

**BEFORE THE**  
**COMPETITION COMMISSION OF INDIA**

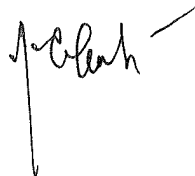
**Case No. 3/2011**

**DATE OF DECISION: 24.02.2012**

**In re: suo-motu case against LPG cylinder manufacturers**

**ORDER**

The cognizance in the present case was taken by the Competition Commission of India (hereinafter referred to as 'the Commission') suo-motu under section 19(1) of the Competition Act, 2002 (hereinafter referred to as 'the Act') consequent upon the submission of investigation report of the Director General (hereinafter referred to as 'the DG') in Case No. 10 of 2010, M/s Pankaj Gas Cylinders Ltd. v. Indian Oil Corporation Ltd. In that case it was reported by the DG that in tender No. LPG-0/M/PT-03/09-10 floated by Indian Oil Corporation Ltd. (hereinafter referred to as IOCL) for the supply of 105 lakh, 14.2 Kg capacity LPG cylinders with SC valves, the manufacturers of LPG cylinders had manipulated the bids and quoted identical rates in groups through an understanding and collusive action.





## 2. BRIEF FACTS OF THE CASE

2.1 While conducting investigation in Case No. 10 of 2010, the DG had noted that IOCL had invited bids vide Tender No. LPG-o/M/PT-03/09-10, for the supply of 105 Lakh, 14.2 KG capacity LPG Cylinders with SC valves in year 2010-2011, to various bottling plants as per the terms and conditions and specifications mentioned in the tender document. As per the conditions of tender documents, only those manufacturers having valid approval from Chief Controller of Explosives (CCOE) and Bureau of Indian Standards (BIS) license for manufacture of 14.2 kg LPG Cylinders as per IS-3196 (Part 1) as on the due date of this tender, were eligible to submit bids for the tender. The tender was having two parts viz, Technical Bid and Price Bid.

2.2 It was noted by the DG that out of the 63 bidders who participated in the tender, 50 bidders were qualified for opening of Price Bids, 12 bidders were qualified as New Vendors (who were not required to submit price bids) and 1 bidder was not qualified for the opening of price bid. The Technical Bid of the subject tender was opened on 03.03.2010 and the Price Bids of 50 qualified bidders were opened on 23.03.2010.

2.3 Further, the DG, on the analysis of bids submitted by the bidders for the year 2010-2011, had noted that there was a similarity of pattern in the bids submitted by all the 50 bidders who submitted price bids for





various States. The bids of a large number of parties were exactly identical or near to identical in different States.

2.4 On the basis of analysis of bids the DG had observed that there were strong indications of some sort of agreement and understanding among bidders to manipulate the process of bidding.

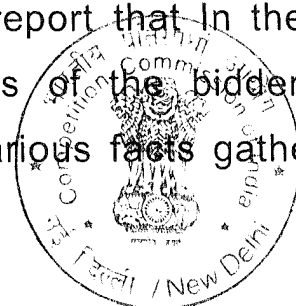
2.5 The Commission, after considering the matter in its meeting dated 09.03.2011 and in exercise of its *suo-motu* powers under section 19 of the Act, was of the view that a thorough investigation into the matter of bid rigging was necessary in the tender awarded for the procurement of 14.2 Kg LPG cylinders by the public sector gas marketing companies viz. IOCL, Bharat Petroleum Corporation Ltd. (BPCL) and Hindustan Petroleum Corporation Ltd. (HPCL). Accordingly, the Commission after forming an opinion under Section 26(1) of the Act that there exists a prima facie case referred the matter to the Director General (DG) for investigation.

2.6 DG after receiving the directions from the Commission investigated the matter and submitted the investigation report dated 13.05.2011 to the Commission.

### **3. INVESTIGATION BY THE DG**

3.1 It is gathered from the investigation report that in the course of investigation, the DG recorded statements of the bidders on oath and analysed their statements in light of various facts gathered during

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investigation. The DG collected evidence by sending questionnaire to the concerned parties and bidders were given opportunity to explain their position in the light of evidence gathered against them.

3.2 It has been highlighted in the DG report that IOCL is a leading market player in the Liquefied Petroleum Gas (LPG) market by virtue of having market share of 48.2%. Being the largest player in LPG market, IOC is a major procurer of 14.2 Kg LPG cylinders. On the basis of facts gathered the DG has also noted that for the year 2010-11, in addition to tender floated by IOCL for procurement of 105.16 Lakh cylinders, HPCL floated a tender for 36 Lakh, 14.2 Kg cylinders and BPCL floated tender for procurement of 40.33 Lakh, 14.2 Kg cylinders during the year. While HPCL and BPCL have adopted e-platforms for tender invitation and finalization IOCL is procuring by way of invitation of tenders.

3.3 The DG, after analyzing various regulatory framework of LPG distribution in India, has noted that the companies in the private sector are not authorized to supply LPG to domestic consumers in 14.2 Kg LPG cylinder. Only PSU Oil companies can supply LPG in 14.2 Kg LPG cylinders as per the given specification in Schedule II of the notification dated 26.4.2000 issued by the Ministry of Petroleum and Natural Gas, Government of India.

3.4 As per the DG report, the process of bidding followed by IOCL in the tender under inquiry was as under:

a) Bidders could quote against the bid documents issued by IOCL.

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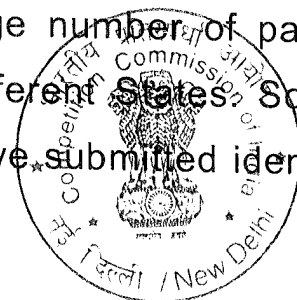


- b) Bidders who were old (existing suppliers) were required to submit price bids as well as technical bids.
- c) The bidders were supposed to quote for supplies in different States of India as per their installed capacity.
- d) After assessing bids, the bidders were arranged according to rates in the categories of L-1, L-2 and L-3.
- e) The rates for supplies were approved after negotiations with L-1 bidders. In case L-1 could not supply required number of cylinders in a particular State, the orders for supplies went to L-2 and also to L-3 bidders or likewise depending upon the requirements in that State as per fixed formula provided in the bid documents.
- f) Certain bidders called new parties (as per conditions contained in tender documents) were required to submit only technical bids. They were required to supply as per L-1 rates determined after negotiations.
- g) One bidder could quote for a maximum of eight States.

3.5 The DG has stated that above system has been put in place apparently to ensure adequate supplies of LPG Cylinders so that supplies to domestic consumers are not interrupted.

3.6 The DG, after analyzing the bids submitted by various bidders to IOCL for 2010-11 has come to the conclusion that there is a similarity of patterns in the price bids submitted by all the 50 bidders (the names of the bidders are given below in para no.3.8) for making supply to IOCL in different States. The bids of large number of parties were exactly identical or near to identical in different States. Some of the bidders belong to same group and may have submitted identical rates

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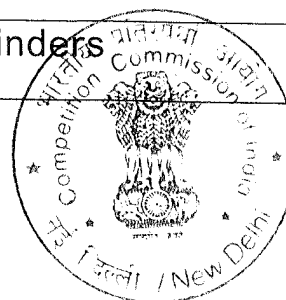


because they can take common decisions being under common control or management. It is also found by DG that not only rates of group concerns are common, but rates of other entities not belonging to any group are also identical.

3.7 The DG report has provided group wise profile of the bidding concerns which is reproduced below:

S.no.	Name of successful Bidders	Name of Common Group to which it belongs to
1	Akmn Cylinders P Ltd	Akmn Cylinders P Ltd
2	Allampally Brothers Ltd	Allampally Brothers Ltd
3	Andhra Cylinders	Confidence Petroleum Group
4	Asian Fab Tec Ltd	Asian Fab Tec Ltd
5	Balaji Pressure Vessels	Balaji Pressure Vessels
6	Bhiwadi Cylinders P Ltd	Bhiwadi Cylinders P Ltd
7	BPT Structural India P Ltd	BPT Structural India P Ltd
8	Carbac Holdings Ltd	Carbac Group
9	Confidence Petroleum	Confidence Petroleum Group
10	ECP Industries Ltd	ECP Industries Ltd
11	Faridabad Metal Udyog P Ltd	Faridabad Metal Udyog P Ltd
12	GDR Cylinders P Ltd	GDR Cylinders P Ltd
13	Gopal Cylinders	Gopal Cylinders

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14	Haldia Precision Engg. Pvt.Ltd	Carbac Group
15	Hans Gas Appliances P Ltd	Confidence Petroleum Group
16	Him Cylinders Ltd	Him Group
17	Hyderabad Cyls P Ltd	Sanghvi Group
18	International Cyls P Ltd	Tirupati LPG Group
19	JBM Industrial Ltd	JBM Industrial Ltd
20	Jesmajo Industrial Fab	Jesmajo Industrial Fab
21	Khara Gas Eqpts P Ltd	Confidence Petroleum Group
22	Konark Cylinders	Konark Cylinders
23	Krishna Cylinders	Krishna Cylinders group
24	Kurnool Cylinders P Ltd	Kurnool Cylinders P Ltd
25	Lite Containers P Ltd	Lite Containers P Ltd
26	Mahaveer Cylinders Limited	Mahaveer Cylinders Limited
27	MauriaUdyog Ltd	MauriaUdyog Ltd
28	MM Cylinders P Ltd	MM Cylinders P Ltd
29	North India Wires Ltd	Carbac Group
30	Om containers	Super Group
31	Omid Engg. Pvt.Ltd	Him Group
32	Punjab Gas Cyls Ltd	Punjab Gas Cyls Ltd
33	Rajasthan Cyls	Rajasthan Cyls
34	RM Cylinders P Ltd	Sanghvi Group

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35	SahuwalaCyls P Ltd.	SahuwalaCyls P Ltd.
36	SanghviCyls P Ltd	Sanghvi Group
37	Sarthak Industries Ltd	Sarthak Industries Ltd
38	Shri Ram Cylinders	Krishna Cylinders group
39	Shri Shakti Cyls P Ltd	Shri Shakti Cyls P Ltd
40	SKN Industries Ltd	SKN Industries Ltd
41	SM Cylinders	SM Cylinders
42	Sunrays engineers P Ltd	Sunrays engineers P Ltd
43	Super Industries	Super Group
44	Supreme Technofabs P Ltd	Supreme Technofabs P Ltd
45	Surya Shakti Vessels P Ltd	Surya Shakti Vessels P Ltd
46	Teekay Metals P Ltd	Super Group
47	TirupatiCyls Ltd	Tirupati LPG Group
48	Tirupati LPG Industries Ltd	Tirupati LPG Group
49	Universal Cyls	Universal Cyls
50	Vidhya Cylinders P Ltd	Vidhya Cylinders P Ltd

3.8 It has been observed in the DG report that out of the above 50 bidding parties, there are about 37 entities that cannot be said to be belonging to any single group and are independently controlled. Given this fact scenario, DG found it unusual that unrelated firms could quote identical rates in different States.

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3.9 The DG has analyzed the bidding pattern of various parties for all the 25 States. As per the report of DG, the analysis of the bids submitted by the various parties for different States illustrates a definite pattern of overall bidding, which is detailed below:-

i) The orders have been placed on all the 50 successful bidders, whoever has submitted bids for making supplies to different depots of IOCL in different States all over India.

ii) The contracts have been awarded and orders have been placed on sets of bidders who have quoted identical rates or near to identical rates in a particular pattern in almost all States.

iii) Successful bid rates have been quoted by different bidders in a group. For example, rate of Rs. 1240 has been quoted for North East and rates of Rs. 1151, Rs. 1127 and Rs. 1100 have been quoted collectively in group for Kerala, Tamil Nadu and Maharashtra respectively. In other States also, identical bids have been quoted collectively and in group.

iv) There is no State (except for Andaman and Nicobar Islands), where there is a single party which has quoted the lowest rate and has got the final contract. In almost all the States, the parties have quoted identical rates or near to identical rates collectively in a group and have also bagged the contract together.

v) There is similarity in the rates quoted by the bidders even when the factories and the offices of these parties are not located in one and same State and they have to make supplies to other locations far off from their factories located at different places.



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3.10 The DG has also stated that the pattern of the bidding suggests that the group of 50 bidders had decided to quote common rates for different States and also allocated areas before quoting the bids. This was also facilitated by the condition stipulated by the IOCL in the tender document that no bidder can quote in more than eight States which gives certain amount of predictability in allocating territories among themselves.

3.11 As per DG report, the factors like market conditions, small number of companies, little or no entry, industry Association, repetitive bidding, identical products, few or no substitutes and little or no technological change, facilitating and aiding collusion are also present in this case.

3.12 The DG has further found that the LPG Cylinder Manufacturers have formed their Association by the name of Indian LPG Cylinders Manufacturers Association. The members are interacting through this Association and using the same as platform to share their possible rates.

3.13 On the basis of evidence gathered during investigation it has been concluded in the DG report that the LPG cylinder manufacturers while submitting bids for the supply of 14.2 Kg LPG cylinders to the IOCL against the tender issued by it, met in Hotel Sahara<sup>Star</sup> in Mumbai on 1st and 2nd March, 2010, just before the date of submission of price bids, discussed the tender and submitted identical bids in collusion with each other.

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3.14DG has also reported that the pattern of successful bid suggested that territories had been allocated among the bidders and bidders who quoted the lowest bids in group in one area, e.g. Western India had generally not quoted so in Eastern India and largely the bidders who quoted lowest in group in Northern India had not generally quoted so in Southern India.

3.15The DG has also analyzed the factors provided in section 19(3) of the Act to ascertain the appreciable adverse effect on competition in India ('AAEC'). It has been concluded by the DG that with their collective market power, the LPG cylinder manufacturers make entry of a new player into the relevant market difficult. The conduct of the Cylinder Manufacturers has not resulted into any accrual of benefits to the consumers. Their collusive action also does not bring any improvement in the production or distribution of the goods or provision of services. The DG has also concluded that there was also no positive outcome in terms of the improvements in production or distribution of goods or provision of services.

3.16It has been observed by the DG that the behavior of the bidders in this case is like that of a cartel. The DG has also noted that factors which are considered conducive for formation of cartel exist in the instant case. There is a high concentration in the market as there are a few players in the market. Being limited in number, the output and pricing of the firms in the industry can easily be monitored. The products are homogeneous, the manufacturers have unused excess

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production capacity and there is high dependence on the product. All these factors facilitate LPG cylinder manufacturers to resort to concerted action.

3.17 Similar pattern of bidding and manipulation of the bids have also been observed in the DG report, for the year 2009-10 and in previous years. It has been further noted that the bidders for the year 2009-10 and 2010-11 were almost identical. Some additional concerns which quoted bids successfully for the year 2010-11 but had not got supply orders for the year 2009-10 were in fact related or group concerns. The rates quoted by them were almost identical for both the years. The territories allocated amongst them for supplies also appeared to be identical.

3.18 Based on the analysis of evidence obtained in this case, the DG has found that bids of IOCL for year 2010-11 have been manipulated by 50 participating bidders. DG has recorded the finding that the LPG cylinder manufacturers have procured orders for supply of 14.2 Kg LPG cylinders by quoting identical rates in groups, through an understanding and collusive action in violation of provisions of section 3(3)(d) of the Act which has deprived the IOCL from getting competitive prices and resulted into raising its cost of procurement.

4. The Commission, after considering the DG report, decided to send a copy of the DG report to the parties for seeking their objections on the findings of DG report.

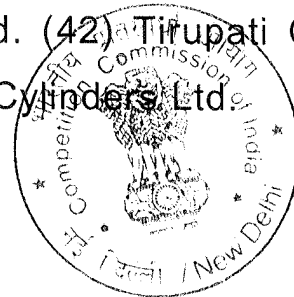


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## 5. Replies of 44 Opposite Parties

5.1 On 01.08.2011, 44 Opposite Parties filed common reply to the DG report through their advocate. These parties are (1) Konark Cylinders & Containers (P) Ltd. (2) ECP Industries Ltd. (3) Sunrays Engineers Pvt. Ltd. (4) Tee Kay Metals Pvt. Ltd. (5) Super Industries (6) Om Containers (7) Lite Containers Pvt. Ltd. (8) Jesmajo Industrial Fabrications Karnataka Pvt. Ltd. (9) Gopal Cylinders (10) A.K.M.N. Cylinders Pvt. Ltd. (11) Sahuwala Cylinders Pvt. Ltd. (12) M/s Universal Cylinders Ltd. (13) Mahaveer Cylinders Ltd. (14) Punjab Gas Cylinders Ltd. (15) Him Cylinders Ltd. (16) Omid Engineers Pvt. Ltd. (17) Bhiwadi Cylinders Pvt. Ltd. (18) Krishna Cylinders (19) Shri Ram Cylinders (20) International Cylinders Pvt. Ltd. (21) Tirupati LPG Industries Ltd. (22) Rajasthan Cylinders & Containers Ltd. (23) Surya Shakti Vessels Pvt. Ltd. (24) Faridabad Metal Udyog Pvt. Ltd. (25) Haldia Precision Engineering Pvt. Ltd. (26) Carbac holdings Ltd. (27) S. M. Cylinders (Unit of SM Sugar (P) Ltd.) (28) M.M. Cylinders Pvt. Ltd. (29) GDR Cylinders Pvt. Ltd. (30) Hans Gas Appliances Pvt. Ltd. (31) Andhra Cylinders (A unit of Envy Cylinders P Ltd.) (32) Confidence Petroleum India Ltd. (33) Khara Gas Equipments Pvt Ltd. Ltd. (34) Sarthak Industries Ltd. (35) R.M. Cylinders Pvt. Ltd. (36) Sanghvi Cylinders Pvt. Ltd. (37) North India Wires Ltd.. (38) Kurnool Cylinders Pvt. Ltd. (Unit II) (39) JBM Industries Ltd. (40) Asian Fab Tec Ltd. (41) BTP Structural (I) Pvt. Ltd. (42) Tirupati Cylinder Ltd. (43) SKN Industries Ltd. (44) Hyderabad Cylinders Ltd.

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## Common submissions of 44 Parties

5.2 The relevant common submissions made by the Opposite Parties are summarized below:

5.2.1 It has been submitted that every part of LPG cylinder is regulated by the law through the various notifications issued under relevant enactments. Further, the price of the steel which constitutes more than 50% in the making of LPG Cylinder fluctuates every month. Similarly, the price of the paint which is also an essential raw material for the manufacturing of LPG Cylinders varies from time to time in accordance with the fluctuation in the oil prices. As per the objections of the aforesaid parties, the taxes also vary from State to State and all these factors along with the transportation cost determine the overall bidding pattern of bidders depending upon their business model.

5.2.2 In regard to quoting of identical rates it has been contended that a bidder whether L-1 or L-2 has no reason to match the rates of other competitors when the quantity of the cylinders which he is likely to get is pre-determined on the basis of the installed capacity, which varies from bidder to bidder.

5.2.3 It has also been submitted by the aforesaid parties that they had nominated 6 agents for depositing their bids on their behalf and it is quite a common practice amongst the bidders to direct their agents to keep close watch on the rates offered by their competitors in respect of a particular State. This leads to the possibility of copying and

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matching of the rates quoted in the price bids by many suppliers in a particular State who may have appointed common agents. Due to this reason cutting and over-writing in the price bids for the tender in question was noticed by the DG.

5.2.4 It has also been submitted that the market in question is an oligopolistic market since there were only 62 qualified tenderers in the whole country out of which 12 bidders were classified as new parties. Out of 50 bidders in the alleged cartel many are group companies controlled by single management. The market is dominated by small number of sellers and due to this fact each player is likely to be aware of the actions of the other bidders. It has been further submitted that price parallelism is a common feature in the oligopolistic market and the case law evolved on the subject, both in US and European jurisdictions has now established that the parallel conduct by itself is not prohibited and it does not create a presumption of collusion and cartelization.

