidated reply providing the shareholding and group structure of OP-1 to OP-5. As per the reply, OP-5 through Ringold



Town Planners Private Limited holds 50% of the paid up capital in OP-1 and is the holding company of OP-1. However, with respect to OP-2, OP-3 and OP-4 it has been submitted that neither OP-5 has any direct or indirect shareholdings or any voting rights in these companies nor any of OP-2, OP-3 and OP-4 hold shares or voting rights of OP-5. Moreover, OP-2 to OP-5 do not have any common directors nor any of them has a right to appoint any director in each other. Also, none of OP-2 to OP-5 is in a position to exercise any control in management or affairs of each other. Thus, these entities do not fall under the definition of 'group'.

18. The OPs have also stated that out of the last eleven excise years *i.e.* from 2007-08 to 2017-18, the Informant was not holding a valid license to manufacture country liquor for five excise years. The OPs have further stated that although the Informant has submitted that several requests were made by it to the OPs for issuance of indent to it, no such request was made to the holder of C.L.-1B license in the particular zone where the Informant operated. As per the Excise Policy, a C.L.-1B license holder can issue indent for procuring country liquor only to a manufacturer within its particular zone. Accordingly, it was not possible for OP-2 and OP-3 operating in Gorakhpur and Agra zone respectively to issue indent to a manufacturer operating in Meerut/Lucknow zone. Moreover, the Informant had written letters dated 24.04.2012 to OP-2 and OP-3 on the letterhead of and in the name of 'Narang Distillery Ltd.', which had ceased to exist with effect from 27.09.2011, when the name of the Informant was changed to 'Starlight Bruchem Ltd.', a fact which at no point in time was informed to the OPs or specified in letters dated 24.04.2012 which are dated after change of name of the Informant.



19. Further, with respect to the allegations of the Informant regarding discontinuation of operations due to the non-issue of indents, the OPs have submitted that the Informant holds a PD-2 license and was eligible to manufacture absolute alcohol, rectified spirit, denatured spirit, Indian made foreign liquor and stored denaturants in addition to country liquor. Thus, discontinuation of operations by the Informant cannot be solely attributed to the non-issuance of indent by the OPs.
20. The OPs have stated that they make the entire purchase and sales in a transparent manner and there has been no complaint from any distillery in this regard. Since the price of country liquor is fixed for all stakeholders by the Government, the question of calling bids as suggested by the Informant does not arise. It is stated that in terms of the excise policy and the laws of the State of Uttar Pradesh, the State Government regulates the price at which molasses may be purchased for manufacture of country liquor. Further, the price at which manufactured country liquor may be procured by C.L.-1B license holders for onward sale and the price at which such liquor is then sold to the retailer are both fixed by the State Government. Finally, the price at which the country liquor is retailed is also fixed by the State Government for sale within the State of Uttar Pradesh. As such, there is no room for negotiations in the procurement price of country liquor or for inviting bids for such procurement. Thus, the allegation of the Informant that OPs have entered into an agreement to limit or control the market is incorrect, as the market is in fact controlled by the State Government.
21. Further, the OPs have stated that there are large number of distilleries in Uttar Pradesh and the OPs are buying country liquor from several of these distilleries. The OPs have also submitted the names and capacity of various distilleries in the state as well as the production and sale by them



for the years 2008-09 to 2014-15. Also, the OPs have provided in value terms, the country liquor purchased by each OP from various distilleries.

22. With respect to the issue of licenses to the Informant for manufacturing liquor, the Informant has submitted copies of all the applications made by it for renewing PD-2 licenses from 2008 till 2018, copies of the receipts for the fees paid for renewal and the grant of PD-2 licenses by the Excise Department. The Informant has further stated that according to the extant practice, Regulation 2(6) of the UP Excise (Establishment of Distilleries)(Twelfth Amendment Rules, 2016), after depositing fee for renewal of PD-2 license, the distilleries are free to manufacture country liquor without waiting for clearance which may come sometime later. Therefore, if approval/renewals of licenses are received late from the Excise Department, neither the Informant can do anything nor has it any control over the renewal process. In this regard, the Informant has pointed out the latest instance of the current year 2018-19, in which the excise fee for renewal has been deposited with Excise Department but the renewal of license has not yet been conveyed to the Informant. However, the bottling in the distillery is still continuing.
23. The Commission has noted the rival arguments of the parties and also perused the material on record.
24. It is noted that the primary allegation of the Informant is discriminatory procurement of country liquor by OPs from either their own distilleries or some favoured distilleries/ manufacturers and denial of market access to other distillers/ manufacturers in contravention of the provisions of Section 4 of the Act. Further, the Informant has also alleged contravention of the provisions of Section 3(3)(a) and 3(3)(d) of the Act.



25. With respect to allegations made about contravention of Section 3 of the Act, the Commission notes that the same are based merely on conjectures. There is no credible evidence on record, which shows existence of any agreement amongst OP-1 to OP-4 in support of the contentions made by the Informant. Accordingly, such allegations are found to be devoid of merit.
26. With respect to allegations made for contravention Section 4 of the Act, the Commission notes that the first requirement for analysis of conduct of an entity under Section 4 of the Act, is delineation of relevant market keeping in view the relevant product market and the relevant geographic market. It is noted that the allegations in the instant case relate to procurement of country liquor in the State of Uttar Pradesh. In terms of characteristics, country liquor can be distinguished from other alcoholic beverages in terms of product attributes, class of consumers and regulatory requirements. Further, the OPs can procure country liquor only from licensed manufacturers/ distillers. The Informant has submitted that the relevant market in the instant case is the 'market for purchase of country liquor from licensed manufacturers within the State of Uttar Pradesh'. However, the facts of the case show that OP-1 to OP-4 are the exclusive holders of the C.L.-1B licenses in each of the five zones, giving them the exclusive authority to sell country liquor in wholesale within their respective licensed zone in the State of Uttar Pradesh. As a result, if any manufacturer/ distiller of country liquor is to sell his produce, one of these OPs will have to buy it from the manufacturer/ distiller before the same is sold to the retailer. Thus, in view of exclusivity granted to OP-1, OP-2, OP-3 and OP-4 by virtue of C.L.-1B licenses held by them, this case appears to involve the following five relevant markets: (a) market for procurement of country liquor from licensed manufacturers within the Special Meerut Zone in the State of Uttar Pradesh; (b) market for



