



**COMPETITION COMMISSION OF INDIA**

***Suo Motu* Case No. 01 of 2020**

***In Re:* Alleged bid-rigging in E-Tenders invited by the Department of Agriculture,  
Government of Uttar Pradesh for soil sample testing**

**CORAM**

**Mr. Ashok Kumar Gupta**

**Chairperson**

**Mr. Sangeeta Verma**

**Member**

**Mr. Bhagwant Singh Bishnoi**

**Member**

**Appearances during the final hearing held on 16<sup>th</sup> December, 2021**

*For Yash Solutions (OP-1)* : Mr. Prashant Mehta, Advocate  
Ms. Divita Vyas, Counsel

*For M/s Satish Kumar Agarwal (OP-2) and* : Mr. Raghav Marwaha, Counsel  
Mr. Rajeev Goyal, Counsel

*For M/s Siddhi Vinayak and  
Sons (OP-3)*

*For M/s Saraswati Sales Corporation (OP-4)* : Mr. Ashutosh Kumar, Legal Counsel  
Mr. Swarnil Dey, Legal Counsel



*For M/s Austere Systems Pvt. Ltd., Pune (OP-5)* : Mr. Avinash Sharma, Advocate  
Mr. Rahul Teni, Director

*For M/s Delicacy Continental Pvt. Ltd (OP-6)* : Mr. Tanmay Gupta, Advocate

*For M/s Fimo Infosolutions Private Limited (OP-7)* : Mr. Arpit Batra, Advocate

*For M/s Toyfort (OP-8)* : Mr. Parmanand, Advocate

*For M/s Chaitanya Business Outsourcing Pvt. Ltd. (OP-9)* : Mr. Prashant Mehta, Advocate

### **Order under Section 27 of the Competition Act, 2002**

#### **A. Background**

1. The present case arises out of a general complaint dated 07.08.2018 received by the Commission alleging bid-rigging in tenders invited by the Department of Agriculture, Government of Uttar Pradesh for soil sample testing. Soil sample testing is the analysis of a soil sample to determine its nutrient content, composition and other characteristics such as acidity and pH level.
2. The complaint pertained to alleged bid-rigging in respect of two e-tenders, namely, Tender 2018\_AGRUP\_210583\_1 (Moradabad) dated 31.05.2018 (“**Tender No. 1**”) and Tender 2018\_AGRUP\_212591\_1 (Bareilly) dated 18.06.2018 (“**Tender No. 2**”), invited for soil sample testing by the Department of Agriculture, Government of Uttar Pradesh. The details of the said tenders as provided in the complaint are as under:



सत्यमेव जयते



### Tender No. 1

S. No.	Bidder Name	Date and Time of Bid Submission	Bid Price (per sample) for 12 parameter soil sample analysis	Bid Price (per sample) for 6 parameter soil sample analysis	Status
1.	Yash Solutions	08.06.2018 01:38 PM	Rs. 144.50	Rs. 96.50	Bid accepted
2.	M/s Satish Kumar Agarwal	08.06.2018 05:02 PM	Rs.145.00	Rs. 97.00	Rejected
3.	M/s Siddhi Vinayak and Sons	08.06.2018 05:18 PM	Rs. 148.00	Rs. 98.00	Rejected
4.	M/s Saraswati Sales Corporation	08.06.2018 05:43 PM	Rs. 149.00	Rs. 98.00	Rejected
5.	M/s Lab Traders	11.06.2018 11:33 AM	Rejected in technical evaluation		
6.	Edward Food Research and Analysis Centre Limited	11.06.2018 12:42 AM	Rejected in technical evaluation		
7.	Atharva Laboratories Pvt. Ltd.	10.06.2018 07:10 PM	Rejected in technical evaluation		

### Tender No. 2

S. No	Bidder Name	Date and Time of Bid Submission	Particulars	Status
1.	Yash Solutions	07.06.2018 01:53PM	N/A*	Bid Accepted



सत्यमेव जयते



2.	M/s Siddhi Vinayak and Sons	14.06.2018 04:41PM	N/A*	Rejected
3.	M/s Satish Kumar Agarwal	14.06.2018 04:39PM	N/A*	Rejected
4.	M/s Newgen Computers	18.06.2018 12:43AM	Rejected in technical evaluation.	
5.	M/s Saraswati Sales	13.06.2018 02:51PM	Rejected in technical evaluation.	
6.	Lab Traders	17.06.2018 04:35PM	Rejected in technical evaluation.	
7.	Edward Food Research and Analysis Centre Ltd.	16.06.2018 09:03AM	Rejected in technical evaluation.	
8.	Austere System Private Ltd.	14.06.2018 08:13PM	Rejected in technical evaluation.	
9.	Atharva Laboratories Pvt. Ltd.	13.06.2018 04:59PM	Rejected in technical evaluation.	