5.2.5 It has been further submitted by these parties that only few amongst them are the members of the LPG Gas Cylinders Association. Most of the parties were neither aware nor participated in the alleged meeting at Mumbai. They have denied each & every allegation found established against them by the DG. They have also contended that the price of the LPG Cylinder is indirectly determined by the Oil Marketing Companies through forced negotiations wherein the profit for the suppliers is kept at lowest level, which can hardly be increased by any cartel.

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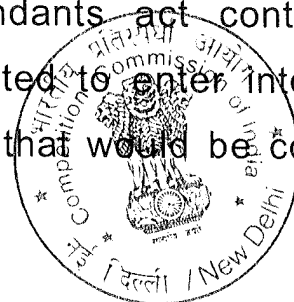


5.2.6As per the contention of the aforesaid Opposite Parties, there is no evidence in the DG report against them regarding any meeting of minds or agreement between themselves or with the other 6 Opposite Parties. The meeting at Mumbai was attended by only 12 persons representing 19 Opposite Parties.

5.2.7These parties have also submitted that it has been repeatedly held in both US and European antitrust cases, particularly in case of Monsanto Co. vs. Spray Rite Service Corporation that to prove concerted action, "there must be direct or circumstantial evidence that reasonably tends to prove that the parties had a conscious commitment to a common scheme designed to achieve an unlawful objective. Furthermore, "it is generally believed that an agreement involving actual, verbalized communication must be proved in order for a price-fixing conspiracy to be actionable under the Sherman Act." The DOJ of U.S. usually proceeds with prosecution only when there is direct evidence of an unlawful agreement.

5.2.8It has been further contended that in antitrust cases based on theory of conscious parallelism, which has been mainly developed in the U.S., evidence of parallel pricing must be supplemented with plus factors, showing that alleged conduct is conscious and not the result of independent business decisions. Such factors may include evidence demonstrating that (i) defendants act contrary to their economic interests, and (ii) are motivated to enter into price fixing conspiracy. It has been held that acts that would be contrary to the

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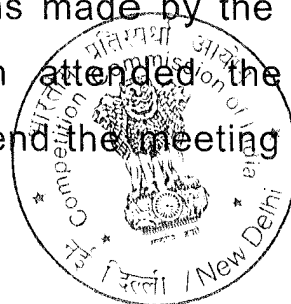
actor's self-interest in the absence of a conspiracy, but which make sense as part of a conspiracy, may provide crucial evidence necessary to exclude the possibility of independent action.

5.2.9 They have relied upon a number of case laws from the many jurisdictions and submitted that mere price parallelism is not sufficient to be admissible as a circumstantial evidence for any agreement to fix prices and there should be some economic justification for fixing the prices. The Opposite Parties have relied upon Baby Food Antitrust Litigation, in re, 166 F. 3d 112 (3rd Cir. 1999); Blomkest Fertilizer, Inc v, Potash Corp. of Saskatchewan, Inc. (2000); Williamson Oil Co. v. Philip Morris USA (11th Cir. 2003), Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), Theatre Enterprises, Inc. v. Paramount Film Distributing Corp 1954. 346 U.S. 537 (1954), and RDK TRUCK SALES AND SERVICE INC v. Mack Trucks (2009).

5.2.10 The Opposite Parties have also relied upon the judgment of MRTP Commission in Alkali and Chemical Corporation of India Ltd. Calcutta v. Bayer (India) Ltd., Bombay {1984 3 Comp LJ 268 (MRTPC)}. On the basis of the aforesaid jurisprudence, it has been contended that none of the plus factors required for the collusive behaviour are present in the instant case therefore, the conclusion of the bid rigging by the Opposite Parties is legally not tenable.

5.3 In addition to the common submissions made by the aforesaid 44 Opposite Parties, 19 companies which attended the meeting at Mumbai, 24 companies which did not attend the meeting and one M/s

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Hyderabad Cylinders Pvt. Ltd. have also submitted their individual contentions in the same reply dated 01.08.2011.

## **Individual submissions of the 19 Parties who attended the Meeting**

### **5.4 Replies of M/s Haldia Precision Engineering Pvt. Ltd. and M/s North India Wires Ltd**

5.4.1 It has been submitted that these two Companies along with M/s Carbac Holdings Ltd belong to same group. These Opposite Parties have denied their participation in the meeting at Mumbai on 1st / 2nd March, 2010 before the date of opening of the tender. It has been further submitted that 3 of their representatives, namely– Mr. Chandi Prasad Bhartia, Mr. Sandeep Bhartia and Mr. Raj Kumar Bhartia were in Mumbai at the time of the filing of the tender and were staying in the Hotel Hyatt at Mumbai. They went to Hotel Sahara Star for having dinner where by chance they met with 20 – 25 Cylinder Manufacturers and on their request they also joined in the dinner. As a token of courtesy, Mr. Chandi Prasad Bhartia paid the bill for the dinner. These parties have denied attending lunch on 2nd March, 2010 at Hotel Sahara Star.

5.4.2 With regard to the identical bid price for the state of West Bengal, it has been submitted that it was a purely business coincidence that the rates quoted by them matched with the rates of the Konark Cylinders and ECP Industries



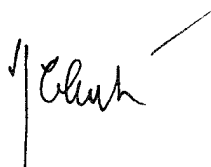
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5.4.3 With regard to the identical bid price for the State of Assam, it has been submitted that only two parties had quoted rates for the Assam State, namely, Haldia Precision and International Cylinders and the negotiated rate between Haldia and IOCL was 48 rupees below the quoted price. On the basis of this fact It has been submitted that had there been any agreement between it and International Cylinders then, it would not have agreed to negotiated price.

### **5.5 Reply of M/s Carbac Holdings**

5.5.1 As M/s Carbac Holdings Ltd. is a Group Company of M/s Haldia Precision Engineering Pvt. Ltd. and M/s North India Wires Ltd., it has reiterated the version of its two other Group Companies.

5.5.2 It has been submitted that it was the only L-1 bidder in the State of West Bengal and was not eligible for order placement in any other State as the rates submitted by it, being higher, were not approved. The DG has wrongly mentioned that Carbac Holdings quoted for the North East States whereas Carbac Holdings Ltd. has never quoted for the same region. The Opposite Party has also made the submission that its price for the State of West Bengal was not only the lowest but also did not match with its two other Group Companies because it wanted to procure orders for the maximum quantity offered along with the said Group Companies who were also expected to be L-2.





## **5.6 Reply of M/s Bhiwadi Cylinders Pvt. Ltd.**

5.6.1 M/s Bhiwadi Cylinders has admitted that it is a member of LPG Gas Cylinders Association and also participated in the meeting held at Mumbai on 1st and 2nd March, 2010. It has been submitted that since representatives of all the companies belong to different parts of India, Mumbai is the only place where they can meet when they have to submit the tenders as all the Oil Marketing Companies have their base in Mumbai for the tendering process.

5.6.2 It has been further submitted that there were no discussions in the meeting related to price or allocation of market. The number of bidders which met in the Hotel Sahara was far less than the total number of the bidders thus negating the possibility of meeting of minds.

5.6.3 This plea has also been taken that there is no entry barrier in the market as the number of vendors has grown from 30 to 77. It has been further submitted that the entry for the new entrants is very easy as the new entrants are assured of orders.

## **5.7 Reply of M/s Surya Shakti Vessels Pvt. Ltd.**

5.7.1 M/s Surya Shakti Vessels Pvt. Ltd. has reiterated the response of M/s Bhiwadi Cylinders Pvt. Ltd. It has been further submitted that the company is into marketing of LPG and Furnace Oil and has offices

*J. Chugh*



in various locations in the States of U.P.& Uttrakhand. Therefore, it followed previous tender rates as benchmark for the tender in question. For other two nearby States, it quoted slightly higher rates so that if it gets orders for these States also, it will be able to make substantial new investments to augment its capacity in a single shot rather than on piece-meal approach it had been pursuing.

5.7.2 It has further been submitted that the bid price is fixed on the basis of negotiation between the bidder and the OMCs. Hence, in the absence of power to fix the price there cannot be unreasonable trade benefit for the bidders. The Opposite Party has further contended that there is no entry barrier in the market as in the instant case itself 12 new vendors had applied in the tender and were allocated quota by the IOCL. The price rise of the LPG Cylinders over a period of time is not an outcome of any action of the Association of LPG Cylinders manufacturers but is due to adverse input market scenario and increase in the cost of raw material, labour, power, freight and other factors. DG has not taken into account increase in steel prices, increase in WPI and general inflation for increase in prices.

### **5.8 Replies of M/s Tirupati LPG Industries Ltd., M/s Tirupati Cylinders and M/s International Cylinders (P) Ltd.**

5.8.1 It has been admitted that Opposite Parties are the members of LPG Gas Cylinders Association and the owner of the companies, Mr. Goyal had participated in the meeting held on 1st and 2nd March, 2010 at Mumbai. The Opposite Parties have submitted that the owner





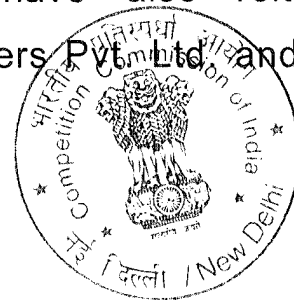
of the companies, Mr. Goyal, is the promoter of one Pharmaceutical Company which has its office and major clients at Mumbai. The main purpose of Mr. Goyal to visit the Mumbai during the 1st and 2nd March, 2010, can be seen from the letter dated 26.02.2010 sent by International Cylinders Pvt. Ltd. to IOCL stating that Mr. Goyal will be visiting the office of IOCL on 2nd March, 2010, to discuss some technical issues with the officers of the IOCL relating to the tender.

5.8.2 They have also reiterated the submissions made by M/s Bhiwadi Cylinders Pvt. Ltd. and M/s Surya Shakti Vessels Pvt. Ltd.

**5.9 Replies of M/s Om Containers Pvt. Ltd., M/s Super Industries, M/s Tee Kay Metals Pvt. Ltd, M/s Krishna Cylinders, M/s Shri Ram Cylinders, M/s Him Cylinders Ltd., M/s Omid Engineering Pvt. Ltd., M/s Lite Containers Pvt. Ltd., M/s Rajasthan Cylinders & Containers Ltd., M/s S.M. Cylinders and M/s Sahuwala Cylinders Pvt. Ltd.**

5.9.1 It has been admitted by these parties that they are members of the Association and their owners had participated in the meeting held at Mumbai. These Opposite Parties have also reiterated the submissions made by M/s Bhiwadi Cylinders Pvt. Ltd. and M/s Surya Shakti Vessels Pvt. Ltd.





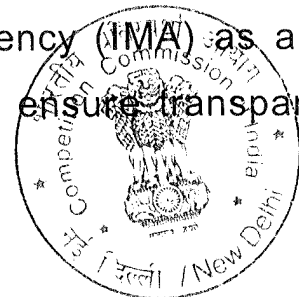
Individual submissions by 24 Parties who claimed to have not attended the meeting

**5.10 Replies of M/s Khara Gas Equipment Pvt. Ltd., M/s Confidence Petroleum India Ltd., M/s Andhra Cylinders and M/s Hans Gas Appliances Pvt. Ltd.**

5.10.1 These parties have submitted that they are Group Companies managed and run by Mr. Yatin Khara and neither they are members of the LPG Cylinder Manufacturer Association nor they had attended the meeting at Mumbai. It has also been submitted that they do not have any common representative or agent in Mumbai, who submits bids on their behalf. They are having a full-fledged office and employees working in Mumbai, who submit bids and handle tender work. They have also denied all the allegations leveled against them by DG.

5.10.2 The aforesaid Opposite Parties have also filed their common additional written submissions dated 07.10.2011 and contended that the conclusions drawn by the DG in its report are unfounded and unilateral, without specifically taking into consideration various terms and conditions incorporated in the tender document by IOCL, wherein it is specifically mentioned that the entire tender process is being monitored by Independent Monitoring Agency (IMA) as appointed by Ministry of Petroleum and Natural Gas to ensure transparency in the

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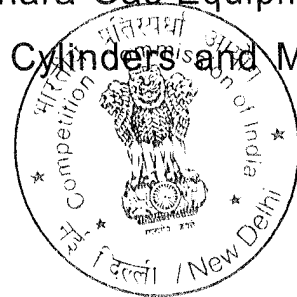
tendering process. The mechanism of IMA is essence of the entire tendering process which prohibits any tenderer to form cartel.

5.10.3The answering Opposite Parties have further contended in the additional reply that in this tender IOCL has been benefited significantly. IOCL got supply at lesser prices as compared to BPCL and HPCL for the same period. The IOCL negotiated with the L1 parties and made them to agree for lesser rates during negotiations. The tenderer have accepted very less margin of profit. IOCL and Independent Monitoring Agency have very well realized this advantage to the IOCL at the time of finalization and the approval of the tender. On the basis of the above, the answering Opposite Parties have submitted that there is no loss to public exchequer.

#### **5.11Reply of M/s Faridabad Metal Udyog Pvt. Ltd.**

5.11.1It has been submitted on behalf of the company that it is neither a member of the Association nor attended the alleged meeting at Mumbai.It has reiterated the version of M/s Khara Gas Equipment Pvt. Ltd., M/s Petroleum Indian Ltd., M/s Andhra Cylinders and M/s Hans Gas Appliances Pvt. Ltd.

#### **5.12Reply of M/s ECP Industries**



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5.12.1 As per the contention of the ECP Industries, it is not a member of the Association nor it attended the alleged meeting at Mumbai. It has been further submitted that it is located in the backward area which is declared as non-industrial district and its average capacity utilization is under 40% of its total capacity in the last 5 years which has resulted into considerable financial strain on the company.

5.12.2 It has been also submitted that it had quoted only for the region of Eastern India in the subject tender floated by IOCL because the transportation costs have become unviable and in comparison the local manufacturers are in a position to offer better prices. It has further submitted that it was L-1 only in Orissa and was L-2 in West Bengal & Jharkhand. On the point of identical price in West Bengal quoted by ECP Industries and Konark Industries, it has submitted that both companies have same sources of steel with same price, same financial institutions, similar age plants and same local conditions and hence matching in one State is a mere co-incidence.

5.12.3 It has also submitted that after technical acceptance of bids, it was called for negotiation in State where it was L-1 i.e. Orissa. It had attended the meeting with the negotiation committee of IOCL in camera and reduced price to Rs.1226.00 in Orissa. In other States (West Bengal and Jharkhand) where it was L-2, as a general practice by IOCL, it was asked to match the negotiated L-1 price, which it had done to secure some more orders for survival.

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5.12.4 It has also been contended by the Opposite Party that it received a very low quantity order of 1.06% of the total required quantity by IOCL which reflects that it is neither a beneficiary nor received any high quantity of orders and has also not received any price advantage.

5.12.5 The answering Opposite Party has further denied each & every allegation leveled against it in the DG Report.

### **5.13 Reply of Mahaveer Cylinder**

5.13.1 M/s Mahaveer Cylinders Ltd. has also submitted that it is neither a member of the Association nor attended the alleged meeting held at Mumbai. It has been contended that there is no difficulty for any new vendor to enter into the LPG Cylinder Market as new units are not required to quote any rates to the 3 OMCs and all new vendors were technically qualified to get orders as per the tender terms & conditions. New vendors are supposed to supply at L-1 rates of a particular state. It has further contended that the input costs for the manufacturing of the LPG Cylinder have increased during the last few years and quoted price is totally justified. The Opposite Party has also denied the allegations leveled against it in the DG report.

### **5.14 Reply of M/s Punjab Gas Cylinder Ltd.**



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5.14.1 It has denied being member of the Association or having attended the alleged meeting held at Mumbai. As per the submission of the Opposite Party, the rate quoted by it was not identical to any other bidder and it has never been involved in any territorial and market allocations with other bidders as alleged in the report.

5.14.2 It has also been contended that it did not get any order during the last 4-5 years despite quoting in the earlier tenders of IOCL and in the subject tender it had quoted at the nil profit or at the cost price to keep its unit alive. It had quoted only for the nearby States namely – Himachal Pradesh and Jammu & Kashmir and slightly farther State Rajasthan. As per the submission of the Opposite Party it was only L-2 in Himachal Pradesh and Jammu & Kashmir and there was no other L-2, L-3. It could not get any rank in Rajasthan. Hence, it was not listed as a probable vendor. Regarding bare minimum difference in L-1 and L-2 prices for Himachal Pradesh and J & K, it has been stated by the Opposite Party that this may have been because L-1 and L-2 are from the same region and therefore, their input costs and freight on cylinders are also the same.

5.14.3 The Opposite Party has further submitted that for the State of Himachal Pradesh, it had quoted Rs.1190/- per cylinder along with M/s Krishna Cylinders and both were L-1. If there had been any understanding with Krishna Cylinders, it would not have reduced the rate in negotiation. Minimum two parties were required for the state of Himachal Pradesh. Even if two parties in Himachal Pradesh would have quoted different rates, then also the IOCL would have given the

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order to both the parties if the rate is matched with L-1 rates. Hence, there was no need for it to collude with the Krishna Cylinders to get the tender. The same analogy can be drawn with respect to its rate quoted in the state of Jammu & Kashmir where only 2 parties have quoted for the tender.

### **5.15 Reply of M/s Konark Cylinders & Containers.**

5.15.1 M/s Konark Cylinders & Containers has submitted that it is neither a member of the Association nor attended the alleged meeting held at Mumbai.

5.15.2 As per the Opposite Party, it is by sheer coincidence that its price in the state of Jharkhand was similar to that of ECP Industries a unit based in Balasore, Orissa. The source of raw material, cost of labour in the state of Orissa, cost of logistics is more or less similar to that of ECP Industries as it is also located in the same State.

### **5.16 Reply of JBM Industries**

5.16.1 M/s JBM Industries has stated that it is neither a member of the Association nor attended the alleged meeting held at Mumbai. As per JBM Industries, it started manufacturing of LPG cylinders in the year 1983 and when the tender system was introduced in 2001-02 it participated in the bidding but could not secure any orders. It has been stated that its plant was closed till 2003. It has been further submitted that from year 2003-04 when manufacturing started again it supplied

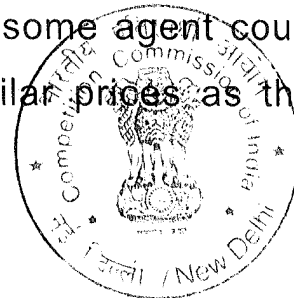
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very small quantities and its unit was again closed in the year 2007-08 and 2008-09. Its LPG business constituted only 7.09% of its total Group turnover for the year 2009-10. Hence, there is no economic justification for it to collude on price bids with other suppliers.

5.16.2 M/s JBM Industries has also filed its additional written objections on 7.09.2011 and submitted that it is not involved in any bid rigging, price fixing or market allocation with respect to the subject tender. The answering opposite party has further contended that it is not member of the LPG Cylinders Manufactures Association and it had not attended the alleged meeting at Mumbai. It has also been submitted that it is a conglomerate of many diversified business groups and LPG cylinders manufacturing business is a miniscule part of group's overall business and there is no economic justification for it to become a member of alleged cartel.

5.16.3 It has been further submitted by M/s JBM Industries that it had submitted bids only for two States i.e. Punjab and Utter Pradesh, and its rates did not match with any other company. In the State of Utter Pradesh, since it had entered the business of LPG cylinders manufacturing after a gap of two years, which the competitors must have noticed, the possibility of rates being leaked out to the competitors through corporate espionage or some agent could not be ruled out which enabled them to quote similar prices as that of the Opposite Party.



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5.17 Replies of M/s Universal Cylinders Ltd., M/s Asian Fab Tec Ltd., M/s BTP Structural (I) Pvt. Ltd., M/s G.D.R. Cylinders (P) Ltd., M/s Gopal Cylinders, M/s Sanghavi Cylinders Pvt. Ltd., M/s RM Cylinders Pvt. Ltd., M/s Jesmajo Industries Fabs., M/s Kurnool Cylinders Pvt. Ltd., M/s M.M. Cylinders Pvt. Ltd., M/s Sarthak Industries Ltd., M/s Sunrays Engineers Pvt. Ltd., M/s SKN Industries Ltd. and M/s AKMN Cylinders (P) Ltd.