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procurement of country liquor from licensed manufacturers within the Lucknow Zone in the State of Uttar Pradesh; (c) market for procurement of country liquor from licensed manufacturers within the Gorakhpur Zone in the State of Uttar Pradesh (d) market for procurement of country liquor from licensed manufacturers within the Agra Zone in the State of Uttar Pradesh and (e) market for procurement of country liquor from licensed manufacturers within the Varanasi Zone in the State of Uttar Pradesh.

27. The Informant has alleged that OP-1 to OP-4 belong to the same group and the OPs as a group are abusing their dominant position. On the contrary, the OPs have contended that only OP-1 is a subsidiary of OP-5 and OP-2, OP-3 and OP-4 do not belong to OP-5 group. In this regard, the Commission is *prima facie* of the view that, irrespective of whether OP-1 to OP-4 form a part of the OP-5 group or not, each of OP-1 to OP-4 would remain dominant in one or more of the relevant markets delineated above as each of them have been granted exclusivity in their respective zone(s). Therefore, determination of the fact whether they form a part of the group is not necessary at this stage of the proceedings.
28. The Commission now proceeds to examine the allegation of discrimination and denial of market access in procurement of country liquor. In this regard, the Commission has perused the data furnished by OP-1 to OP-4 regarding country liquor procured by them from various distilleries during the period 2011-12 to 2016-17. It is observed that each of OP-1 to OP-4 have been procuring country liquor from more than one distillery; however, significant percentage *i.e.* around 25 to 55%, of the procurement by OP-1, OP-3 and OP-4 in this period was from two distilleries, *namely*, Wave Distilleries and Breweries Limited and Lords Distilleries Limited, which are group companies of OP-5. It is further observed that in the years 2015-16 and 2016-17, OP-2 procured more than



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50% from these distilleries and OP-1, OP-2 and OP-4 procured between 30 to 55% from them. Such trend of procurement by OP-1 to OP-4 shows that they are giving preference to these two distilleries over other distillers/ manufacturers. The OPs have not been able to provide any plausible justification for according such preferential treatment.

29. With respect to the Informant, the OPs have averred that indents were not placed upon the Informant, as it did not have valid license. However, the Informant has placed on record evidence that it had applied for renewal of its license every year from 2009-10 onwards and the State Government did renew licenses for these years albeit belatedly. Moreover, according to the existing practice as pointed out by the Informant, the distilleries can continue manufacturing country liquor after depositing the fee for renewal of license, without waiting for clearance, which may come later. Given the aforesaid, the Commission is of the view that there was nothing to prevent the OPs from procuring country liquor from the Informant, if they in fact intended to procure from them. The OPs have themselves accepted that in six out of eleven years the Informant held a valid license but have given no reasonable explanation for not placing indents upon them during these years, except stating that the Informant had not made them aware of the change in the company name and had placed request for indent from an OP, which was not the wholesale license holder of that zone. In view of the Commission, the contention of the OPs clearly seem to be an afterthought in light of the facts available on record.
30. With respect to the contention of the OPs that a distillery is required to place request for indent on an OP which is the wholesale license holder of that zone, it is observed that the data provided by the OPs regarding their procurement of country liquor from various distilleries itself contradicts their argument. Such data provided by each OP for the



financial years 2011-12 to 2016-17 clearly shows that procurement by each OP is not restricted by the zone to which the distilleries belong. For instance, it is seen that while only OP-2 has license for Gorakhpur zone, each of OP-1 to OP-4 are procuring from distilleries in that zone. Similarly, as already stated, each of OP-1 to OP-4 are procuring from Wave Distilleries and Breweries Limited and Lords Distilleries Limited, irrespective of their respective zones. Thus, in light of foregoing facts, the Commission is of the view that the reasons given by the OPs appear to be merely an attempt to subvert the fact that procurement from various distillers/ manufacturers was being made by them in an arbitrary and discriminatory manner, resulting in denial of market access to certain distillers/ manufacturers like the Informant.

31. Based on above, the Commission is of the opinion that the conduct of the OPs is *prima facie* in contravention of the provisions of Section 4, particularly Section 4(2)(a)(i) and 4(2)(c) of the Act.
32. Accordingly, the DG is directed to cause an investigation into the matter and submit this report within a period of 60 days from the receipt of this order. The DG is also directed to investigate into the allegation of the Informant regarding OP-1 to OP-5 being a group and contravening the provisions of Section 4 of the Act as such.
33. Further, the DG is directed to investigate the role of the persons/ officers who were in-charge of and responsible for the conduct of the businesses of such parties at the time of the alleged contravention.
34. Nothing stated in this order shall tantamount to final expression of opinion on merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.





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35. The Secretary is directed to send a copy of this order along with the information and the documents received in relation to this matter to the Office of the DG.

**Sd/-**

**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**

**(Sudhir Mital)**  
**Member**

**Sd/-**

**(Augustine Peter)**  
**Member**

**Sd/-**

**(U. C. Nahta)**  
**Member**

**New Delhi**  
**Dated: 09.07.2018**