*\*Rates quoted by the parties for this tender were not provided in the complaint.*

3. It was alleged in the complaint that the following participating bidders acted in a concerted manner in respect of Tender No. 1 and Tender No. 2 and resorted to bid-rigging in contravention of provisions of Section 3(1) read with Section 3(3)(d) of the Competition Act 2002 ('Act'):
  - a. Yash Solutions, Bareilly (Unit of Yash Ornaments Pvt. Ltd.) ("**Yash Solutions**"/OP-1)
  - b. M/s Satish Kumar Agarwal, Bareilly ("**M/s Satish Kumar**"/OP-2)
  - c. M/s Siddhi Vinayak & Sons, Bareilly ("**M/s Siddhi Vinayak**"/OP-3)
  - d. M/s Saraswati Sales Corporation, Bareilly ("**M/s Saraswati Sales**"/ OP-4)
  - e. Austere System Pvt. Ltd., New Delhi ("**Austere Systems**"/OP-5)
4. It was further alleged that there were numerous red flags in the documents submitted by the aforesaid entities for Tender No. 1 and Tender No. 2, but the tender inviting authorities preferred to ignore these aspects, which included the following:



सत्यमेव जयते



- (i) M/s Satish Kumar and M/s Siddhi Vinayak submitted copies of experience certificates (eligibility requirement in tender) which were issued by Yash Solutions on the same date. Also, M/s Saraswati Sales submitted a copy of an experience certificate issued by Austere Systems.
  - (ii) Audit reports submitted by M/s Satish Kumar and M/s Siddhi Vinayak were issued by a common auditor and indicated not only the identical date of issue but also same place of business of M/s Satish Kumar and M/s Siddhi Vinayak at Bareilly, Uttar Pradesh.
  - (iii) The term deposit receipts (for deposit of earnest money) and non-judicial stamp papers (for affidavits) furnished by both M/s Satish Kumar and M/s Siddhi Vinayak in their bids bore consecutive serial numbers.
5. It was stated in the complaint that Yash Solutions emerged as the successful bidder for the award of work for Tender No. 1 and Tender No. 2 for the regions Moradabad and Bareilly, respectively, in the year 2018-19. It was also stated in the complaint that in the previous year, *i.e.*, 2017-18, Yash Solutions was awarded tenders for soil testing for the regions of Bareilly and Moradabad, and Austere Systems was awarded tenders for the regions of Jhansi, Saharanpur and Meerut as a result of such collusive bidding.
  6. Based on the foregoing, it was alleged that the entities referred above rigged the tenders of soil testing in the state of Uttar Pradesh by indulging in cover bidding, bid rotation and collusive bidding.

**B. Prima facie consideration of the Commission**

7. Upon consideration of the complaint, the Commission noted that the audit reports furnished by M/s Satish Kumar and M/s Siddhi Vinayak indicated the same place of business. Further, the experience certificates furnished by M/s Satish Kumar and M/s Siddhi Vinayak (which were part of the bid documents) were issued by Yash