5.17.1 These parties have contended that they are also neither members of the Association nor they attended any meeting held at Mumbai.

5.17.2 These parties have reiterated the contentions made by other Opposite Parties.

**5.18 Reply of M/s Hyderabad Cylinders Pvt. Ltd.**

5.18.1 It has submitted that during the course of investigation the DG had not taken any evidence from it nor issued any notice to be present before him. As DG had not investigated it nor gave any chance to the party to represent the case before him the conclusion drawn in the report filed by the DG that all the 50 bidders including the Hyderabad Cylinders have violated section 3(3)(d) of the ~~Act~~ is in violation of principles of natural justice thus, bad in law.



**Submissions of other 6 parties**

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## 5.19 Reply of Allampally Brothers

5.19.1 M/s. Allampally Brothers Ltd. has filed its reply to the DG report on 25.06.2011. It has submitted that it had no understanding with any other manufacturers, suppliers or Association for the bid price in the States of Kerala and Tamil Nadu where it had quoted. It has also been submitted by Allampally Brothers that it has an installed capacity of 300000 cylinders per annum and is the only LPG cylinder manufacturers functioning in Kerala. Upon invitation of tender by IOCL for supply of 938200 cylinders for Kerala and 1598000 cylinders for Tamil Nadu, it had quoted for supply of 150000 cylinders but got supply order for 79090 cylinders only for Kerala and none for Tamil Nadu. It has further stated that it is evident that there was no meeting of minds with any other suppliers to manipulate the process of bidding, as their quotation was not the lowest for Kerala despite the fact that they are the only LPG Cylinder manufacturer operating there. Further it has also stated that its quotation for the State of Tamil Nadu was the highest among the bidders due to which they were not able to get any orders for that State.

5.19.2 Allampally Brothers has also contended that the company was taken over by the present management during year 2005-2006 and that they are not aware of the existence of the Indian LPG Manufacturing Association. It has been further stated that the subscription of the Association has not been renewed and company has not attended any meeting conducted by the Association.



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5.19.3 The answering Opposite Party has further submitted that the bid rate quoted by it for Kerala being identical with some other suppliers was just by sheer chance and there was no collusion regarding the price.

### **5.20 Reply of Mauria Udyog Ltd.**

5.20.1 M/s Mauria Udyog Ltd. has filed its reply/objections to the DG report on 8.8.2011. It has denied its participation in cartel activities and has stated that it had quoted different rates for three States on account of the difference in the transportation charges. Further, there is no evidence in the DG report which has shown its presence in the alleged meeting at Mumbai on 1<sup>st</sup> or 2<sup>nd</sup> March 2010.

5.20.2 The answering Opposite Party has further stated that it had submitted bids for only three States i.e. Punjab, Rajasthan and Uttar Pradesh as they are contiguous States to its factory situated on the border of Haryana and Uttar Pradesh. It has further stated that it was one of the lowest 4 bidders for the State of Rajasthan and lowest 5 for the State of Punjab and was successful in getting a very small order of 69715 cylinders only which was less than 0.7% of the tender quantity.

5.20.3 Mauria Udyog has further contended that majority of its production is exported and it has an installed capacity of 2.4 million cylinders, being one of the highest capacities in the country. It has stated that it is a government approved registered exporter supplying to multinational companies like SHV, TOTAL, SHELL, BP, WITOGAZ and

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CALTEX and it was not a viable option for them to collude for IOCL tender. Further, it has denied each and every allegation leveled against it in the DG report.

### **5.21 Reply of M/s. Supreme Technofabs Pvt. Ltd.**

5.21.1 On 7.9.2011, M/s Supreme Technofabs Pvt. Ltd. filed its reply and submitted that it is the only unit located in the UT of Dadra and Nagar Haveli and, Gujarat and Maharashtra are the nearest States to its plant.

5.21.2 Supreme Technofabs has stated that it falls under the definition of a "new unit" and was entitled to receive orders for supply of 50000 nos. cylinders but no orders were given to it.

5.21.3 It has been submitted that it had quoted a net delivery price (NDP) of Rs. 1096.00 for all plants in the State of Gujarat and was one of three L2 bidders. In the State of Maharashtra again it was L2 bidder, where it quoted a net delivery price of Rs 1150.00 for all plants, 5 bids being L1 and 2 bids being L2.

5.21.4 M/s Supreme Technofabs has also contended that it had quoted independently in the subject tender and had not colluded or formed a cartel with any other bidder.

### **5.22 Reply of M/s Shri Shakti Cylinders P Ltd**



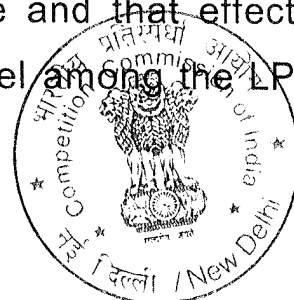
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5.22.1 On 25.6.2011 M/s Shri Shakti Cylinders P Ltd. filed its reply and contended that as it is not a member of any Association the question of its collusion does not arise. It has also submitted that the prices quoted by it were not identical in all the States and on the other hand the prices which the LPG Cylinder Manufacturers were compelled to accept are wholly identical and substantially less than quoted rates. It has been further submitted that there is no correlation between the prices sought by the bidders and the price finally accepted by the IOCL through the process of negotiations which are more often wholly one sided.

5.22.2 It has denied the manufacturing cost of 14.2 Kg LPG Cylinder shown in DG report at Rs. 960.00 and has stated that actual cost is Rs. 1048.72 per cylinder. It has also contended that for the State of Andhra Pradesh, the DG has himself reported that all the 10 bidders did not quote the same price and has contended that the investigation report unfairly focused attention on those few who had quoted the same price ignoring the majority who had quoted different prices.

5.22.3 Shri Shakti Cylinders P. Ltd has further submitted that none among 50 bidders are utilizing their installed capacity to the full extent. It has been further submitted that there was no evidence in the DG report that final price thrust upon the meek bidders was either equal to or more than the bid price. The approved price per LPG cylinder is invariably much less than the quoted price and that effectively nails the allegation about the existence of a cartel among the LPG cylinder

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manufactures. None among the leading LPG Cylinder Manufacturers, which were questioned had said that Shakti Cylinder was among those who had participated in the meeting. As per the averment of answering Opposite Party, its bid papers were submitted directly to IOCL by its resident representative at Mumbai, and that was done in confidence trusting the IOCL.

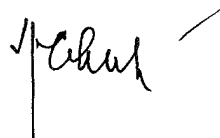
### **5.23 Reply of M/s. Vidhya Cylinders Pvt. Ltd.**

5.23.1 The Opposite Party has adopted the contention of 44 parties as stated in para 5.2.1 above to show that bids are made after taking into account the cost of inputs, taxes and freight.

5.23.2 It has been further submitted that it is not a member of LPG Cylinders Manufacturers Association and nor it had participated in any meeting alleged to have been held in Mumbai. The answering opposite party has denied each and every allegation leveled against it in the DG report.

5.23.3 It has also contended that the DG has come to the conclusion of formation of the cartel even by those suppliers who did not attend the alleged meeting only because the rates offered by the bidders were matching but no evidence of any agreement has been found by the DG.

5.23.4 M/s Vidhya Cylinders has further submitted that it might be a coincidence that the prices quoted by other cylinder manufacturers are





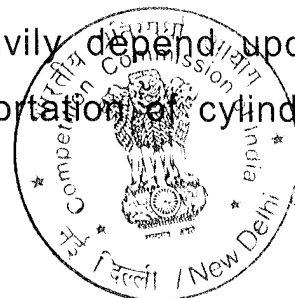
similar or nearby to the prices quoted by it. In case of Madhya Pradesh, only 3 other parties i.e. M/s Sarthak Industries Ltd., Super Industries and Confidence had quoted. The Opposite Party along with Sarthak Industries and Super Industries was L-1 and Confidence was L-2 at Rs. 1105/- per cylinder. As per the averment of Opposite Party, in the State of MP it had quoted the price of Rs 1097/- whereas the order was given at the price of Rs. 1088.10/- per cylinder. Had there been any understanding with other L-1s, it would not have reduced the rates in negotiation. It has further stated that minimum two parties were required for the State of M.P and even if two parties in M.P would have quoted different rates, then also IOCL would have given the orders to both the parties if L2 was prepared to match the rate of L-1. Hence there was no need for it to collude with the other L-1s to get the order in subject tender. It has been further contended by Opposite Party that position is same with respect to the supplies for the State of Chhattisgarh.

5.23.5 The Opposite Party has also placed reliance on the contentions made by 44 parties in common reply regarding barriers to entry, price parallelism and has relied upon the judgments quoted by them.

#### **5.24 Reply of M/s Balaji Pressure Vessels Ltd.**

5.24.1 M/s Balaji Pressure Vessels Ltd. has stated that no one had participated on its behalf in the alleged meeting held in Mumbai. It has further submitted that the manufacturers heavily depend upon the transporters to get a uniform price for transportation of cylinders to

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anywhere in the State. To overcome the risk factor, it has entered into a fixed price contract with the transporters for supplying cylinders at uniform rates throughout the State.

5.24.2As per the submissions of Balaji Vessels, it had quoted lower prices for Tamil Nadu as compared to Andhra Pradesh because there is extra freight component involved for the supplies to be made for the State of Andhra Pradesh.

5.24.3 It has been contended that market for LPG is oligopolistic in nature as 99% of the market is controlled by the three public sector Companies, IOCL, BPCL and HPCL. There are many suppliers of LPG Cylinders to these three buyers. Supply of cylinders is a competitive market. The steel suppliers are also oligopolistic in nature and the cylinder manufacturers are at the mercy of these two oligopolistic markets. The LPG Cylinder manufacturers are located across length and breadth of the Country. Therefore the meeting of the manufacturers for cartelization was not at all possible as everyone has different parameters of supply.

5.24.4 As per the submissions of answering Opposite Party, each manufacturer got different quantities at different prices which indicate that the profits were not shared equally among the tenderers as contended by DG. It has been further submitted that in the subject tender the quantity of the cylinders picked by IOCL was not assured therefore, this is essentially a rate contract and the cylinder manufacturers have no say in this regard. Hence allocation among the



bidders is not possible because of uncertainty. The Opposite Party has further contended that there was no manipulation in the tender as the conditions were prescribed by IOCL and the tenderers were not able to manipulate or alter any condition. As per the Opposite Party the final rates were negotiated with IOCL and only when the benchmark price of IOCL was met, the offer was made to the tenderers.

5.24.5 It has been further submitted that this industry is having severe limitations in terms of availability of raw materials, controlled by only three suppliers, lack of staff in inspection agency and transport logistics and all these factors lead to failure in supplying the awarded quantities by the cylinders manufacturers within the stipulated time. As per the averment of Opposite Party there is no entry barrier in the relevant market.

5.24.6 It has further submitted that it was not called by the IOCL for the negotiation of the rates and had received a letter no. LPG-O/M/PT-03/09-10 dated 27.04.2010 wherein it was asked to convey its acceptance to supply the LPG Cylinders at lowest quoted price and it had accepted the same. The option before it was either to accept the price approved by IOCL for the supply of cylinders or lose the order by refusing to do so. There was no scope for it to negotiate the contract offer for higher price or higher quantity. Therefore, it could not have been a part of the alleged cartel to supply LPG Cylinders to IOCL.

5.24.7 As per the submissions of the Balaji Vessels, there is a stiff competition in the market and small percentage of price matching in

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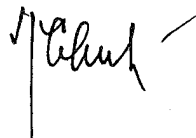


the entire tender process is just a coincidence which cannot be explained. The Opposite Party has further submitted that there is no relation between the increase in the price of LPG supplied to end consumers and the prices of LPG cylinders as the prices of the LPG is fixed by the Ministry of Petroleum & Natural Gas, Government of India.

5.25 M/s Hyderabad Cylinders, M/s Him Cylinders Ltd, M/s Omid Engineering Pvt. Ltd, M/s Tirupati LPG Industries Ltd., M/s International Cylinders Pvt Ltd., M/s Tirupati Cylinders Ltd. ,M/s Om Containers, M/s Supper Industries, M/s Teekay Metals Pvt Ltd., M/s RM Cylinders Ltd. and M/s Sanghvi Cylinders Pvt. Ltd. through their additional written submissions (all dated 7.10.2011) reiterated the contentions taken by Confidence group in its additional written submission.

6. The Commission has also heard the oral arguments advanced by the Opposite Parties. Shri M. M. Sharma, Advocate appeared for 44 Opposite Parties, who had filed a common reply, for oral argument on 26.09.2011. During his arguments he mostly reiterated the contentions taken in the reply to the D.G. report dated 01.08.2011. The gist of his arguments is summarized below:

6.1 It was argued by the Shri Sharma that this is a case where possibility of existence of cartel among the bidders is almost zero as the IOCL was not bound to accept the lowest bid price. In terms of the Integrity Agreement forming part of the tender documents, it was a





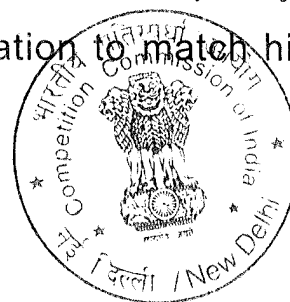
commitment on the part of the bidders not to enter into any agreement with any other party with respect to the said bid. If the DG had observed that there was a case of cartel amongst the bidders, he should have investigated IOCL but DG has failed on this count.

6.2 Shri Sharma contended that the market in question is oligopolistic market since there are only a small number of players (62 qualified vendors in whole of India) in the market. Hence, the market being dominated by small number of sellers, each player is likely to be aware of the actions of the others.

6.3 It was also argued by him that price parallelism is a common phenomenon in such an oligopolistic market. Therefore, DG's conclusion regarding the cartel based on price criterion alone is faulty.

6.4 Shri Sharma also contended that the rates for supply had to be fixed after negotiation with L-1 bidder. In case of L-1 bidders' inability to supply the required number of cylinders, the order was to go to L-2 and L-3 depending upon the requirement. Moreover, the quantity of cylinders which is likely to be ordered to one bidder was pre-determined based on the basis of its installed capacity. Hence, a bidder, whether L-1 or L-2, has no justification to match his rates with other competitors.

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6.5 He has also argued that in fact it is IOCL which fixes rates. Thus IOCL being in dominant position, determines the profit margin and the Opposite Parties, even if for the sake of argument had met prior to submission of bids, were not in a position to control the bid price. Therefore, the conclusion regarding existence of cartel amongst them does not hold good. The IOCL responses on the aspect were not taken by the DG during the investigation.

6.6 He argued that DG has concluded the existence of cartel based on sole evidence of meeting at Mumbai. The said meeting was attended only by 12 persons representing 19 opposite party companies. Moreover, all the investigation and conclusions therein are based on circumstantial evidence only and there is no independent witness.

6.7 Shri Sharma also invited the attention of the Commission towards para 6, page 6 of the reply to the DG report regarding the appointment of 6 nominated agents by the bidders to submit bids on their behalf. It was argued that since many of the agents are common to many bidders, this leads to the possibility of copying or matching of the rates quoted in the price bids.

6.8 Shri Sharma also relied upon the judgement of Hon'ble Supreme Court in Union of India Vs Hindustan Development Corporation (1993), 3 SCC 499 as well as judgement pronounced by the US Court in Monsanto Company Vs Spray – Rite Service Corp, 465 US 752

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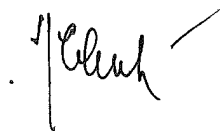
(1984). He also pointed out that Department of Justice in USA usually proceeds with prosecution only when there is direct evidence of an unlawful agreement.

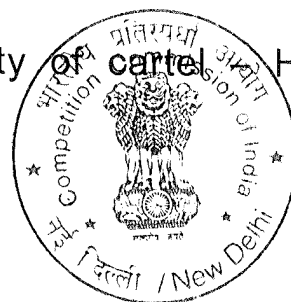
6.9 It was further argued that conscious (price) parallelism in itself should not necessarily be construed as evidence of collusion. It is the practice worldwide to adopt a "Parallelism Plus" Approach which requires existence of plus factors beyond mere parallel behaviour.

6.10 Shri Sharma also contended that existence of an agreement among the direct competitors is *sine qua non* for a horizontal anti-competitive agreement under Section 3 (3) of the Act. There existed no direct or indirect evidence in the present case. Nor the DG has tried to gather any such evidence, even indirect one.

6.11 Shri Sharma submitted that he is representing 44 out of the 50 parties. The said 44 parties can be segregated as follows:

1. Present in the meeting in Mumbai.
2. Not present in the meeting in Mumbai.
3. Parties not investigated but found guilty of cartel Hyderabad Cylinders Pvt. Ltd.





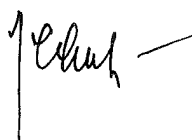
6.12 Shri Sharma argued that the above said 3 categories should have been treated differently. However, the DG has dealt with them uniformly and concluded them guilty of cartel. There are instances where a party quoted for 4 States and its rates are matching with some other parties in 2 states where it did not get the order but still found part of the cartel.

6.13 It was also argued by him that the owners, directors and the representatives of the companies used to collect at some place, some time to discuss various common issues. Unless there is some direct evidence, it cannot be concluded that they were there for price fixation.

7. Shri Prithviraj B. N., Advocate appeared for M/s Balaji Pressure Vessels Ltd. and advanced following arguments:

7.1 Shri Prithviraj urged that no one on behalf of the Company had participated in the said meeting in Mumbai. The Managing Director of the Company during the time of the meeting was abroad. The bid of the company was submitted prior to the date of the meeting itself. Therefore, there is no point in concluding the company to be in cartel.

7.2 Shri Prithviraj further contented that the company had quoted lesser price for Tamil Nadu in comparison to other 2 states because it was interested in the supply at Chennai as the transport cost in Tamil Nadu is favorable to it.

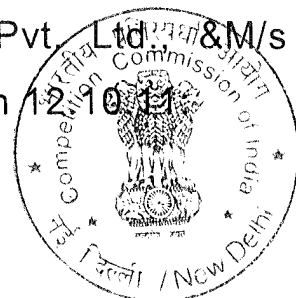


7.3 He also contended that the company quoted lesser price for the State of Chennai because at Chennai, unloading of the cylinders happens on the same date as against other places, therefore, it is a favorable location for the company. Value Added Tax (VAT) in Tamil Nadu is only 1% whereas it is 4% in Andhra Pradesh. This was an additional factor for difference in quoted rates for the two States.

8. Shri M. L. Fatehpuria, Director with Shri Mohit Fatehpuria appeared for Supreme Technofabs Pvt. Ltd. and argued that there is no point in being in cartel with other competitors to quote a lesser price for a supply as the company had orders from BPCL at higher rate .The Company had quoted lesser price in Gujarat as the transportation cost in Gujarat is less than the other states. In Madhya Pradesh, the supplies were to be made at far remote locations. The labour rates are also costlier in Madhya Pradesh. These factors explain the higher rates quoted by the company in that State.

9. Shri N. Venkatraman, Senior. Advocate, appeared for M/s Andhra Cylinders, M/s Confidence Petroleum India Ltd., M/s Hans Gas Appliances Pvt. Ltd., M/s Khara Gas Equipments Gas Pvt. Ltd., M/s ECP Industries Ltd., M/s Konark Cylinders & Containers, M/s OM Containers, M/s Super Industries, M/s TEEKAY Metals Pvt. Ltd., M/s Hyderabad Cylinders, M/s RM Cylinders Pvt. Ltd. & M/s Sanghvi Cylinders Pvt. Ltd. and submitted as under on 12/10/11

*N. Venkatraman*



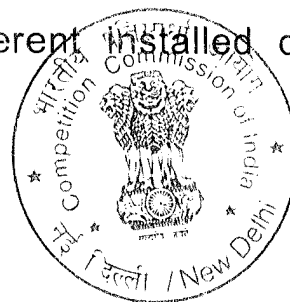
9.1 He argued that the Commission in its order directed the DG to investigate the issues related to IOCL, BPCL and HPCL. But the DG investigated the issue with respect to IOCL only, therefore the entire investigation and the report thereon is against the spirit of the order of investigation itself. The Commission should stop the proceedings at this stage and get it reinvestigated by the DG covering all the 3 companies.

9.2 Shri N. Venkatraman also contended that IOCL was not investigated or heard during the investigation. The report does not say that IOCL was a party to the collusion. In this case, IOCL is a necessary party, however, neither any evidence from IOCL confirming that the bid was rigged nor that the IOCL also colluded with bidders in the matter has been collected by the DG during investigation.

9.3 Shri Venkatraman argued that in terms of clause 11 (c) of the tender document, it was at the sole discretion of IOCL to accept or reject any offer. The IOCL did not say that the bid was rigged and the investigation is silent as to how the bid was rigged. The investigation did not mention anything about the involvement of the IOCL in the process. In these circumstances the bid rigging is impossible.

9.4 It was also argued that in view of the tender conditions cartelization among the bidders with different installed capacity is impossible.

*[Handwritten signature]*



9.5 He also contended that to monitor the tender, there was a monitoring committee headed by one of the retired OMC Chairman. The said monitoring committee was never consulted by the DG during the investigation process and in fact the DG report is silent on this aspect.

9.6 Shri N. Venkatraman also urged that in the entire matter, the only evidence which has been found is the meeting in Mumbai. However, there are parties who have not attended the said meeting. Such parties should be left out of the allegation regarding cartelization as they cannot be said to be in agreement in terms of Section 2 (b) of the Act. Further, even those who have attended the meeting cannot be said to have formed a cartel because agreement is only one ingredient for establishing the cartel. The other ingredients like what was the determined price have not been investigated in required details by the DG.

9.7 Shri N. Venkatraman further contended that prior to this tender the supply was made to the HPCL and BPCL at the higher rates so there is no point in colluding to form a cartel to grab an order for a lower price. In the light of this fact it were only the tenderers who can be said to be the sufferers. But they did not come crying foul against IOCL. As the BPCL and HPCL paid higher prices for the same product, the end consumers have been benefited in the present case. Therefore, in absence of any adverse commercial impact upon IOCL and in view of the ultimate consumers being the beneficiary, there cannot be construed any case of cartel against the suppliers.

*Palank*



10. Shri R. S. Suri, Senior Advocate appearing for M/s Him Cylinders Ltd. and M/s OMID Engineering Pvt. Ltd. made the following arguments:

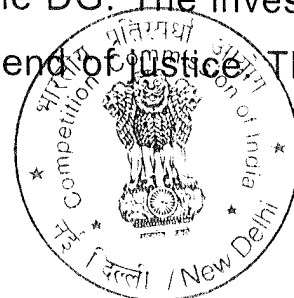
10.1 The findings of DG are nothing but what is usually termed as tautology in social sciences. Just because the prices quoted by many bidders have been similar, the DG has concluded that these are evidences of formation of a cartel by the bidders. There is no evidence, direct or indirect, gathered by the DG to show that there has been a meeting of mind in quoting the prices.

10.2 Shri R. S. Suri also argued that this is not a case of oligopolistic market but a case of oligopsony characterized by a small number of consumers for a product. In this market IOCL, BPCL and HPCL are the leading consumers and are in the position to determine the conditions in the market. Therefore, the suppliers are in no position to determine anything in the market.

10.3 It has been also argued that there is no AAEC in this case. Factors a, b & c of section 19(3) of the Act are absent in the matter. As a result of the entire bidding process, neither competition has been eliminated nor reduced.

10.4 Shri R. S. Suri also raised the plea that in this case IOCL is a necessary party but was not investigated by the DG. The investigation of IOCL was necessarily required to meet the end of justice. Thus, the

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IOCL being the necessary party, without investigating it nothing can be legally settled or concluded.

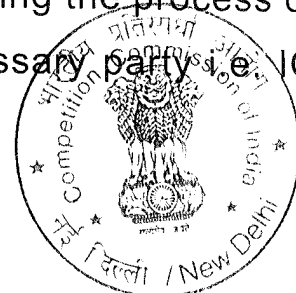
10.5 Shri Suri also contended that every company has its own calculations and bench marks. The pricing offered by the companies are based on cost plus formula which is a simplistic pricing model for arriving at a sale price which allows the company to cover all costs associated with the production and sale of the product and make a reasonable profit. Only because the prices offered by various players are same, they cannot be said to have formed a cartel.

11. Shri Arun Bhardwaj, Sr. Advocate appearing for M/s International Cylinders Pvt. Ltd., M/s Tirupati LPG Cylinders Ltd. and M/s Tirupati LPG Industries Ltd. made the following arguments:

11.1 The DG did not investigate the issue with respect to BPCL and HPCL and investigated the issue with respect to IOCL only whereas the order of the Commission was to investigate issues with respect to all the three. Therefore, not only the DG investigation report is incomplete, it is also against the spirit of the order of investigation passed by the Commission.

11.2 Shri Arun Bhardwaj also contended that whereas a proper party is supposed to render assistance to the Courts and Tribunals, a necessary party is one, in absence of whom an issue cannot be settled. Therefore, there is no point in continuing the process of inquiry based on an investigation in which the necessary party i.e. IOCL has

*Shri Arun Bhardwaj*





not been investigated. The entire proceeding needs to be dropped at this stage and the matter should be re-investigated.

11.3 Shri Arun Bhardwaj also argued that IOCL was having the authority to cancel the bid, but it did not chose to do so. If there was a cartel amongst the bidders, IOCL should have been necessarily investigated but it was not done. Thus, without impleading IOCL, this entire process is meaningless and no case of cartel in the matter can be founded. Therefore, the IOCL should be impleaded and the matter be re-investigated.

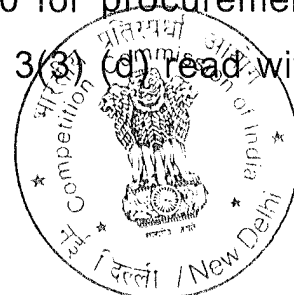
12. The Commission has carefully examined the entire material available on record as well as the DG report and the contentions raised by the parties in their oral and written submissions.

### **13. Issues for Determination**

13.1 On consideration of facts and circumstances of the case, the evidences available in DG report and reply of the cylinder manufacturer the following issue emerges which requires determination in this case:

Issue 1: Whether there was any collusive agreement between the participating bidders which directly or indirectly resulted in bid rigging of the tender floated by IOCL in March 2010 for procurement of 14.2 kg LPG cylinders in contravention of section 3(3) (d) read with section 3(1) of the Act?

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## 14. Determination of Issue No. 1

14.1 As all the participating bidders have denied resorting to collusive tendering which according to the findings of DG resulted into bid rigging, the evidence available on record is required to be analysed in the light of contentions raised by the bidders and relevant provisions of the Act.

### Bid Rigging as per the Competition Act

14.2 Bid rigging takes place when bidders agree among themselves to eliminate competition in the procurement process so that prices are higher and the procuring agency pays more. Under the Competition Act bid rigging has been defined in the Explanation to Section 3, Sub Section (3) as “an agreement, between enterprises or persons referred to in sub Section 3 engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids on adversely affecting or manipulating the process for bidding.” Further, sub-section (3) of section 3 reads as under:

“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) .....
- (b) .....

*[Handwritten signature]*



(c) .....

(d) directly or indirectly results in bid rigging or collusive bidding.

shall be presumed to have an appreciable adverse effect on competition.”

14.3 Section 3(1) of the Act prohibits and section 3(2) makes void all agreements by enterprises or persons in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services which cause or are likely to cause appreciable adverse effect on completion within India.

14.4 It is pertinent to mention that Section 3(3) (d) of the Act uses both the expressions “bid rigging” and “collusive bidding.” Both these terms are normally used interchangeably to describe many forms of illegal anti-competitive bidding. However, common thread running through these activities is that they involve some kind of agreement or informal arrangement among bidders, which limits the competition.

14.5 The Competition law treats agreement between bidders which result into bid rigging on presumptive rule approach, meaning thereby that once the essential ingredients constituting bid rigging are established there is no further need to launch into an elaborate enquiry to find out impact of such conduct on the market and adverse effect on competition is presumed. In that situation the burden shifts on the contravening parties to rebut the

*J. Chak*



presumption by showing that their conduct does not result into appreciable adverse effect on competition in India.

14.6 As succinctly described in DG report, collusive bidding or bid rigging may be of different kinds, namely, agreements to submit identical bids, agreements as to who shall submit the lowest bid, agreements for the submission of cover bids (voluntarily inflated bids), agreements not to bid against each other, agreements on common norms to calculate prices or terms of bids, agreements to squeeze out outside bidders, agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis.

14.7 As the agreement between the competing bidders is *sine qua non* for establishing contravention of section 3 of the Act, it is useful to consider the various elements of agreement as defined in the Act in some detail for the purpose of proper appreciation of applicability of relevant provisions of section 3 of the Act to the facts of this case.

14.8 The term “agreement” has been very widely defined in section 2(b) of the Act which reads as under:

“agreement” includes any arrangement or understanding or action in concert,--

(i) whether or not, such arrangement or understanding or action is formal or in writing; or

(ii) whether or not, such arrangement or understanding or action is intended to be enforceable by legal proceedings.”

*J. Chugh*



14.9 Thus, from the definition provided in the Act it can be gathered that an agreement need not be in writing, nor necessarily to be legally enforceable and an arrangement or understanding is as good as a formal written agreement. The legislative intent is quite clear and the definition encompasses both overt and tacit form of agreements and it is not required that it has to be an "agreement" as is understood in common legal parlance.

14.10 It is further seen that 'Cartels' are specifically included in the category of agreements provided under section 3(3) of the Act, which are presumed to have appreciable adverse effect on competition. The term 'Cartel' is explicitly defined in section 2(c) the Act as:-

*"Cartel includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of service."*

14.11 The necessity to include any arrangement or understanding within the ambit of an agreement has been aptly described by Lord Denning in the case of RRTA v. W.H.Smith and Sons Ltd., namely:

*"People who combine together to keep up prices do not shout it from the housetops. They keep it quiet. They make their own arrangements in the cellar where no one can see. They will not put anything into writing nor even into words. A nod or wink will do. Parliament as well is aware of this. So it included not only an 'agreement' properly so called, but any 'arrangement', however informal"*



*J. Chugh*

14.12 In the backdrop of legal position as delineated above it becomes quite clear that in order to find contravention of section 3 of the Act, it is not the requirement of law to demand direct evidence of agreement in all cases and in absence of direct evidence, existence of circumstantial evidence that tends to exclude the possibility of independent action would be sufficient to give rise to an inference of an agreement.

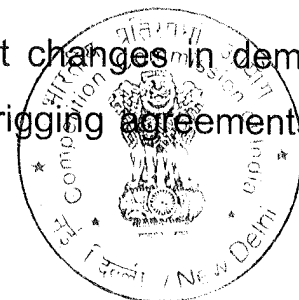
14.13 Keeping in mind the requirement of relevant provisions of the Act, the evidence obtaining in this case needs to be analysed and evaluated in context of contentions raised by the opposite parties to come to a finding in respect of issue no. 1.

### **Factors in support of the inference of collusive agreement**

14.14 As has been aptly stated in the DG report that even though the bid rigging can occur in any economic sector, there are some sectors in which it is more likely to occur due to particular features of the industry or of the product involved. Such characteristics tend to support the efforts of firms to rig bids. The process of bid rigging may be facilitated when certain supporting factors (Source: Fighting Cartels in Public Procurement-Policy Brief, October 2008, OECD) are also present. The Commission is also of the view that the probability of bid rigging gets higher if following supporting factors which have been analysed in the DG report are present in any product market:

### **Market conditions**

14.14.1 The DG has rightly stated that significant changes in demand or supply conditions tend to destabilize ongoing bid-rigging agreements but a



constant, predictable flow of demand from the public sector tends to increase the risk of collusion. In the present case, the Gas Cylinder manufacturers were aware of the fact that there would be a steady flow of tenders from IOCL and other PSU Oil Marketing Companies for procurement of LPG cylinders in order to supply LPG to the consumers, leading to a predictability of demand. This is a facilitating factor for collusion as the suppliers have time and opportunity to work out an arrangement. The existence of such market conditions in this case has not been disputed by the opposite parties.

### **Small number of suppliers**

14.14.2 Empirical studies have shown that bid rigging is more likely to occur in a concentrated market where only a small number of Companies supply the goods or service. Being limited in number, it becomes easier for them to coordinate and reach an agreement. From the perusal of record it is noted that the number of concerns who have submitted price bids is 50 and out of 50 participating companies only 37 companies can be said to be independent bidding companies as 7 group companies consist of 20 participating companies. These figures highlight the fact that the number of companies who are supplying 14.2 kg LPG Cylinders, as per specifications, is small in number which makes the market conducive for cartelization. It is interesting to note that existence of these factors have been admitted by the participating bidding companies in their replies to buttress their argument that this could be a reason for their submitting identical or close to identical bids in the impugned tender.

### **Few New Entrants**



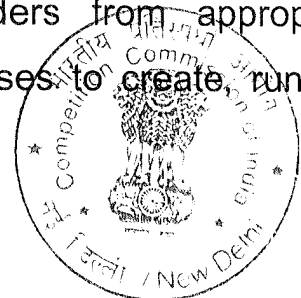
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14.14.3 The Commission is in agreement with the observation of DG that when few firms have recently entered or are likely to enter a market because it is costly, difficult or slow to enter, the existing firms in that market are protected from the competitive pressure of potential new entrants. The entry barrier tends to support bid rigging efforts. Entering into manufacturing of LPG cylinders is not very easy as it definitely requires some investments in terms of capital outlay and investments. This market is not like a perfect market, where any firm can make entry or exit at any point of time. Chances of collusion are directly proportional to the likelihood of potential entry in any given market.

#### **Active Trade Association**

14.14.4 Trade associations can be used as legitimate forum for members of a business to promote standards, innovation and competition. However, trade associations remain vulnerable to stepping beyond the limits placed by competition law because, by definition, they involve meetings, discussions and cooperation amongst various – often virtually all – competitors in a particular line of business.. On examination of DG report it is borne out that Indian LPG Gas Cylinder Manufacturers have formed an association which was registered under the Tamil Nadu Societies Registration Act, 1975 as “Indian LPG Cylinder Manufacturers Associations” on 29<sup>th</sup> June 2004 with the stated object to protect the common interest and welfare of LPG Cylinder Manufacturers of India and to serve as a forum of the LPG Cylinder Manufacturers for expressing their grievances and commercial concerns to the public through media and to assist the LPG Cylinder Manufacturers in obtaining necessary approvals and relevant orders from appropriate authorities etc. It has also listed one of its purposes to create, run and

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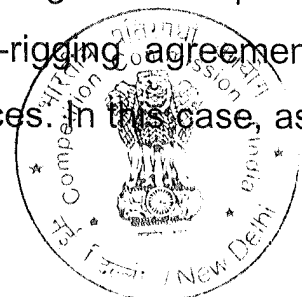


manage a common fund for the common economic betterment of the LPG Cylinder Manufacturers and also to encourage and recognize competitive spirit, achievement motive and efficiency among members. Only those persons or companies who are involved in the manufacture of LPG Cylinders can be admitted as an ordinary member after paying an entrance fees of Rs. 5000/- and if any such company pays Rs. 25000/- it can be admitted as life member. The Association has its executive committee in place to run the management of the Association. This Association has furnished a list of members of Association. On scrutiny of that list it is revealed that out of 50 old participating bidders in the tender under enquiry except 7 companies namely Asian Fab Tech Ltd, Faridabad Metal Udyog Pvt. Ltd., Gopal cylinders, Krishna Cylinders, JBM Industries & Shri Ram Cylinders all the bidders or their group companies are members of Association. Even Asian Fab Tech Ltd. can be said to be a member of the Association as its former avatar Asian Cylinder has been shown as a member. Among 50 participating companies against whom charge of bid rigging has been found to have been established by the DG only 37 companies can be said to be independent bidders as 7 groups of companies consist of 20 participating companies. Therefore, this supporting factor is also present in this case.

### **Repetitive bidding**

14.14.5 There is no doubt that procurement of similar products on recurring basis increases the chances of collusion. The bidding if takes place at frequent intervals surely helps members of a bid-rigging agreement to allocate contracts among themselves or agree on prices. In this case, as the

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bidding is taking place on repetitive basis due to ever increasing demand of supply of LPG by the consumers, it provides an opportunity to the bidders to collude.

### **Identical products**

14.14.6 The Commission endorses the views of the DG that when the products or services offered by companies are identical or very similar, it is easier for them to reach an agreement on a common price structure. As has been pointed out in DG report, in this case, the LPG cylinder manufacturers are engaged in manufacturing and supply of identical products. This situation has been created by the PSU Oil Marketing Companies as unique designs and specifications for the supply of LPG Gas Cylinders have been prescribed by oil companies themselves. Since the products are identical and standardised chances of coordination between LPG cylinder manufacturers become greater.

### **Few or no substitutes**

14.14.7 If there are no or few substitutable products or services available for the product or service that is being purchased, firms intending to rig bids feel more secure, knowing that the purchaser has few, if any, good alternatives and thus their efforts to raise prices are more likely to be successful. In this case, the manufacturers know that there is no substitute to the cylinders manufactured and supplied by them, giving them opportunity to collude.

### **No significant technological changes**

14.14.8 The fact that the product being supplied was standardised in year 2000 and there has been no change or alteration in the product design in

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the instant case over a long period of time acts as an additive factor for facilitating firms reach an agreement and maintain that agreement over a period of time.

14.15 Thus, it is seen that all the facilitating factors mentioned above which are considered conducive for cartelisation are conspicuously present in the instant case and market structure and conditions are supportive for collusion. In fact presence of many of these factors have been by and large admitted by the bidders in there replies submitted before the Commission.

### **Meeting of bidders in Mumbai**

14.16 “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or some contrivance to raise prices.”

— Adam Smith, The Wealth of Nations, 1776

14.17 The fact of agreement can be either communicated by words or conduct. “Bidders need to know and communicate with each other to reach an agreement. Once bidders know each other well enough to discuss bid rigging, they need a convenient location where they can talk. Of course, communications can occur by telephone, email, fax or letter, and they often do; however, many bid-riggers believe that they are less likely to leave evidence of their communications if they have face-to-face meetings. These meetings occur most often at, or in association with, trade association meetings, or other professional or social events. They are also likely to



occur prior to the opening of the tender process”(OECD Document on DETECTING BID RIGGING IN PUBLIC PROCUREMENT).

14.18 In the instant case evidence gathered by DG shows that all the circumstances detailed above are present. It has been seen that barring few, all the bidders are part of an active Trade Association and they meet on regular intervals. Mr Dinesh Goyal, Director of Tirupati Cylinders Limited, a member of the Association, in his statement recorded by DG on 08.09.2010 admitted that meetings between cylinder manufacturers take place before every bid of IOCL, BPCL and HPCL in order to discuss pre-bid issues. These facts clearly show that bidders knew each other and used to communicate also. In the impugned tender also they needed a convenient location to meet and talk.

14.19 As the Tender No. LPG-O/M/PT-03/09-10 floated by IOCL for procurement of approximately 1,05,16,500 Nos. of 14.2 Kg LPG Gas Cylinders was due on 03-03-2010 for submission of price bids in Mumbai, the bidders decided to meet in Mumbai prior to that date. It has been brought out in the DG report that Dinesh Goyal wanted to conceal this fact as it was a vital piece of information to establish meeting of minds and that is why in his first statement recorded on 25.08.2010, he, denied that there was any meeting of the manufacturers. However, consequent to the inquiries conducted by the DG from Hotel Sahara Star located near the Bombay Airport and IOCL, Mumbai, it was established from the details furnished by the Hotel Sahara, placed at Exhibit-3 of DG report, that not only Dinesh Goyal had stayed in the Hotel on 01.03.2010 and 02.03.2010 but, in fact, he organised a conference on 1<sup>st</sup> March 2010 (in evening followed by dinner) and 2<sup>nd</sup> March 2010 (in afternoon followed by lunch) for 30 and 45 persons

*[Handwritten signature]*



respectively and payments by credit card and by cash were made. It is also gathered from the record (Exhibit-2 of DG report) that Mr. Goyal is an active member of Indian LPG Cylinders manufacturers Association and he has taken part, along with office bearers, in parleys with the Government.