Solutions to them on the same date. The Commission further noted that the term deposit receipts submitted by M/s Satish Kumar and M/s Siddhi Vinayak as EMD for Tender No. 1 and Tender No. 2 bore consecutive serial numbers. Further, the non-judicial stamp papers used for filing affidavits along with bid documents filed by M/s Satish Kumar and M/s Siddhi Vinayak also bore consecutive serial numbers. The Commission also observed that Yash Solutions, M/s Satish Kumar and M/s Siddhi Vinayak were dealing with a common supplier *i.e.*, Thermo Fisher Scientific Pte. Ltd., under a common account, which indicated a nexus between them. Further, the tax invoices issued by Today Tech Solutions for lab consumables to Yash Solutions, M/s Siddhi Vinayak and M/s Satish Kumar were identical in each and every aspect and appeared to be forged by these entities to obtain technical eligibility for the tenders. The Commission also noted that Yash Solutions appeared to have sub-contracted the soil sampling work to M/s Satish Kumar and M/s Siddhi Vinayak and Austere Systems appeared to have sub-contracted the work awarded to it to M/s Saraswati Sales in various regions of Uttar Pradesh. The Commission also noted that M/s Satish Kumar and M/s Siddhi Vinayak indulged in cover bidding in Tender No. 1 and Tender No. 2 to let Yash Solutions emerge as L-1 in both the tenders. Further, it was observed that Yash Solutions emerged as successful bidder in the regions of Bareilly and Moradabad for the years 2017-18 and 2018-19, whereas Austere Systems appeared to have won tenders for the year 2017 for regions of Jhansi and Meerut and for the regions of Saharanpur and Meerut for the year 2018. Based on the above analysis, the Commission was of the *prima facie* view that, despite being competitors, these entities appeared to have manipulated the process of bidding in the soil testing tenders in the state of Uttar Pradesh by indulging in bid rigging, in contravention of provisions of Section 3(1) read with 3(3)(d) of the Act.

8. Accordingly, the Commission passed an order dated 30.01.2020 under Section 26(1) of the Act, directing the Director General (**DG**) to cause an investigation and submit the investigation report in the matter. The Commission also observed that if



सत्यमेव जयते



the DG came across anti-competitive conduct of any other entity in addition to those mentioned in the information, the DG would be at a liberty to investigate the same. The DG was also directed to investigate the role of the persons/officers who were in charge of and responsible for the conduct of the businesses of the parties at the time the alleged contravention was committed, as well as persons/officers with whose consent or connivance the alleged contravention was committed, in terms of the provisions of Section 48 of the Act.

9. The DG, pursuant to the directions of the Commission, investigated the matter, and after seeking due extensions of time, submitted the Investigation Report dated 08.04.2021.

**C. Findings of the investigation**

10. A summary of the findings of investigation is as under:
  - a. The investigation brought out details as regards nine tenders, namely, tenders of (i) 2017 and 2018 for Moradabad division, (ii) 2017 and 2018 for Bareilly division, (iii) 2017 for Jhansi division, (iv) 2018 for Saharanpur division, (v) 2017 and 2018 for Meerut division, and (vi) 2018 for Aligarh division.
  - b. As per the records submitted by the Department of Agriculture, Government of Uttar Pradesh, during the year 2017-2018, the contract for soil testing work was awarded to Yash Solutions on L-1 basis for Moradabad and Bareilly divisions, whereas the contract for Jhansi and Meerut divisions was awarded to Austere Systems.
  - c. For the year 2018-2019, the contract for soil testing work was awarded again to Yash Solutions for Moradabad, Bareilly and Aligarh divisions. With respect to Saharanpur and Meerut Divisions, the contract was awarded to Austere Systems.



सत्यमेव जयते



- d. The investigation revealed that Yash Solutions, M/s Satish Kumar, M/s Siddhi Vinayak, M/s Saraswati Sales and Austere Systems (the Opposite Parties as identified by the Commission at *prima facie* stage) as well as other parties/bidders, namely, Delicacy Continental Private Limited (“**Delicacy Continental**”), Fimo Info Solutions Pvt. Ltd. (“**Fimo Info Solutions**”), M/s Toyfort and Chaitanya Business Outsourcing Pvt. Ltd. (“**Chaitanya Business Outsourcing**”) indulged in cartelisation and bid-rigging in the 2017 and 2018 tenders pertaining to soil testing work issued by various divisions of the Department of Agriculture, Government of Uttar Pradesh.
- e. The investigation also brought out that Yash Solutions, in collusion with M/s Satish Kumar, M/s Siddhi Vinayak, M/s Saraswati Sales and Chaitanya Business Outsourcing, had rigged the bids and emerged as L-1 in soil testing tenders floated by the Department of Agriculture, Government of Uttar Pradesh, in Bareilly and Moradabad divisions in 2017 and Bareilly, Moradabad and Aligarh division in 2018.
- f. Austere Systems in collusion with Yash Solutions, Delicacy Continental, M/s Toyfort and Fimo Info Solutions, had rigged bids and emerged as the L-1 bidder in soil testing tenders floated by the Department of Agriculture, Government of Uttar Pradesh in Meerut and Jhansi divisions in the year 2017 as well as Saharanpur and Meerut division tenders in the year 2018.
- g. The investigation also brought out that Delicacy Continental, Fimo Info Solutions, M/s Toyfort and Chaitanya Business Outsourcing be added as Opposite Parties in the matter.
- h. With respect to M/s Satish Kumar and M/s Siddhi Vinayak, the investigation brought out that the said entities are sister concerns. Both entities are proprietorship concerns owned by Mr. Satish Kumar Agarwal and are engaged in the business of supplying vegetables and fruits. Both entities had bid for 2017 and 2018 soil testing tenders despite having no prior experience of soil