14.20 The factum of meeting between the bidders was conclusively established when Mr. Dinesh Goyal was confronted with the evidences supplied by Hotel Sahara and he admitted holding a meeting of manufacturers prior to submission of bids. In his second statement recorded on oath on 08.09.2010, he admitted that a conference of LPG Cylinder Manufacturers was organised on 1<sup>st</sup> and 2<sup>nd</sup> March 2010 in Hotel Sahara Star of Mumbai where he had stayed on 1<sup>st</sup> and 2<sup>nd</sup> of March 2010. Following relevant extracts of his statement (Placed at Annexure-3 of DG report) will depict clear picture;

*“ Q.2 When your statement was last recorded on 25<sup>th</sup> of August 2010, it was stated by you that you had not visited Mumbai in February-March 2010?. Would you please recall once again and confirm whether you were in Mumbai between 1<sup>st</sup> and 3<sup>rd</sup> March 2010.?”*

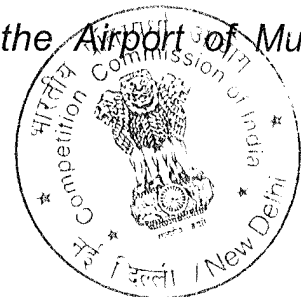
*Ans.2 Now I recall that I was in Mumbai in February and March and had stayed in Hotel Sahara Star.*

*Q.3 What was the purpose of the visit?*

*Ans.3 Routine visit to sort out queries from oil companies.*

*Q.4 Had you stayed in Hotel Sahara Star, near the Airport of Mumbai between March 1 and March 3 2010?*

*J. Goyal*



Ans.4 I do not recall. However, I always stay in Sahara Star since I am a member of the said Hotel for the purposes of getting rooms there in the hotel.

Q.5 Had you organized any conference or get-together between 1<sup>st</sup> and 3<sup>rd</sup> March 2010 in Hotel Sahara, Mumbai?

Ans. 5 I had not organized any conference or get together in Hotel Sahara Star on these dates.

Q.6 Do you know Mr. Sandeep Bhartia? Who is he? How do you know him?

Ans. 6 Mr. Sandeep Bhartia represents a group which controls Carbac Holding Limited, Haldia Precision Private Limited and North India Wires Limited.

Q.7 I am showing details obtained from Hotel Sahara Star, Mumbai which show that there was a get together/conference organized by you on the above dates and payments were made by you and Sandeep Bhartia through cash and credit card? What do you say on these evidences?

Ans.7 **Yes, I had organized the conference as may be seen from the evidences in possession before this office and shown to me. The payment has been made for the conference organized on the dates by me and Sandeep Bhartia of Carbac group. The dates were either 1<sup>st</sup> of March or 2<sup>nd</sup> of March 2010. There were about 15-20 other LPG cylinder manufacturers who attended this conference. Representatives from Him Cylinder, Rajesh had also stayed in the same Hotel Kishor Kela, Sandeep Bhartia, P.K.Gupta, Manvinder Singh of Bhavadi Cylinders,**

*✓ Clerk*



were some cylinder manufacturers, I recall, who had among others attended this conference. There were small meetings in my room as well, where I had stayed on these dates.

Q.8 Did you discuss something? What was the agenda of discussion?

Ans.8 The agenda of discussion was routine business discussion.

Q.9 Why did you or Sandeep Bhartia make the payments for the conference?

Ans.9 The payments are made and shared by cylinder manufacturers on different occasions when such conferences and get together are organized.

**Q.10 Do such meetings take place before every bid of IOCL or BPCL or HPCL?**

**Ans. 10: Yes. In order to discuss pre-bid issues, meetings do take place.**

Q.11 Are you associated with Indian LPG Cylinder Manufacturing Association?

Ans. 11 :**Yes , I am member of this association.**

Q.12 Why is it necessary to meet prior to submission of bids?

Ans. 12 Meetings are organized among manufacturers so that we know about pre-bid objections of the oil companies.

Q.13 Who had chaired the conference?

*[Handwritten signature]*



*Ans. 13 : P.K.Gupta of Sahuwala Cylinders Limited is the senior most amongst us and therefore he lead the discussion. There is nobody who chaired the conference as such.*

*Q.14 Who had invited the LPG cylinder manufacturers for the conference on the above dates?*

*Ans.14 There is no invitation. When manufacturers meet at one place, say, Mumbai to submit bids, we all meet to discuss our business.*

***Q.15 Since the bid in IOCL was to be submitted on 3<sup>rd</sup> of March 2010, did the cylinder manufactures also discuss the bid rates to be quoted by meeting together on 1<sup>st</sup> and 2<sup>nd</sup> March 2010?***

***Ans. 15 No. There was no discussion on prices but only pre-bid issues were discussed. I do not exactly remember which issues were discussed.***

*Q.16 There are about 50 bidders who quoted price bids. However, it is noted that a number of concerns are in fact controlled by the same person? Can you tell what would the effective number be of concerns which are in business and who submitted the bids?*

*Ans. 16 May be about 25 in all.*

14.21 When the excerpts of statement of Mr. Goyal, as reproduced above, are read in the light of evidence submitted by the Hotel Sahara it leads to only one conclusion that LPG Cylinder Manufacturers (bidders) had met on 1st and 2nd March 2010 in Hotel Sahara Star, Mumbai, just before submission of bids on 3rd of March 2010. Going by the admission of Mr. Dinesh Goyal, it also becomes evident that the LPG cylinder manufacturers

*H. Goyal*





also discussed pre-bid issues in the conference and also that such meetings usually take place before the submissions of bids against tenders invited by other PSU oil companies. Further, Mr. P.K.Gupta, the President of Indian LPG Cylinder manufacturing Association, has been stated to have led the discussion during the conference. All these factors when taken together unmistakably suggest meeting of mind among the LPG cylinder manufacturers who were supposed to submit competitive bids the next day i.e. 03.03.2010.

14.22 From the perusal of record, it is also apparent that not only the statement of Mr. Dinesh Goyal regarding meeting of bidders and discussion on tender under inquiry has been corroborated by other Cylinder Manufacturers but identity of many of them including office bearers of the Association was unmasked also. Following statements of Manufacturers recorded by DG during investigation throw more light on this aspect:

**14.22.1 Mr. Manvinder Singh, Director of Bhiwadi Cylinders Limited made following statement before DG on 20.04.2011;**

*“ Q.4 Had you attended meetings over any dinner or lunch on 1<sup>st</sup> of March,2010 or 2<sup>nd</sup> of March 2010 or 3<sup>rd</sup> of March 2010 at any hotel of Mumbai hosted by LPG manufacturers?*

*Ans.4 I attended the dinner at Hotel Sahara , located near the airport of Mumbai probably on 2<sup>nd</sup> of March 2010. There was no formal meeting.*

*Q.5 Who hosted this dinner?*

*Manvinder Singh*



Ans. 5 Shri C.P.Bhartiya, Managing Director of North India Wires Limited hosted the dinner. He or his son paid for the dinner which was attended by around 15 LPG cylinder manufactures and their representatives.

Q.6 Who all attended the dinner? Can you identify them?

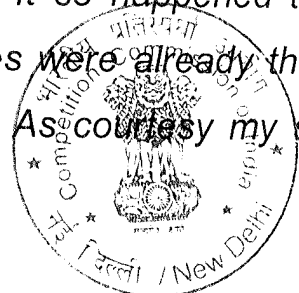
Ans. 6 I do not recall all the names. However, as far as I remember apart from me, Mr. Dinesh Goyal of Tirupati Cylinders Limited, CP Bhartiya of North Wires Limited, his son, Mr. P.K.Gupta of Sahuwala Cylinders Limited, Mr. Kulaindswamy of Lite Containers Limited, Mr. Ashok Raja of Him Cylinders Limited, Mr. Gopal Bajoria of Rajasthan Containers and Cylinders Limited and his son, Avinash Bajoria. As I know there are eight-nine representatives of LPG manufacturing firms located at Mumbai. Some of the representatives of the LPF firms at Mumbai also attended this dinner. One, Mr. Upadhyaya, is our representative. He is freelancer and works for many companies---

**14.22.2 Mr. Chandi Prasad Bhartia , Director of Haldia Precision Engineering P.Ltd made following statement before DG on 25.04.2011;**

Q.9 Had you or your other director attended meetings or any dinner or any lunch on 1<sup>st</sup> of March,2010 or 2<sup>nd</sup>/3<sup>rd</sup> of March 2010 at any hotel of Mumbai?

Ans.9 Yes. I along with my son, Sandeep Bhartia and my brother R.K. Bhartia had attended a dinner at Hotel Sahara Star, Mumbai. There were 20-25 persons in dinner. I did not host the meeting. It so happened that other LPG cylinder manufacturers and their associates were already there and since we were also there, we joined the dinner. As courtesy my son

*Handwritten signature of Chandi Prasad Bhartia*



Sandeep Bhartia signed the bill on my directive. He paid through his credit card- American Express. The amount paid was about Rs.60,786.

**14.22.3 Mr. Vijay Kumar Agarwal, Director of SM Sugar Private Limited made following statement before DG on 15.04.2011:**

Q.12 Had you or any other director or employee of the company attended meetings or any dinner or lunch on 1<sup>st</sup> of March,2010 or 2<sup>nd</sup>/3<sup>rd</sup> of March 2010 at any hotel of Mumbai hosted by LPG manufacturers?

Ans.12 Mr. Santosh Bhartiya of Haldia Precision Engg. Pvt. Ltd had hosted dinner for LPG manufacturers in Hotel Sahara, Mumbai. I had also attended the said dinner hosted by Mr. Bhartiya which was held just before the tender date. It was probably on the 2nd March 2010. I had gone to take coffee in Hotel Sahara. Others informed me about the dinner. I joined the dinner thereafter. There were about 20-30 LPG manufacturers in that dinner. The dinner started about 7-8 PM in evening.

Q.13 What was discussed in that dinner?

Ans. 13 General issues of tender were discussed. However, rates were not discussed.

Q.14 Who all attended the dinner meeting?

Ans. 14 I remember Dinesh Goyal of Tirupati Group, Manvinder Singh of Bhiwadi Cylinders, Arun Agarwal of Krishna Cylinders. Perhaps, PK Gupta of Sahuwala Cylinders was also there.

*[Handwritten signature]*



**14.22.4 Mr. S. Kulandhaiswamy, Managing Director of Lite Containers Private Limited and Secretary of the Association made following statement before DG on 15.04.2011**

Q.11 *Were you, your other director or other employees at Mumbai before submission of bids to IOCL?*

Ans. 11 *I had gone to Mumbai to submit bids on 2<sup>nd</sup> March 2010.*

Q.12 *Had you or any other director or employee of the company attended meetings or any dinner or lunch on 1<sup>st</sup> of March, 2010 or 2<sup>nd</sup>/3<sup>rd</sup> of March 2010 at any hotel of Mumbai hosted by LPG manufacturers?*

Ans.12 *No. However, I know Mr. Santosh Bhartiya of Haldia Precision Engg. Pvt. Ltd had hosted lunch for manufacturers. I had not attended the lunch.*

**14.22.5 Mr Ramesh Kumar Batra, Director of Surya Shakti Vessels Pvt. Ltd. made following statement before DG on 27.04.2011**

Q.5 *Had you attended meetings over any dinner or lunch on 1<sup>st</sup> of March, 2010 or 2<sup>nd</sup> of March 2010 or 3<sup>rd</sup> of March 2010 at any hotel of Mumbai hosted by LPG manufacturers?*

Ans.5 *No. But my son Puneet Batra was at Mumbai. He went to meet my cousin, Mr. Sanjay Batra who was staying at Hotel Sahara. There he came to know that some 15-20 cylinder manufacturers had organized a get together. He joined the dinner on their invitation."*

14.22.6 From the record it is also seen that even though the President, Mr P.K.Gupta and Secretary, Mr S. Kulandhaiswamy of the Association have either given evasive reply or denied their presence in the meeting, their

*S. Kulandhaiswamy*



participation has been confirmed by other Manufacturers who were present there. As per the statements of the bidders recorded by DG there can be no denying the fact that a meeting was organized for the LPG Cylinder manufacturers in Hotel Sahara, Mumbai on 1<sup>st</sup> and 2<sup>nd</sup> March 2010. Further, as per depositions of bidders before the DG, in the meeting, Mr. Dinesh Goyal of Tirupati Cylinders Limited, CP Bhartiya, R.K.Bhartia, Sandeep Bhatia, of Carbac Holding and North Wires Limited group, Mr. P.K.Gupta of Sahuwala Cylinders Limited, Mr. Kulaindswamy of Lite Containers Limited, Mr. Ashok Raja of Him Cylinders Limited, Mr. Gopal Bajoria and his son, Avinash Bajoria of Rajasthan Containers and Cylinders Limited, Vijay Agarwala of SM Sugar Private Limited, Arun Agarwal of Krishna Cylinders, Puneet Batra of Surya Shakti Vessels Limited and Manvinder Singh of Bhiwadi Cylinders Private Limited among others were present.

### **Agenda of the Meeting**

14.23 It is noted from the statement of Mr. Dinesh Goyal as reproduced above that the LPG cylinder manufacturers discussed about their business including pre-bid issues in the conference. It has also come in his statement that Mr. P.K.Gupta the President of Indian LPG Cylinder manufacturing Association led the discussion during the conference.

14.24 The fact that tender was discussed also gets strengthened from the statements of other Cylinder Manufacturers like Mr Manvinder Singh, Mr Vijay Kumar Agarwal, Mr Ramesh Kumar Batra. The relevant extracts of their statements as recorded by DG are reproduced below:

14.24.1 Mr Manvinder Singh of Bhiwadi Cylinders Limited stated that tender of IOCL was discussed during the meeting over dinner hosted on 2<sup>nd</sup> March, 2010 .

*Manvinder Singh*



Q.7 What was discussed in that dinner?

Ans. 7 Briefly, about the tender of IOCL scheduled on 3<sup>rd</sup> of March 2010. Other issues were also discussed like absence of BIS inspecting officers, new suspension rules and recovery of the deducted money by the oil companies.”

14.24.2. Similar statement has been made by Mr. Vijay Kumar Agarwal, Director of SM Sugar Private Limited.

Q.13 What was discussed in that dinner?

Ans. 13 General issues of tender were discussed. However, rates were not discussed.

14.24.3. The statement of Ramesh Kumar Batra, Director, Surya Shakti Vessels Limited recorded on 19.08.2010 clearly bring forth the fact that sometimes discussion on rates takes place among the manufacturers over telephone also as is noted from the following statement of Mr. Ramesh Kumar Batra.

Q.6: I am showing you the bid quotations submitted by some of the bidders and your company quoted for the states of Uttaranchal, Uttar Pradesh, Delhi, Orissa, Chhattisgarh and Rajasthan? Your quotations match with the quotations of other bidder parties? How it has happened?

Ans.6: This is co-incidence. **Although locally sometimes before submitting before submitting bids, telephonic discussions take place regarding trade trends.**

14.24.4. Mr Ramesh Kumar Batra, in substance, reaffirmed the same facts when his statement was again recorded on 27.04.2011 by DG.

14.25. On the basis of above discussion, it can be concluded that the LPG cylinder manufacturers met and discussed the tenders before submitting bids for the supply of 14.2 Kg LPG cylinders to the IOCL against the

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impugned tender issued by it. The names of manufacturers representing 19 companies have come in light and the evidence also shows that there were many more present. Even though the names of all bidders who participated in the meeting could not be identified but their subsequent conduct of submitting identical bids is a clear pointer to the fact that they had colluded with each other to rig the bids.

### **Appointing common Agents**

14.26 The conclusion that all the successful bidders resorted to collusive tendering gets further fortified by the stand taken by the Cylinder Manufacturers in their replies. As described in para 5.2.3 above, 44 parties filed a common reply wherein it has been stated that they nominated 6 agents for depositing bids on their behalf. As the agents were common who were further directed by the bidders to keep close watch on the rates offered by their competitors, this might have led to the possibility of copying and matching of the rates quoted in the price bids by many suppliers in a particular State.

14.27 The fact that 44 bidders appointed 6 common agents to submit bids on their behalf, in itself, is sufficient to infer agreement between bidders. However, in the present case, as has been seen, this is not the only factor which lends support to the collusive bidding.

### **Identical bids despite varying cost**

14.28 In the present case as has been noted above Indian Oil Corporation had invited bids vide Tender No. LPG-o/M/PT-03/09-10, for the supply of 105 Lakh, 14.2 KG capacity LPG Cylinders with SC valves to the various bottling plants located in 25 States.



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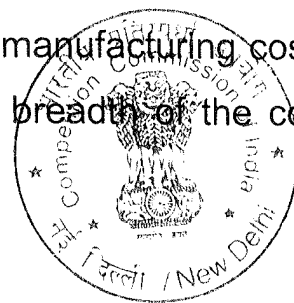
14.29 It has also been noted that IOCL followed a process in this tender, as detailed in para 3.4, to ensure the adequate supplies of LPG cylinders so that supplies to domestic consumers are not interrupted. One of the features of the process was that the rates for supplies were fixed after negotiations with L-1 bidders and in case L-1 were not in a position to supply required number of cylinders in a particular state, the orders for supplies were to go to L-2 and also to L-3 bidders or likewise depending upon the requirements in that state as per fixed formula announced in the bid documents. Further, the new bidders were required to submit only technical bids and they were required to supply as per L-1 rates determined after negotiations.

14.30 It has been also noted that out of 63 entities who submitted the bids for the current year i.e. 2010-11, 50 were old and existing bidders who were required to submit the price bids. Bid of one entity was not considered and 12 bidders were classified as new parties.

14.31 On the analysis of bids submitted by the bidders for the current year, it was noted by DG that there was a similarity of patterns in the price bids submitted by all the old 50 bidders for making supplies to IOC in various States. The DG found that the bids of a large number of parties were exactly identical or near to identical in different states. The DG also found that not only rates of group concerns were common, but rates of other concerns belonging to the other and unrelated groups were also identical.

14.32 It is seen that out of the 50 successful bidding parties 20 entities that belong to 7 group concerns and therefore, in effect, there are only 37 entities can be said to be independent concerns. They were supposed to be competing with each other. However, it has come in evidence that despite being located in different places and having varied manufacturing cost they have quoted identical rates across the length and breadth of the country.

*J. Chugh*





The tender has been awarded and orders have been placed on the sets of bidders who have quoted identical rates or near to identical rates in a particular pattern in almost all States.

14.33 The DG has analysed the rates quoted by bidders for each of 25 states in great detail and has tabulated them in order to show the identity in bids notwithstanding difference in manufacturing and transportation cost. It is not felt necessary to reproduce the entire data and only the analysis will be examined for reaching to conclusion.

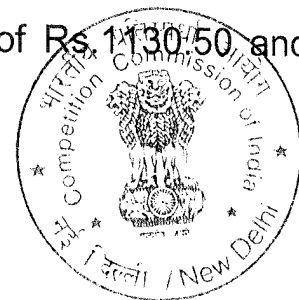
#### **Analysis of Bids for the State of Punjab**

14.34 It is found that IOCL awarded contract to 5 bidders, namely, Gopal Cylinders, Krishna Cylinders, Omid Engineering, SM Cylinders and Shri Ram Cylinders at a negotiated rate of Rs.1070. Four of these successful bidders had quoted identical rates of Rs.1080.5 and one had quoted rate of Rs.1080.

#### **Analysis of Bids for the State of Rajasthan**

14.35 It is noted that tender was awarded at a negotiated rate of Rs. 1123 to 10 parties namely, SKN Industries Limited, Sunrays Engineering Private Limited, Tirupati Industries Limited, Tirupati Cylinder Limited, Universal Cylinders, Bhiwadi Cylinders P.Ltd., Him Cylinders Ltd, International Cylinders P.Ltd., SKN Industries Limited and Rajasthan Cylinders. Nine of the successful bidders had quoted identical rates of Rs. 1130/50 and one had quoted rate of Rs.1130.

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### **Analysis of Bids for the State of Haryana**

14.36 In this state it is observed that tender was awarded at a negotiated rate of Rs. 1069.12 to 3 parties namely, Mahaveer Cylinders Limited, Shriram Cylinders Limited and Gopal Cylinders, Two of the successful bidders had quoted identical rates of Rs.1085.5 and one had quoted rate of Rs.1085.

### **Analysis of Bids for the State of Chhattisgarh**

14.37 Out of 4 bidders in the case of Chhattisgarh, two quoted Rs. 1095 and two others have quoted at Rs. 1100. The contract was awarded at negotiated rate of Rs. 1088.57 to all four who participated in the bids.

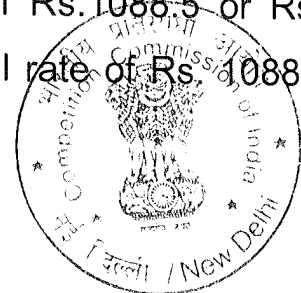
### **Analysis of Bids for the State of Uttaranchal**

14.38 Same picture emerges here also. The contract was awarded to International Cylinders Private Limited, Mahaveer Cylinders Limited, Tirupati Cylinders Limited, Universal Cylinders Limited, Surya Shakti Vessels Private Limited at a rate of Rs. 1073. Four of these successful parties had quoted identical rates of Rs.1081 and one had quoted rate of Rs. 1080.

### **Analysis of Bids for the State of Delhi**

14.39 The contract was awarded at a rate of Rs.1074 to 8 parties, namely, Faridabad Metal Udyog P. Ltd., Omid Engg. Private Limited, Rajasthan Cylinders, Sunrays Engineers P Ltd, Tirupati Industries Limited, Mahaveer Cylinders Limited, Tirupati Cylinders Limited, Bhiwadi Cylinders Private Limited, the parties which had quoted the rate of Rs.1088.5 or Rs.1088 together. 7 successful bidders had quoted identical rate of Rs. 1088.5 and

*J. Chant*



one - i.e. Tirupati LPG Industries Limited, which is group concern of Tirupati Cylinders, had quoted rate of Rs.1088).

#### **Analysis of Bids for the State of Himachal Pradesh**

14.40 Out of 2 bidders in case of Himachal Pradesh, Krishna Cylinders quoted Rs.1090 and Punjab Gas Cyls. Ltd. quoted Rs.1090.50. The contract was awarded at a rate of Rs.1083 to both the parties.

#### **Analysis of Bids for the State of Gujarat**

14.41 It is seen that in the state of Gujarat the contract was awarded at a rate of Rs.1089 to 5 parties, Sarthak Industries Ltd., Hans Gas Appliances P Ltd, Confidence Petroleum, Om containers, Supreme Technofabs P Ltd. Three of the successful bidders had quoted identical rate of Rs.1096 and two quoted Rs.1095

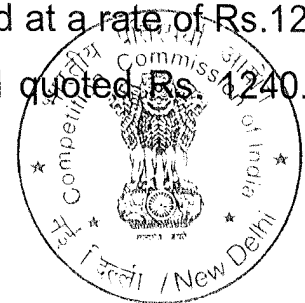
#### **Analysis of Bids for the State of Madhya Pradesh**

14.42 For the state of Madhya Pradesh the contract was awarded at a rate of Rs.1088.1 to the three parties who had quoted identical rates of Rs. 1097. The winning parties were Sarthak Industries Ltd. Super Industries and Vindhya Cylinders Pvt. Ltd.

#### **Analysis of Bids for the State of Orissa**

14.43 For the state of Orissa, the contract was awarded at a rate of Rs.1226 to ECP Industries Ltd and Konark Cylinders who had quoted Rs. 1240.73 and Rs1245.34 respectively.

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### **Analysis of Bids for the State of Uttar Pradesh**

14.44 For the State of Uttar Pradesh out of thirteen parties, 9 parties quoted rate of Rs. 1106.5, 2 quoted Rs. 1106, one quoted Rs. 1140 and the other quoted Rs. 1160. The contract was awarded at a rate of Rs.1097 to 11 parties, namely, Faridabad Metal Udyog P Ltd., JBM Industries Limited, Krishna Cylinders, Mauria Udyog Limited, Rajasthan Cylinders, Surya Shakti Vessels Private Limited, SM Cylinders, Tirupati LPG Industries Ltd, Bhiwadi Cylinders P. Ltd, Him Cylinders Limited, International Cylinders Private Limited (9 of them had quoted a rate of Rs.1106.5 and 2 had quoted a rate of Rs.1106.)

### **Analysis of Bids for the State of Andhra Pradesh**

14.45 For the State of Andhra Pradesh out of ten parties, 4 parties quoted identical rate of Rs. 1100, 3 quoted Rs. 1101.49, two quoted Rs. 1103.15 and remaining one quoted Rs. 1103. The contract was awarded at a negotiated rate of Rs.1091.89 (NDP-ITC) to all 10 parties, namely, Andhra Cylinders, Balaji Pressure Vessels, GDR cylinders P Ltd, Hyderabad cylinders P Ltd, Kurnool Cylinders P Ltd, MM Cylinders P Ltd., RM Cylinders P Ltd, Sanghvi cylinders P Ltd, Shri Shakti cylinders P Ltd and Sahuwala Cylinders P Ltd.

### **Analysis of Bids for the State of Karnataka**

14.46 For the State of Karnataka out of nine parties, 3 parties quoted identical rate of Rs. 1103.6, one quoted 1103, 4 quoted Rs.1105 and one quoted Rs. 1110. The contract was awarded at a negotiated rate of Rs.1095.71 to Asian Fab Tec Ltd., BTP Structural India P.Ltd, Jesmajo Industrial Fab and Sanghvi Cylinders P Ltd ( 3 of them had quoted identical rate of Rs.1103.6 and one had quoted Rs.1103).



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### **Analysis of Bids for the State of West Bengal**

14.47 For the State of West Bengal out of six parties, 4 parties quoted rate of Rs. 1105.99, 1 each quoted Rs. 1105 and Rs. 1150 respectively. The contract was awarded at a negotiated rate of Rs. 1095.82 to four parties, namely, ECP Industries Ltd, Konark Cylinders, North India Wires Ltd, Haldia Precision Engg. Pvt. Ltd, who had quoted identical rate of Rs.1105.99 and Carbac Holdings Limited who had quoted rate of Rs. 1105.

### **Analysis of Bids for the State of J&K**

14.48 For the State of J & K out of two parties, one quoted rate of Rs. 1115 and other for Rs. 1116. The contract was awarded at a negotiated rate of Rs. 1106 to both the bidders.

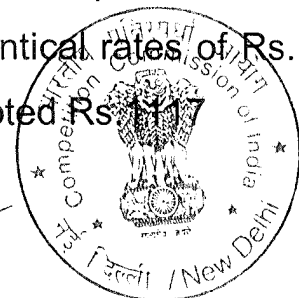
### **Analysis of Bids for the State of Jharkhand**

14.49 For the State of Jharkhand out of four parties, two parties quoted rate of Rs. 1125, one for Rs. 1120 and another for Rs. 1117. The contract was awarded at a negotiated rate of Rs. 1110 to ECP Industries Ltd, Konark Cylinders.

### **Analysis of Bids for the State of Bihar**

14.50 For the State of Bihar out of ten parties, 4 parties quoted rate of Rs. 1117.5, 2 quoted Rs. 1130, 2 quoted Rs. 1125, one quoted Rs. 1117 and remaining one quoted Rs. 1180. The contract was awarded at a negotiated rate of Rs.1110 to Omid Engg P Ltd, SM Cylinders, Tirupati LPT Industries Ltd, Tirupati Cylinders Limited who had quoted identical rates of Rs.1117.5 and International Cylinders Private Ltd who had quoted Rs.1117

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### **Analysis of Bids for the State of Tamil Nadu**

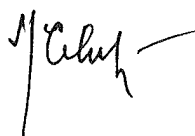
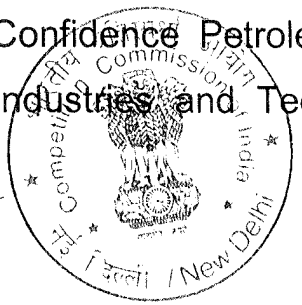
14.51 For the State of Tamil Nadu, out of twenty three parties, 15 parties quoted rate of Rs. 1127, 3 quoted rate of Rs.1126 and other five quoted Rs.1250, Rs. 1130, Rs. 1128, Rs.1125 and Rs. 1175 each. The contract was awarded at a negotiated rate of Rs.1115.91 to AKMN Cylinders P Ltd., Andhra Cylinders, Balaji Pressure Vessels, Confidence Petroleum, Hans Gas Appliances P Ltd., International Cylinders P Ltd, Jesmajo Industrial Fab, Kurnool Cylinders P Ltd, MM Cylinders P Ltd, Om Containers, RM Cylinders P Ltd, Sanghvi Cylinders Ltd, SM Cylinders, Shri Shakti Cylinders P Ltd., Sahuwala Cylinders P Ltd, Super Industries, Teekay Metals P Limited, Lite containers P Limited and GDR Cylinders P Limited. Out of these, 15 had quoted identical rates of Rs.1127, three had quoted Rs.1126 and one had quoted rate of Rs. 1125

### **Analysis of Bids for the State of Pondicherry**

14.52 For the State of Pondicherry out of ten parties, four parties quoted rate of Rs. 1130, 3 quoted Rs. 1125, 2 quoted Rs. 1131 and remaining one quoted Rs. 1135. The contract was awarded at a negotiated rate of Rs.1116 to Super Industries, Confidence Petroleum and Om Containers who had quoted identical rates of Rs.1125

### **Analysis of Bids for the State of Maharashtra**

14.53 For the State of Maharashtra out of eight parties, 5 quoted identical rate of Rs.1100, two quoted Rs.1150 and one quoted Rs.1110. The contract was awarded at a negotiated rate of Rs.1100 to Confidence Petroleum, Khara Gas Eqpts P Ltd, Om Containers, Super Industries and Teekay

Metals P Ltd, who had quoted identical rate of Rs.1100 and to Hans Gas Appliances Limited, a concern of Khara group, which had quoted Rs.1110.

#### **Analysis of Bids for the State of Sikkim**

14.54 For the State of Sikkim both the parties quoted rate of Rs. 1150. The contract was awarded to both of them at a negotiated rate of Rs.1102.

#### **Analysis of Bids for the State of Kerala**

14.55 For the State of Kerala out of eighteen, 10 parties quoted rate of Rs. 1151, 2 parties quoted rate of Rs. 1160, 2 quoted rate of Rs. 1170 and 4 others quoted for Rs.1152, Rs. 1153, Rs. 1154, Rs.1150.5 each. The contract was awarded at a negotiated rate of Rs. 1141.53 to Allampally Brothers Ltd, Confidence Petroleum, International Cylinders Private Limited, Kurnool Cylinders P. Ltd., Om containers, RM Cylinders P Ltd, Sahuwala Cylinders P Ltd, Super Industries, Teekay Metals P Ltd, Tirupati LPG Industries Ltd & Tirupati Cylinders P Ltd. Of these concerns, ten had quoted identical rate of Rs. 1151 and one had quoted rate of Rs. 1150.5.

#### **Analysis of Bids for the State of Assam**

14.56 For the State of Assam out of four parties, two parties quoted rate of Rs. 1175, one for Rs. 1166 and another for Rs. 1165. The contract was awarded at a negotiated rate of Rs. 1158 to North India Wires Ltd and Haldia Precision Engineering Private Limited.

#### **Analysis of Bids for North East**

14.57 For the State of North East out of eight parties, 7 parties quoted rate of Rs. 1240 and remaining one quoted Rs. 1250. The contract was awarded at a negotiated rate of Rs. 1226 to Confidence Petroleum, Him Cylinders Ltd,



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Tirupati LPG Industries Ltd & Tirupati Cylinders Limited, who had quoted identical rate of Rs.1240.

#### **Analysis of Bids for Andaman and Nicobar Island**

14.58 For the State of Andaman and Nicobar Island, Sahuwala Cylinders Private Limited quoted rate of Rs. 1390. The contract was awarded at the quoted rate.

14.59 Based on above analysis of the bids the Commission agrees with the following conclusion drawn in the DG report;

14.59.1 That all the 50 participating bidders secured orders from IOCL.

14.59.2 That the tender was awarded and orders were placed on the sets of bidders who had quoted identical rates or near to identical rates in a particular pattern in almost all States.

14.59.3 That successful bid rates were quoted by different bidders in a group collectively. For example, rate of Rs. 1240 was quoted for North East and rates of Rs.1151, Rs. 1127 and Rs.1100 were quoted collectively in group for Kerala, Tamil Nadu and Maharashtra respectively. In other States also, identical bids were quoted collectively.

14.59.4 Except for Andaman and Nicobar Islands, where there was a single party which had quoted the rates and got the final contract, in almost all the States, the parties have quoted identical rates or near to identical rates collectively in a group and have also bagged the contract together.

14.59.5 That there was identity in the rates quoted by the bidders even when the factories and the offices of these parties are not located in one and same State and they had to make supplies to locations far off from their factories located at different places. In ordinary course, a supplier located in



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northern region would supply at a different rate to North East than the supplier located at Andhra Pradesh and Maharashtra. However, it is noted that eight bidders quoted bids for supplies to be made in North East. Out of them four succeeded in getting orders by quoting the same rates even when their locations are different.

14.59.6 If we take the case of bidding in Delhi it is seen that factory locations of successful bidders are not the same and thus, the freight component in the bids should have been different. However, in spite of being located at far off places from each other, the concerns have quoted identical rates. It is also borne out that this trend is uniformly applicable across the States. These facts give rise to the inference that the bidders were not competing and were acting against the normal course of business.

14.59.7 Similarly in case of Tamil Nadu it is seen that out of 20 concerns which submitted bids, 14 have quoted identical rates of Rs. 1127. In the list of 14 concerns, there are 2 group concerns as well which have quoted identical rates. However, even if the group concerns are taken as a single entity, it is noted that, quoted rates of 13 different companies are identical even though the factories are located in different parts of the country like Himachal Pradesh, Maharashtra, Andhra Pradesh, Karnataka, Uttar Pradesh. It is also noted that the cost of manufacturing of different concerns varies from bidder to bidder. Taking into account the cost and freight component involved in making supplies in different states, quoted rates should have been different. However, it is noted that quoted rates by 12 different group concerns are identical. This was possible only when the bidders had agreed on rates.

14.59.8 Similar situation emerges when we examine the case of Rajasthan. It is revealed that out of 16 concerns, 9 quoted identical bids of Rs.1130.5



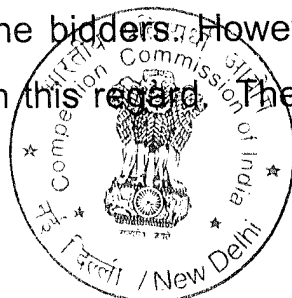
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even though their factories are located in different states. Out of these 9, factories of three concerns are located in Rajasthan while factories of 6 others are located in other states ranging from different places of Himachal Pradesh to different places of Uttar Pradesh and Haryana. However, they still have quoted identical rates of Rs.1130.5. It is also seen that the cost of production varies from entity to entity. Coupled with the difference in the cost of freight, therefore, the bid rates of these concerns should have been different, which is not the case. This raises a presumption that all of them might have decided their bid rates amongst themselves before submitting their bids to IOCL.

14.60 The DG has carried out analysis of bids for all 25 States vis-a-vis location, quoted rates and manufacturing cost of different entities which is placed at Annexure-2 of DG report. The analysis of data reveals that the bid rates, for making supplies in a particular State, quoted by companies were identical, even when their factories are located at different places and their manufacturing cost also varies from each other. This conclusively establishes that there was tacit understanding among the bidders to quote identical rates for making supplies of LPG cylinders in different states, even when their factories are located at places different from each other and their cost of production also varies from each other.

### **Absence of business justification**

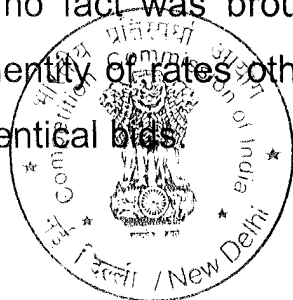
14.61 These inexplicable peculiar facts or circumstances which culminated into quoting of identical bids, seemingly with no economic rationale, needed to be explained by the bidders. However, they have failed to provide any satisfactory answer in this regard. The DG has recorded the statements of



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the executives of the bidding companies and by and large they have either tried to pass it off as mere co-incidence or have simply stated that they have no idea as how the rates were identical. Some bidders have also tried to explain that since the cost of production is more or less same, this could be a reason for participating bidders quoting identical rates. But the facts on record speak otherwise. The cost of manufacturing has been supplied by the bidding companies themselves and this shows that the cost per cylinder varies in a wide spectrum ranging from Rs.870 to Rs.1095.89. Hence the opposite parties have failed to put forth any cogent facts or circumstances which could have led the Commission to form a view that identity of rates was not due to meeting of minds. Thus, having shown the fact that, irrespective of the variation in the cost of production as well as freight, all the opposite parties quoted identical or near identical rates, a duty was cast on the opposite parties to dispel the presumption by bringing forth some plausible explanation as to what has occasioned the identity of rates as the onus of bringing in the fact which is especially within the knowledge of any person lies upon him. The opposite parties have not produced any material which would go to negate the presumption arising from identity of rates.

14.62 The logical corollary emanating from such facts and circumstances, when seen together with the fact that though the opportunity was given to the opposite parties, they failed to offer any reasonable explanation before DG or in the course of inquiry proceedings, would only buttress the inference that the identity of prices quoted by the opposite parties in response to the impugned tender was the result of collusive action. In the course of inquiry, no fact was brought out which would have suggested some reason for identity of rates other than an understanding amongst the bidders to quote identical bids.



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## Supply at higher cost

14.63 It is also noted by the Commission that the supply in the tender under inquiry was made at substantially higher cost in comparison to year 2009-10. The Commission agrees with the conclusion drawn in the DG report that the higher rates approved in the year 2010-11 as compared to 2009-10 only suggest that the enterprises have coordinated their acts together to get higher prices. Owing to collusive tendering IOCL could not get lower prices, which it could otherwise have, in case of actual competition among the bidders.

14.64 The Commission has also observed that the Cylinder Manufacturers are continuously increasing the rates and this fact gets strengthened from Table-33 of the DG report which shows that since year 2006-07 the prices have collectively been raised on an average by 36% for making supplies in different States.

## STANDARD OF PROOF

14.65 As in Cartel cases generally direct evidence is hard to come, the Competition Agencies largely bank upon indirect evidence. MRTP Commission in the Cement case relied upon indirect evidence by adopting principles of 'preponderance of probability' and 'liaison of intentions' as standard of proof. In case of contravention the Commission has been conferred power to impose only civil fines and it does not have criminal jurisdiction. It is also pertinent to mention that under section 36 of the Act the Commission is vested with some powers of a Civil Court in conduct of its enquiries. Hence, Cartelisation not being a criminal offence the test of proof



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will be only 'balance' of probability' and 'liaison of intention' which can be established with the support of indirect or circumstantial evidence. Since, in criminal cases, the offence has to be proved beyond reasonable doubt, the law makers in the beginning have opted to make cartel a civil offence only.