testing. Further, the said entities did not have any soil testing machine. M/s Satish Kumar and M/s Saraswati Sales, in collusion with Yash Solutions, used fake documents provided by Yash Solutions to become eligible and submit cover bids to support the bid of Yash Solutions. Both the entities were blacklisted by the Department of Agriculture, Government of Uttar Pradesh for two years in relation to the lack of authenticity of the documents submitted along with bids for soil testing tenders. However, the said decision was not appealed by the proprietor of the said entities.

- i. With respect to M/s Saraswati Sales, the investigation revealed that M/s Saraswati Sales, a proprietorship concern, was engaged in the business of electrical contract work for various agencies and had submitted bids in the soil testing tenders in the year 2018 for the Bareilly, Moradabad and Aligarh divisions, even though the proprietorship concern neither had prior soil testing experience nor any infrastructure for conducting soil testing. The investigation also brought out that M/s Saraswati Sales, in collusion with Yash Solutions, submitted cover bids using fake documents provided by Yash Solutions.
- j. The investigation also brought out that a common IP address was used for the submission of e-bids in respect of M/s Satish Kumar, M/s Siddhi Vinayak, M/s Saraswati Sales and Yash Solutions in the Moradabad tenders for the year 2018. Further, in the Bareilly tenders for the year 2018, the bids submitted by M/s Siddhi Vinayak, M/s Satish Kumar and Yash Solutions were submitted through a common IP address. The login ID used by M/s Siddhi Vinayak to submit the bids in the Bareilly and Moradabad tenders for the year 2018 also belonged to Yash Solutions.
- k. The investigation also revealed that Chaitanya Business Outsourcing, a group company of Yash Solutions, had also submitted cover bids in collusion with Yash Solutions in the Bareilly soil testing tenders for the year 2017.



सत्यमेव जयते



- l. Yash Solutions, having no prior experience of soil testing work, had submitted its bids, for various divisions and was awarded tenders in the Bareilly and Moradabad divisions in the year 2017 and Moradabad and Aligarh Divisions in the year 2018. The investigation concluded that Yash Solutions, in collusion with M/s Satish Kumar, M/s Siddhi Vinayak, M/s Saraswati Sales and Chaitanya Business Outsourcing, had rigged the bids in the years 2017 and 2018 issued by various divisions of the Department of Agriculture, Government of Uttar Pradesh.
- m. The investigation also found that Austere Systems, Fimo Info Solutions and M/s Toyfort, through cartelisation and collusion, rigged the bids of 2017 for Meerut and Jhansi divisions. Austere Systems and Fimo Info Solutions had prior business relationships and *inter se* shareholdings in each other. The investigation revealed that these three entities had no prior experience of soil testing before they submitted bids for the Jhansi and Meerut divisions for the year 2017. As per the DG, these entities did not even fulfil the terms and conditions of the said tender.
- n. Fimo Info Solutions and M/s Toyfort never purchased any soil testing machine or established any soil testing lab or any other infrastructure required for soil testing. The investigation also brought out that the proprietor of M/s Toyfort had submitted bids on behalf of Austere Systems in the Jhansi tender of 2017. The EMD in respect of Austere Systems and M/s Toyfort was submitted by a Director of the rival bidder Fimo Info Solutions from her husband's bank accounts. However, none of the Directors/Proprietors could submit any explanation for their conduct, which reaffirmed that, through collusion and concerted action, the said entities created a façade of competition and rigged bids in the 2017 Meerut and Jhansi soil testing tenders, with the common objective of ensuring that Austere Systems wins the said tenders.
- o. Investigation also brought out that Delicacy Continental, a company dealing in the rice exports, was engaged as a sub-contractor in soil testing work by



Austere Systems in the year 2017. The investigation revealed that Delicacy Continental, in collusion with Austere Systems had submitted cover bids in the 2018 tenders for Meerut and Saharanpur.