## AAEC

14.66 The provisions of section 3(3) envisage that once ingredients of Section 3(3) are established, there is no further need to determine the factors mentioned in Section 19(3) of the Act as there is a presumption in the Act that such agreements cause appreciable adverse effects on competition. There upon the onus shifts on entities facing charges to prove that there are pro-competitive effects of such agreements which outweigh the anti-competitive effects. But in the present matter even if factors enumerated in section 19(3) are considered, it is seen that all pro-competitive effects are absent whereas anti-competitive are present. The following analysis will go on to confirm this finding:

**(i) Creation of barriers to new entrants in the market:** The conduct of LPG Cylinder manufacturers by coming together on a common platform and fixing bid prices ensure that no new player can enter the relevant market and quote prices independently. There is no doubt that with their collective market power, the LPG cylinder manufacturers would make entry of a new player into the relevant market difficult, because new player in order to enter the market will have to first negotiate with the existing players to get business profitably.



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**(ii) Driving existing competitors out of the market:** In cases of collusive tendering the existing competitors normally will not go out of market as everyone is getting his share of pie and this fact also ensures that till the competitors cooperate, they get business profitably.

**(iii) Foreclosure of competition by hindering entry into the market:** As observed above the act of manufacturers certainly make entry difficult, since without joining hands, the new players would find it difficult to get entry into the relevant market as the combined market power of existing players would make the survival of the new players difficult until they also join hands with existing players.

**(iv) Accrual of benefits to consumers:** As discussed above, the cost of procurement has gone up and no benefit has been caused either to IOCL or domestic consumers due to the conduct of the bidders.

**(v) Improvements in production or distribution of goods or provision of services:** There is absolutely no material on record which can enable the Commission to infer that the collusive action of bidders has resulted in improvement in production or distribution of goods or provision of services.

**(vi) Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services:** This factor is also absent in the present case as no justification or case has been made out by the LPG cylinder manufacturers to prove that their action resulted in promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.



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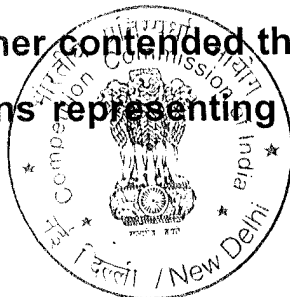
## Evaluation of contentions of LPG Cylinder Manufacturers

Salient contentions of the LPG Cylinder manufacturers are dealt with as below:-

**(i) It has been contended by the Opposite Parties that since only few of the bidders are members of Indian LPG Cylinders Manufacturers Association, the conclusion drawn by the DG that all fifty bidders were in collusion is erroneous.**

14.67 The argument advanced by the bidders is factually incorrect and hence has no substance. From the list furnished by the Association itself it can be glanced that in fact except Asian Fab Tech Ltd. (Though its former name Asian Cylinder is a member), Faridabad Metal Udyog Pvt. Ltd., Gopal Cylinders, Krishna Cylinders, JBM Industries & Shri Ram Cylinders all the bidders are members of the Association. Moreover, the fact of not being member of the Association by itself is not sufficient to conclude that non-members cannot collude with the members of the Association. Evidence shows that even non-members like Krishna Cylinders, & Shri Ram Cylinders, which are Group Companies, were present in the meetings held at Mumbai. All the above named Companies have also filed a common reply and have admitted that they appointed 6 common agents to submit bids. This statement on behalf of the parties strengthens the inference that the bids were submitted in accordance with the agreement reached between the parties.

**(ii) It has been further contended that evidence gathered by DG shows that only 12 persons representing 19 bidding companies participated**



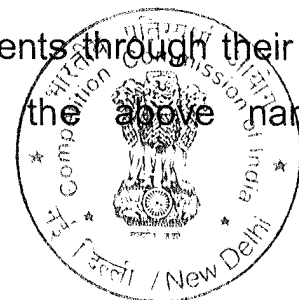
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**in the meetings held before the tender date in Mumbai and therefore it cannot be held that all fifty bidders were part of alleged agreement.**

14.68 The commission is of the opinion that this argument is devoid of any merit and deserves to be rejected. Evidence shows that a dinner was hosted for 30 persons on 1.03.2010 and again on 2.03.2010 a lunch was hosted for 45 persons in Hotel Sahara by the members of Association and expenses were paid by Sandeep Bhartiya of Carbac Group and Dinesh Goel of Tirupati Group. Statement of bidders recorded by DG shows that Dinesh Goel stated that 15-20 bidders attended the conference whereas C.P. Bhartiya gave the figure of 20-25. Further, Vijay Kumar Agarwal stated the number as 20-30. Different manufacturers also named some of the persons who attended the meetings.

14.69 Further, from the statements recorded by DG it is seen that (1) Mr. Dinesh Goyal of Tirupati Cylinders Limited, (2) CP Bhartiya, (3) R.K. Bhartiya, (4) Sandeep Bhatia, of Carbac Holding and North Wires Limited group, (5) Mr. P.K. Gupta of Sahuwala Cylinders Limited, (6) Mr. Kulaindswamy of Lite Containers Limited, (7) Mr. Ashok Raja of Him Cylinders Limited, (8) Mr. Gopal Bajoria and his son, (9) Avinash Bajoria of Rajasthan Containers and Cylinders Limited, (10) Vijay Agarwala of SM Sugar Private Limited, (11) Arun Agarwal of Krishna Cylinders, (12) Puneet Batra of Surya Shakti Vessels Limited and (13) Manvinder Singh of Bhiwadi Cylinders Private Limited, (14) Kishore Kela of Super Group among others were present. It has also come in evidence that pre-bid issues and tender was discussed. Cornered by the evidence gathered by the DG, it has been admitted in the written submissions filed on behalf of 44 respondents through their counsel Shri MM Sharma of Vaish Associates that the above named 19

*Shri MM Sharma*





manufacturers attended the meeting held in Mumbai on 01-02, March 2010. Although there is no conclusive evidence which can establish the identity of remaining persons who were present in the meetings in addition to those named by manufacturers, but the subsequent conduct of all the bidders clearly indicates meeting of mind between all the bidders on pricing. Not only have they quoted identical price but admittedly 44 Companies appointed common agents to submit bids.

**(iii) The Opposite Parties have also raised the arguments that when allocation is made by IOCL on the basis of installed capacity and on the basis of negotiated rates there cannot be any possibility or incentive to collude.**

14.70 It is true that rates are accepted by IOCL after negotiation. However, bid rigging can still take place if bidders collude and keep the bid amount at a pre-determined level. Such pre-determination is by way of intentional manipulation by members of the bidding group. So even if the successful bid was subject to negotiation post tender, this argument cannot be accepted that there will be no impact on price, simply because if the successful tender price was inflated as a result of collusion then the impact would be carried over to the negotiations as they would commence at an inflated level. Once they become successful, this will also create a new bench mark for subsequent tender and thereby will have a ripple effect in long term. Similarly, this argument also holds no substance that since the quantity to be awarded is determined by IOCL, there is no incentive to collude because even if the quantity allocation remains uncertain whatever quantity will be awarded to a successful bidder will definitely fetch a higher

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price if high bench mark has been set by the bidders colluding with each other.

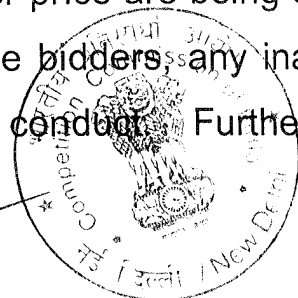
**(iv) In the common reply filed on behalf of 44 companies an attempt has been made to explain the identity in bid prices by stating that these companies had appointed 6 common agents to submit their bids and, therefore, chances of observing the rates of competitors and copying them are possible.**

14.71 In view of the Commission such fact scenario, on the contrary only strengthens the inference that there was meeting of mind between the bidders and which is reflected in bidding pattern across the States. DG report also highlights the manipulation in the tender documents by Jesmajo Fabricators in order to match the quotes of other bidders. Based on above discussion the explanation offered by bidders is unacceptable.

**(v) The next argument made by the bidders is that tender conditions are controlled by IOCL which has reserved itself right to cancel the bid in case it is observed that any malpractice has taken place. Moreover, the bidders are required to sign Integrity Agreement. It has been argued that in view of these circumstances no room is left for bid rigging.**

14.72 The contention of the OPs that conditions prescribed in tender document are heavily loaded in favour of IOCL and signing of integrity agreement ensures that bids cannot be rigged is devoid of any merit for the reasons stated above in para 14.70. When tender price are being quoted in terms of anti-competitive agreement between the bidders, any inaction on the part of IOCL will not lend legitimacy to such conduct. Further, even if

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the IOCL has not noticed any malpractice or has not complained about the bid rigging, the jurisdiction of the Commission to examine the issue of bid rigging is neither ousted nor dependent on these factors. It is also seen that IOCL when confronted by DG (in case no.10 of 2010) failed to offer any explanation for the submission of identical or near to identical bids.

**(vi) It was also contended that IOCL was not investigated during the investigation though being a necessary party. Further, order under 26(1) directed the DG to investigate the issue related to IOCL, BPCL & HPCL but DG has not made any investigation in relation to bids of BPCL & HPCL. The IOCL has not said that the bid was rigged nor DG has confronted IOCL regarding the bidding or has concluded that IOCL also colluded in the bid rigging. Therefore, the investigation is incomplete and Commission should get it reinvestigated covering all 3 OMCs. It has also been argued that to monitor the tender there was a committee headed by retired ONGC Chairman but DG never consulted the monitoring committee and his report is silent on this aspect.**

14.73 The Commission does not see any substance in this contention. It is apparent that in this case the DG has not sought any clarification from IOCL because the present case originated from the evidence collected by DG in case no.10 of 2010, Pankaj Gas v IOCL and in that case IOCL was confronted with the evidence and statement of Y.V.Ramana Rao, Chief Manager, IOCL was recorded on 14-07-2010, which forms part of record in this case. Even otherwise, the conduct of the bidders is being examined in this case and not of IOCL or other OMCs. The anti-competitive conduct of the colluding bidders in the impugned tender also does not get justified by

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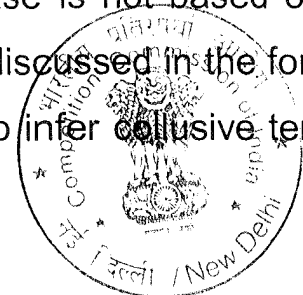


the mere fact that tenders floated by other OMCs were not investigated or because DG did not consult the monitoring committee.

vii) It has been vehemently argued by the Opposite Parties that Price Parallelism is a common phenomenon in such oligopolistic markets. Market being dominated by small number of players there is strong likelihood that each player is aware of the actions of the others. Price parallelism by itself is not considered sufficient to establish cartelization throughout the world and some plus factors are required to establish contravention. In this case there is no direct or indirect evidence of existence of an agreement among the competitors on price and therefore quoting similar price by itself is not sufficient to be construed as evidence of collusion. In the context of Section 1, of Sherman Act, the courts have made it clear that parallel behavior, by itself, does not prove a conspiracy and is therefore not illegal (Theatre Enterprises 20). Rather, for parallel behavior to constitute evidence of a conspiracy, it must be accompanied by certain “plus factors”, such as evidence of “raising prices in time of oversupply” (American Tobacco<sup>21</sup>), “artificial standardization of products”, and “pre-textual explanations for a course of action”. As summarized by a leading treatise, among the most important plus factors are those that tend to show that the conduct would be in the parties’ self-interests if they all agreed to act in the same way but would be contrary to their self-interests if they acted alone.

14.74 The Commission is of the view that this case is not based on price parallelism and as has been seen in the analysis discussed in the foregoing paras that there is sufficient evidence on record to infer collusive tendering

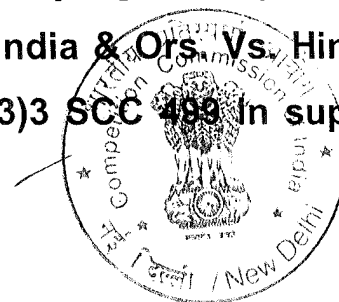
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by the bidders. In this case the analysis of bids not only shows that the bidders were not competing but the evidence on record also go on to show that they were not competing because they had an agreement. As seen above all except 5 bidders are members of Association and they met just before the due date of bidding and discussed tender. It is also seen that even non-members were present in the meetings. It has been also seen that non-members were part of group of 44 bidders who had appointed common agents to submit their bids. All bidders were involved in submission of identical or similar bids and every bidder secured order at some place. Manipulation in the tender was noticed by DG. No plausible economic rationale has been offered by OPs as to how identical bids were submitted, despite difference in manufacturing cost and freight. Market structure and conditions are conducive for collusion. The probability of bid rigging gets higher if there are limited numbers of bidders. Being small in number, it is easy to reach an agreement, especially when the same bidders are involved in repeated procurement by IOCL, BPCL and HPCL. Chances of bid rigging become greater if the product purchased is standardised and did not change over a period of time. Under these circumstances, it is easier to work out an agreement and to make it last a long time. In this case, the plus factors, which have been talked about by OPs are also available if all the facts stated above are taken into account. As has been observed above in para 14.65 that since CCI can impose only administrative fines, the standard of proof required is not that of beyond reasonable doubt.

**viii) The opposite parties have relied upon the judgement pronounced by the Hon'ble Supreme Court in Union of India & Ors. Vs. Hindustan Development Corporation and Others, (1993)3 SCC 499 in support of**

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**their contention that mere submission of identical bids will not be sufficient to draw a conclusion that there was a formation of cartel.**

14.75 On perusal of the above referred judgement, it becomes clear that the facts were different in that case. In that case, the Railway Board floated a tender notice for procurement of cast steel bogies. In that tender 3 manufacturers M/s. HDC, Mukund and Bhartiya quoted identical price per bogie and post tender, after this fact was detected, they also offered to reduce the price. On examining the matter, the Hon'ble Supreme Court held that there is not enough of material to conclude that the above companies had formed a cartel and it cannot positively be concluded on the basis of these two circumstances alone. But in this case in addition to the existence of fact of identify of rates, host of other evidence is also available which when considered cumulatively, distinctly point out to the formation of cartel amongst the bidders which resulted into bid rigging. It has come out in the evidence that all the bidders except 5 out of 50 odd bidders are members of Indian Cylinder Manufacturers Association and most of them had met in Mumbai in Hotel Sahara just before the tender date although the presence of all the participating bidders could not be established. However, from the evidence available in DG report, 14 persons were identified who were representing 19 companies. It has also been shown that there were 30 to 35 manufacturers who were present though only 14 could be identified. The subsequent conduct or behavior by the participating bidders conclusively shows that the submission of identical bids was the outcome of collusion amongst them. It has also been admitted by the executives whose statements were recorded by the DG during the course of examination that they had indeed discussed pre-bid issues and tender on 1st and 2nd March, 2010. It has also come in evidence that despite located in different parts of

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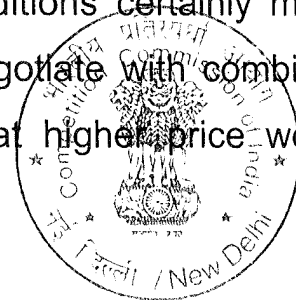


country and varying manufacturing costs, the bid rates were identical or near to identical. Presence of office bearers of the Association was also recorded by the DG. When confronted by the DG how the identical prices have been quoted by them despite difference in manufacturing costs as well as freight, most of them have stated that they have no idea and some of them have tried to explain it as a mere coincidence. Therefore, the judgment which has been quoted in support of their contention offers little assistance to the opposite parties. Further, even though the judgments pronounced by the courts of U.S.A. and cited on behalf of the parties are not very relevant as legal structure of competition regime in both the countries is different and in India no criminal sanction has been provided in case of cartels, host of plus factors, as has been seen in addition to identity of prices which are stated to be required under US jurisprudence are available in the present case.

**ix)The Cylinder Manufacturers have also taken the plea that when the number of cylinder manufacturers has grown from 30 to 77 and new manufacturers are assured of supply, there cannot be any barrier to entry and therefore no appreciable adverse effect on competition can be said to have been caused in this case. Further, factors enumerated in clause a, b & c of section 19(3) are absent in the present matter and therefore there is no AAEC. As a result of bidding competition is neither eliminated nor reduced.**

14.76 It is seen that presently only 37 entities are controlling the supply and when all are acting as a cohesive group such conditions certainly make entry difficult as the new player will have to first negotiate with combined market power of existing players. Further, supply at higher price would

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definitely impact the IOCL and end consumers adversely. As discussed above all pro-competitive factors enumerated in section 19(3) are absent in this case.

**x)It has been also argued by some parties that as the manufacturers had earlier supplied the same product at higher rate to BPCL & HPCL, only the manufacturers can be said to be direct sufferers and IOCL as well as ultimate consumers were beneficiaries in the impugned supply and in view of this there cannot be said to be case of cartel against the suppliers.**

14.77 The Commission finds no substance in the argument advanced by the parties because even if they had made supplies to other OMCs at higher cost this by itself is not sufficient to rebut the presumption raised under section 3(3) once elements of bid rigging have been found established against them in the present case. Moreover, the parties have not furnished any material to show that supplies have been made to other OMCs at higher cost in all the 25 States involved in the tender under inquiry. On the other hand it has been observed in the preceding paras that supply to the IOCL was made at higher cost in comparison to previous year.

**xi)It has been submitted by Hyderabad Cylinders that as it was not afforded any opportunity of hearing by the DG, the report of the DG is bad in law and cannot be used to find contravention against it.**

14.78 The fallacy of this argument is exposed by the fact that even if DG had not issued notice to them they have been given ample opportunity by the Commission to explain their conduct during inquiry before the Commission and which they have availed also. Further, it is also evident from the record



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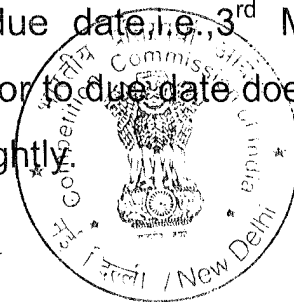
that Hyderabad Cylinders is a group company of Sanghvi Group which is also controlling Sanghvi Cylinders Private Limited and RM Cylinders Private Limited. It is also borne out from the record that the statement of Vijay Sanghvi, Director of M/s Sanghvi Cylinders Private Limited was recorded on 29.04.2011 on oath on behalf of group companies. Considering all these facts and circumstances the Commission finds no merit in this argument.

**xii) It has been argued on behalf of ECP Industries that it received very low quantity order of the total required quantity which shows that it is neither a beneficiary nor has received any price advantage. Similar argument has been taken on behalf of Mauria Udhyog that they received very small order which was less than 0.7% of the tender quantity.**

14.79 As has been discussed in para 14.70 that this fact does not bear much significance and does not justify the collusive conduct of the bidders. The quantity awarded to each entity has no correlation to submission of bids by them under tacit understanding resulting into bid rigging. Hence, this argument is bereft of any substance and consequently rejected.

**xii) On behalf of M/s Balaji Pressure Vessels Ltd. it was argued that the bid of the company was submitted prior to the date of meeting itself so it cannot be said to be part of any cartel.**

14.80 The Commission finds that the argument is factually incorrect as the price bids were supposed to be submitted on due date, i.e., 3<sup>rd</sup> March, 2010. Therefore, to say that it had submitted bids prior to due date does not make any sense and the contention is rejected out rightly.



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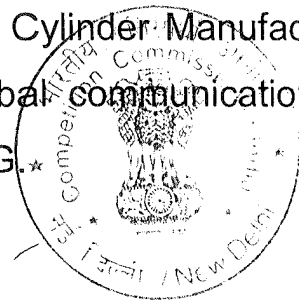
xii) On behalf of Carbac Group it has been argued that in Assam State its company Haldia Precision and International Cylinder of Tirupati Group though quoted the same price but negotiated rate between Haldia and IOCL was 48 Rs. below the quoted price and had there been any agreement with International Cylinders it would not have negotiated below the quoted price.