- p. It was also revealed in the investigation that Yash Solutions and Austere Systems, through an understanding/arrangement, had geographically allocated the divisions for soil testing tenders and either deliberately avoided bidding or submitted supporting bid documents in each other's regions/areas.
- q. In view of the foregoing, the investigation found Yash Solutions, M/s Satish Kumar, M/s Siddhi Vinayak, M/s Saraswati Sales, Austere Systems, Delicacy Continental, Fimo Info Solutions and M/s Toyfort and Chaitanya Business Outsourcing in contravention of provisions of Section 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act.
- r. The investigation also identified individual officials/officers of the Opposite Parties who are found to be responsible under Section 48 of the Act:
- i. Mr. Naresh Kumar Sharma, Proprietor, M/s Saraswati Sales;
  - ii. Mr. Satish Kumar Agarwal, Sole Proprietor, M/s Satish Kumar and *de facto* owner of M/s Siddhi Vinayak;
  - iii. Mr. Praveen Kumar Agarwal, Managing Director, Yash Solutions;
  - iv. Mr. Nitish Agarwal, Director, Chaitanya Business Outsourcing;
  - v. Mr. Ankur Kumar, Director, Delicacy Continental;
  - vi. Mr. Jai Kumar Gupta, Director, Fimo Info Solutions;
  - vii. Mr. Suresh Kumar Gupta, Proprietor, M/s Toyfort; and
  - viii. Mr. Rahul Gajanan Teni, Director, Austere Systems

**D. Consideration of the Investigation Report by the Commission**

11. The Commission considered the Investigation Report in its ordinary meeting held on 08.06.2021 and noted the findings of the DG that Yash Solutions, M/s Satish Kumar, M/s Siddhi Vinayak, M/s Saraswati Sales and Austere Systems along with



other entities, *viz.*, Delicacy Continental, Fimo Info Solutions, M/s Toyfort and Chaitanya Business Outsourcing indulged in cartelisation and bid rigging in the soil testing tenders floated by the Government of Uttar Pradesh in Moradabad, Bareilly Jhansi and Meerut divisions in the year 2017 and Bareilly, Moradabad, Meerut, Aligarh and Saharanpur divisions in the year 2018. Therefore, the Commission, while considering the role played by Delicacy Continental, Fimo Info Solutions, M/s Toyfort and Chaitanya Business Outsourcing as highlighted by the investigation, decided to add Delicacy Continental, Fimo Info Solutions, M/s Toyfort and Chaitanya Business Outsourcing as parties to the present proceedings and accordingly, they were arrayed as Opposite Party No. 6, Opposite Party No. 7, Opposite Party No. 8 and Opposite Party No. 9, respectively.

12. Further, the Commission decided to forward a copy of the Investigation Report in the electronic form to all the nine Opposite Parties named above and the persons/individuals of the Opposite Parties identified by the DG as being responsible under Section 48 of the Act for filing their respective objections/suggestions thereto latest by 16.07.2021. The Commission also directed the Opposite Parties to furnish copies of their audited balance sheets and profit & loss accounts/turnover for the last three financial years, *i.e.*, 2018-19, 2019-20 and 2020-21 latest by 16.07.2021. The persons/individuals named above were also directed to file their income details including copies of the income tax returns for the last 3 financial years, *i.e.*, 2018-19, 2019-20 and 2020-21. The Commission further decided to hear the parties on the Investigation Report on 05.08.2021.
13. Subsequently, M/s Saraswati Sales and Austere Systems filed separate applications each dated 15.07.2021, seeking extension of time to file their respective objections/comments to the Investigation Report stating difficulties in filing the same experienced due to the COVID-19 pandemic. On 20.07.2021, the Commission considered the above-mentioned applications and granted extension of time to the said parties and its persons/individuals to file their respective objections/suggestions to the Investigation Report latest by 20.08.2021. The rest of



the Opposite Parties and its individuals who had not filed their objection(s)/ suggestion(s) and/or income details were also directed to file the same, latest by 20.08.2021. The Commission further decided to hear the parties on the Investigation Report on 09.09.2021, and the earlier date fixed of 05.08.2021 was cancelled. *Vide* separate applications sent through e-mail, each dated 06.09.2021, Yash Solutions, M/s Satish Kumar and M/s Saraswati Sales sought extension of time to file their objections/suggestions to the Investigation Report.