14.81 It is observed by the Commission that in the instant case, the identify of price is found in the initial quotation submitted by the opposite parties though of course subsequently IOCL could manage to bring down the rates marginally through negotiations but that will not have any bearing on the culpability of the bidders. The burden of explaining their conduct as to how they had quoted identical prices despite difference in cost of production and transportation is not discharged by the fact that they had agreed to lower the prices after negotiations. It is also noted that even when in this State the quoted rates were brought down by the IOCL after negotiation the supply was made to it at higher cost compared to previous year. In the light of above the Commission finds that being devoid of any merit the argument deserves to be rejected.

### **Exceptional case of JBM and Punjab Cylinders**

14.82 The following arguments have been taken on behalf of JBM Industry Limited:

14.82.1 JBM Industry is not a member of any LPG Cylinder Manufacturers Association in India and no evidence of any verbal communication with other participating bidders has been produced by DG.



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14.82.2 They have not attended any meeting allegedly held on Mumbai at 01-02 March, 2010 and they have no relation with any such meeting.

14.82.3 The Company started operation in 1983 for manufacture of LPG Cylinder but later on diversified its business in heavy fabrication and railways and now it is a conglomerate of many diversified business group. Presently LPG Cylinder manufacturing forms a very minuscule part of overall business group. The Company has produced data to show that in year 2009-10, the turnover related to LPG Cylinder was only 4.89 crores out of total turnover of Rs. 68.99 crores that is only 7.09% of overall turnover. On the basis of this data it has been argued that there was no need for the company to be part of any cartel.

14.82.4 The Company did not manufacture any LPG Cylinder in year 2009-10 and 2008-09 as the manufacturing plant was not operational. It has also been stated that in year 2007-08 against the quoted rate of the company Rs. 990 per cylinder the Oil Marketing Companies (OMCs) offered rate of Rs. 901 per cylinder and company refused the offer as it was not commercially viable.

14.82.5 Since the plant of the company was shut down for 2 years it decided to operate the plant for a low margin of 5% to recover fix cost and hence made bids accordingly. In the state of Punjab the rates quoted by the company do not match with any other company. Whereas in the state of UP since the company re-entered the business of cylinder manufacturer after a gap of 2 years the possibility of rates quoted by the company being leaked out to the competitors through corporate espionage cannot be ruled out which might have enabled them to quote similar prices which explain the matching of its rates with other competitors.

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14.82.6 It has also been contended that in 2010-11 it was awarded the contract to supply a small quantity of cylinders and got orders for only 50265 cylinders.

14.83 It is also noted that M/s Punjab Gas Cylinders Limited has also submitted following additional arguments:

14.83.1 They have not attended the meeting of other manufacturers allegedly held on 01-02 March, 2010 in Mumbai nor have they been involved in any cartel.

14.83.2 The company did not get any order during the last 4-5 years despite quoting in tender floated by IOCL, hence there can be no case against the company for joining any cartel.

14.83.3 The company had quoted in the impugned tender for the state of Himachal Pradesh, Jammu & Kashmir and Rajasthan and it was L-2 bidder in Himachal Pradesh and Jammu & Kashmir only and there was no other L-2, L-3 bidder in these states. Further, it could not get any orders in Rajasthan. Regarding the identity of quotes between L-1 and L-2 bidder, it has been stated that the marginal difference between L-1 and L-2 may have been because the bidders were from same region and their inputs cost and freight was same. It is also stated that in Jammu & Kashmir only 2 parties had quoted and in Himachal Pradesh also only 2 parties quoted L-1 rates. Therefore, there was no need for the company to collude with other bidders as it would have got orders even if the rates were different.

14.84 In the light of arguments made by these two parties, the perusal of record reveals that JMB Industry Limited is not a member of the cylinder Manufacturers Association and its presence at the meeting held on 01-02 March, 2010 is also not recorded. The averment made by the company that it did not participate in the last year tender floated by IOCL is substantiated

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from the record submitted by IOCL for the year 2009-10. Similarly Punjab Gas Cylinder Limited also did not participate in the last year tender and its presence at the meeting in Mumbai is not verified. In case of JBM the cylinder business forms very small part of a business and both were either not participating or were not awarded supply orders in last 3 years. Therefore, their cases stand on different footing and the plus factors which are available in case of other bidders are not available in toto in the case of these 2 companies. Hence, the fact of their being part of a cartel and colluding with other bidders does not seem to have been conclusively established by the evidence available on record. Based on above, the Commission feels that the additional circumstances obtaining in case of these two companies do not warrant an inference that they were also involved in bid rigging.

14.85 The conduct of the participating bidders when tested on the touchstone of the foregoing analysis of evidence leads to irresistible conclusion that the identity of rates was due to an agreement between the bidders, (except JBM Industries and Punjab Cylinders), who formed a cartel to rig the bid. Based on above discussion, the Commission has no doubt in mind to come to the conclusion that the identical price quotations submitted by the opposite parties in the impugned tender were actuated by mutual understanding/arrangement or in other words agreement amongst them.

14.86 In the light of above discussion the issue no. 1 is decided in affirmative and the Commission holds that except JBM Industries and Punjab Cylinders all the bidding entities mentioned in para 3.7 above have contravened the provisions of section 3(3) read with section 3(1) of the Act .

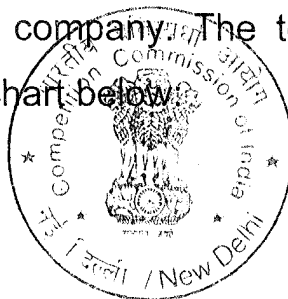


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## 15. Order under section 27 of the Act

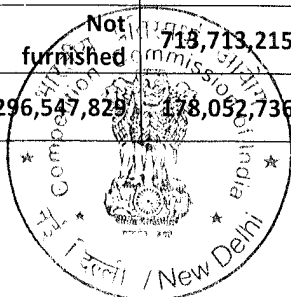
15.1 The collusive conduct of the LPG cylinder manufacturers fall in the pernicious category of offences which have been condemned by anti-trust authorities all over the world due to the fact that such actions and conduct not only harm the economy but are also against the consumers interests. The treatment of cartels has been harsh and punitive worldwide. The courts in US have treated cartels as per se infringements of the Sherman Act and as criminal offences punishable by imprisonment of concerned directors. The Enterprise Act, 2002 in the United Kingdom also introduced criminal offences for individuals responsible for cartel activity which could lead to imprisonment of up to five years in addition to fines. In UK debarment from directorship in companies is also one of the possible consequences. Although, the EU law does not provide for criminal sanctions, several countries in the EU and outside, such as France, Canada, Greece, Japan, Korea and Norway independently have enacted such provisions.

15.2 The Commission also observes that all the bidding companies who have infringed the provision of section 3(3) are responsible in equal measure and no mitigating circumstances are available to any of them. Considering the totality of facts and circumstances of the present case and the seriousness of contravention the commission decides to impose a penalty on each of the contravening company at the rate of 7 % of the average turnover of the company. The total amount of penalty on each company is given in the chart below.



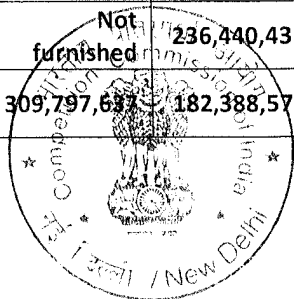
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SL No	Parties	Turnover (sales) in year Ended on 31.03.2007	Turnover (sales) in year ended on 31.03.2008	Turnover (sales) in year ended on 31.03.2009	Turnover (sales) in year ended on 31.03.2010	Turnover (sales) in the year ended on 31.03.2011	Average turnover	7% of Average Turnover
1	Konark Cylinders & Containers Pvt (L)	Not furnished	Not furnished	323,964,575	202,710,924		263,337,750	18,433,642
2	ECP Industries Ltd	146,295,523	182,544,170	197,813,585	264,615,063		214,990,939	15,049,366
3	Sunrays Engineers Pvt. Ltd	20,667,239	66,058,895	98,181,476	Not furnished		61,635,870	4,314,511
4	Tee Kay Metals Pvt. Ltd.	Not furnished	Not furnished	403,714,481	576,325,893		490,020,187	34,301,413
5	Super Industries	Not furnished	Not furnished	Not furnished	740,601,028		740,601,028	51,842,072
6	Om Containers	Not furnished	Not furnished	Not furnished	1,061,002,546		1,061,002,546	74,270,178
7	Lite Containers	Not furnished	Not furnished	278,509,095	441,241,720		359,875,408	25,191,279
8	Jesmajo Industrial Fabrications Karnataka Pvt. Ltd.	Not furnished.	213,818,192	242,602,810	328,468,893		261,629,965	18,314,098
9	Gopal Cylinders	Not furnished	Not furnished	Not furnished	342,952,056		342,952,056	24,006,644
10	A.K.M.N Cylinders	162,390,532	143,818,134	115,483,275	Not furnished		140,563,980	9,839,479
11	Sahuwala Cylinders	Not furnished	Not furnished	521,944,336	765,779,789		643,862,063	45,070,344
12	M/s Universal Cylinders Ltd.	Not furnished	Not furnished	142,597,562	274,332,272		208,464,917	14,592,544
13	Mahaveer Cylinders Ltd.	Not furnished	Not furnished	130,206,231	238,055,837		184,131,034	12,889,172
14	Him Cylinders Ltd	371,649,109	435,153,758	285,389,170	325,316,450	682,038,807	348,619,793	24,403,385
15	Omid Engineers Pvt. Ltd.	Not furnished	Not furnished	205,290,295	273,924,666		239,607,481	16,772,524
16	Bhiwadi Cylinders Pvt. Ltd.	Not furnished	Not furnished	314,234,942	455,146,218		384,690,580	26,928,341
17	Krishna Cylinders	Not furnished	334,910,429	217,583,790	327,868,289		293,454,169	20,541,792
18	Shri Ram Cylinders	Not furnished	Not furnished	76,317,843	290,594,375		183,456,109	12,841,928
19	International Cylinders Pvt. Ltd.	Not furnished	Not furnished	565,955,400	951,421,628		758,688,514	53,108,196
20	Tirupati LPG Industries Ltd	Not furnished	Not furnished	718,713,215	998,503,759		856,108,487	59,927,594
21	Rajasthan Cylinders & Containers Ltd	Not furnished	296,547,829	178,052,736	514,751,692		329,784,086	23,084,886



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22	Surya Shakti Vessels Pvt. Ltd.	Not furnished	Not furnished	274,353,285	368,055,347		321,204,316	22,484,302	
23	Faridabad Metal Udyog Pvt. Ltd	Not furnished	Not furnished	164,487,675	174,691,619		169,589,647	11,871,275	
24	Haldia Precision Engineering Pvt. Ltd.	Not furnished	265,425,218	238,497,468	374,316,437		292,746,374	20,492,246	
25	Carbac Holdings Ltd.	Not furnished	289,778,644	245,764,652	441,285,704		325,609,667	22,792,677	
26	S. M. Cylinders (Unit of SM Sugar (P) Ltd.)	Not furnished	Not furnished	226,199,699	445,746,179		335,972,939	23,518,106	
27	M.M. Cylinders Pvt. Ltd.	Not furnished	Not furnished	160,072,163	172,458,976		166,265,570	11,638,590	
28	GDR Cylinders Pvt. Ltd.	Not furnished	Not furnished	212,202,588	175,125,162		193,663,875	13,556,471	
29	Hans Gas Appliances Pvt. Ltd.	95,858,431	833,456,951	Not furnished	Not furnished		464,657,691	32,526,038	
30	Andhra Cylinders (A unit of Envy Cylinders P Ltd.)	134,543,085	121,587,185	84,153,728	153,801,708		119,847,540	8,389,328	
31	Confidence Petroleum India Ltd.	Not furnished	1,740,633,431	2,625,527,720	5,610,657,908		3,325,606,353	232,792,445	
32	Khara Gas Equipments Pvt. Ltd.	Amalgamated with Confidence petroleum							0
33	Sarthak Industries Ltd.	295,027,626	605,526,394	488,764,375	576,044,478		556,778,416	38,974,489	
34	R.M. Cylinders Pvt. Ltd.	76,278,079	194,223,803	214,971,132	Not furnished		161,824,338	11,327,704	
35	Sanghvi Cylinders Pvt. Ltd.	279,634,369	372,194,258	341,260,390	Not furnished		331,029,672	23,172,077	
36	North India Wires Ltd.	297,502,392	309,195,762	353,512,000	501,919,713		388,209,158	27,174,641	
37	Kurnool Cylinders Pvt. Ltd.	Not furnished	Not furnished	121,105,352	447,387,957		284,246,655	19,897,266	
38	Asian Fab Tec Ltd.	161,219,764	326,214,905	Not furnished	Not furnished		243,717,335	17,060,213	
39	BTP Structural (I) Pvt. Ltd.	Not furnished	200,527,329	157,469,613	368,522,570		242,173,171	16,952,122	
40	Tirupati Cylinders Ltd.	Not furnished	Not furnished	224,726,541	422,817,059		323,771,800	22,664,026	
41	SKN Industries Ltd.	Not furnished	Not furnished	Not furnished	97,716,910	131,957,846	114,837,378	8,038,616	
42	M/s Supreme Technofabs P Ltd.	Not furnished	Not furnished	64,276,586	50,297,138		57,286,862	4,010,080	
43	ALLAMPALLY Brothers Ltd.	23,338,664	60,494,730	99,243,251	157,358,455		105,698,812	7,398,917	
44	Balaji Pressure Vessels Ltd.	Not furnished	Not furnished	236,440,435	273,089,090		254,764,763	17,833,533	
45	Shri Shakti Cylinders Pvt Ltd.	Not furnished	309,797,637	182,388,570	421,599,637		304,595,281	21,321,670	



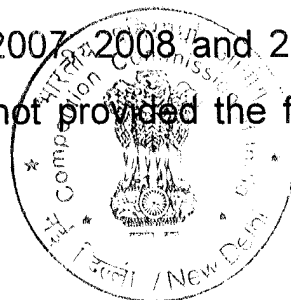
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46	Vidhya Cylinders Pvt Ltd.	44,661	32,074,970	85,766,420	124,429,943		80,757,111	5,652,998
47	Mauria Udyog Ltd.	4,013,519,685	4,713,234,045	4,713,234,045	6,164,395,043	8,016,309,240	5,196,954,378	363,786,806
The following is calculated on basis of 2.1 times of Net Profit								
48	Hyderabad Cylinders Ltd.(Net Profit Based)	17,602,000	20,346,050	32,318,232	39,922,467	29,948,467	30,862,250	64,810,724
	Total Value							1,655,860,749

15.3 The following methodology has been adopted for calculating the fines shown in the chart above as per the financial details furnished by the companies and in case of non-submission of requisite figures the details available on the website of the company or MCA 21 have been taken into account. Where financial details could be available only for two years, in the given situation the Commission decided to use the information, assuming it to reflect the position in regard to the third year also. Further, as Khara Gas Equipments Pvt, Ltd. was amalgamated with Confidence Petroleum, penalty has not been imposed separately on it. In case of Hyderabad Cylinders Ltd. the penalty has been imposed at the rate of 2.1 times of its net profit as details of turnover were not available:

- i. For Konark Cylinders & Containers Pvt (L) turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- ii. For ECP Industries Ltd turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration.
- iii. For Sunrays Engineers Pvt. Ltd turnovers of Financial Years (FY) for the year ended 2007, 2008 and 2009 were taken into consideration, as the firm has not provided the financial details for the year ended 2010.



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- iv. For Tee Kay Metals Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- v. For Super Industries turnovers of Financial Years (FY) for the year ended 2010 were only taken into consideration as the details of other financial years ended 2008 and 2009 were not provided.
- vi. For Om Containers turnovers of Financial Years (FY) for the year ended 2010 were only taken into consideration as the details of other financial years ended 2008 and 2009 were not provided.
- vii. For Lite Containers turnovers of Financial Years (FY) for the year ended 2010 were only taken into consideration as the details of other financial years ended 2008 and 2009 were not provided.
- viii. For Jesmajo Industrial Fabrications Karnataka Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration.
- ix. For Gopal Cylinders turnovers of Financial Years (FY) for the year ended 2010 were only taken into consideration as the details of other financial years ended 2008 and 2009 were not provided.
- x. For A.K.M.N Cylinders turnovers of Financial Years (FY) for the year ended 2007, 2008 and 2009 were taken into consideration, as the firm has not provided the financial details for the year ended 2010..
- xi. For Sahuwala Cylinders turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years



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- xii. For M/s Universal Cylinders Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- xiii. For Mahaveer Cylinders Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- xiv. For Him Cylinders Ltd turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration.
- xv. For Omid Engineers Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- xvi. For Bhiwadi Cylinders Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years..
- xvii. For Krishna Cylinders turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration.
- xviii. For Shri Ram Cylinders turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years..
- xix. For International Cylinders Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years..



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- xx. For Tirupati LPG Industries Ltd turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years..
- xxi. For Rajasthan Cylinders & Containers Ltd turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration, as the firm has provided details for only two years..
- xxii. For Surya Shakti Vessels Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- xxiii. For Faridabad Metal Udyog Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- xxiv. For Haldia Precision Engineering Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration.
- xxv. For Carbac Holdings Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration.
- xxvi. For S. M. Cylinders (Unit of SM Sugar (P) Ltd.) turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- xxvii. For M.M. Cylinders Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.



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- xxviii. For GDR Cylinders Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- xxix. For Hans Gas Appliances Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2007 and 2008 were taken into consideration, as the firm has provided details for only two years and has not provided the details of financial year ended 2009 and 2010.
- xxx. For Andhra Cylinders (A unit of Envy Cylinders P Ltd.) turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration, though the firm has provided the financials for the year ended 2007.
- xxxi. For Confidence Petroleum India Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration.
- xxxii. For Sarthak Industries Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration. These figures have been taken from the website of the company since the firm has not furnished any details.
- xxxiii. For R.M. Cylinders Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2007, 2008 and 2009 were taken into consideration, as the firm has not provided the financial details for the year ended 2010.
- xxxiv. For Sanghvi Cylinders Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2007, 2008 and 2009 were taken into consideration,



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as the firm has not provided the financial details for the year ended 2010.

- xxxv. For North India Wires Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration, though the firm has provided the financials for the year ended 2007.
- xxxvi. For Kurnool Cylinders Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- xxxvii. For Asian Fab Tec Ltd. turnovers of Financial Years (FY) for the year ended 2007 and 2008 were taken into consideration, as the firm has provided details for only two years.
- xxxviii. For BTP Structural (I) Pvt. Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration.
- xxxix. For Tirupati Cylinders Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- xl. For SKN Industries Ltd. turnovers of Financial Years (FY) for the year ended 2010 and 2011 were taken into consideration, as the firm has provided details for only two years and has not provided the financial details for the year ended 2008 and 2009.
- xli. For M/s Supreme Technofabs P Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.



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- xlii. For Allampally Brothers Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration, though the firm has provided the financials for the year ended 2007.
- xliii. For Balaji Pressure Vessels Ltd. turnovers of Financial Years (FY) for the year ended 2009 and 2010 were taken into consideration, as the firm has provided details for only two years.
- xliv. For Shri Shakti Cylinders Pvt Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration.
- xlv. For Vidhya Cylinders Pvt Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration.
- xlvi. For Mauria Udyog Ltd. turnovers of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration, though the firm has provided the financials for the year ended 2007 and 2011.
- xlvii. For Hyderabad Cylinders Ltd. Net profits of Financial Years (FY) for the year ended 2008, 2009 and 2010 were taken into consideration. These figures have been taken from the public domain since the details were not furnished by the firm.

15.4 The Commission also directs each company to deposit the penalty amount within 60 days of receipt of this order.

15.5 Additionally the Commission directs all the contravening parties to cease and desist from indulging in such anticompetitive conduct which result in bid rigging. The parties are further directed to file undertakings to this effect individually within 60 days



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16. The Commission further directs that a copy of this order may also sent to PSU Oil Marketing Companies, namely, IOCL, BPCL and HPCL for taking necessary action as deemed fit.

17. The Secretary is directed to communicate this order to all the parties for compliance immediately.

Sd/-  
Member (GG)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Member (G)

Certified True Copy