14. On 08.09.2021, the Commission considered the above-mentioned applications and again granted extension of time to the said parties and their persons/individuals to file their respective objections/suggestions to the Investigation Report as well as copies of respective financial statements latest by 12.10.2021. The Commission further decided to hear the parties on the Investigation Report on 21.10.2021, and the earlier date fixed of 09.09.2021 was cancelled.
15. Thereafter, an application dated 11.10.2021 was received from Yash Solutions seeking extension of time by four weeks for filing its objections/suggestions to the Investigation Report. In the said application, Yash Solutions also requested inspection and certified copies of the documents on record such as CDRs, bids submitted, copies of invoices and the experience certificate which, according to the said Opposite Party, do not form part of the Investigation Report. An application dated 13.10.2021 was also received from M/s Satish Kumar and M/s Siddhi Vinayak seeking cross examination of the individuals of Yash Solutions, M/s Saraswati Sales and Chaitanya Business Outsourcing. In the said application, it was stated that the Investigation Report relied on the statements of various individuals of the said parties, which are contradictory to true facts.
16. On 21.10.2021, the Commission considered the said applications. The Commission again decided to grant extension of time to Yash Solutions and its individuals to file its respective objections/suggestions to the Investigation Report, latest by 12.11.2021.



17. With respect to the application seeking grant of an opportunity of cross-examination by M/s Satish Kumar and M/s Siddhi Vinayak of the individuals of Yash Solutions, M/s Saraswati Sales and Chaitanya Business Outsourcing, the Commission was of the view that M/s Satish Kumar and M/s Siddhi Vinayak were not able to demonstrate that the cross-examination of individuals of M/s Yash Solutions, M/s Saraswati Sales and Chaitanya Business Outsourcing prayed for in the application was 'necessary' or 'expedient' in the facts and circumstances as provided under CCI (General) Regulations, 2009. Accordingly, the Commission disallowed the said application. The Commission decided to hear the parties on the Investigation Report on 16.12.2021.
18. On 16.12.2021, the Commission heard the Parties and their individuals at length and decided to pass an appropriate order in due course. The Commission directed the Opposite Parties to file synopsis of their arguments along with their respective updated financial statements, latest by 23.12.2021. Written submissions on behalf of Yash Solutions, M/s Satish Kumar, M/s Siddhi Vinayak and Chaitanya Business Solutions were received *vide* e-mails dated 27.12.2021. Austere Systems filed its written submissions on 05.01.2022.

**E. Objections/ Submissions of Parties**

19. A summary of the replies/ objections/ written submissions to the Investigation Report filed by the Opposite Parties is as under:

**Yash Solutions**

20. In its objections, Yash Solutions stated that it has never indulged in acts of bid-rigging/ cartelisation in any manner whatsoever in relation to soil testing tenders of Moradabad, Bareilly and Aligarh divisions invited in 2017 and 2018 by the Government of Uttar Pradesh. Yash Solutions submitted that it is an MSME with modest operations and meagre turnover.



21. Yash Solutions has averred that the Department of Agriculture, Government of Uttar Pradesh cancelled tenders of 2018 awarded to it in relation to Bareilly, Moradabad and Aligarh divisions and blacklisted it *vide* its order dated 08.10.2018 due to similar complaints from other non-successful bidders, namely, EFRAC, which was quashed by the Hon'ble Allahabad High Court *vide* its order dated 22.05.2019. It has mainly averred that it was declared L-1 in only three out of five tenders floated by the Department of Agriculture, Government of Uttar Pradesh as it had offered the lowest price amongst all other bidders. It has averred that it had neither fixed the price by manipulation of bids of participants nor fixed the quantity to be supplied by the participants by forming a cartel as alleged. It has contended that the DG has wrongly found that Yash Solutions was responsible for rigging the soil testing tenders as floated by the UP government.
22. It has submitted that in the 2017 Bareilly tenders, none of the other Opposite Parties except Chaitanya Business Outsourcing, which is its sister concern, had participated, and filing of bids by both these companies, though related to each other, did not amount to bid-rigging as there was no condition in the tender that related parties could not file bids in their respective names. It further avers that its sister concern, Chaitanya Business Outsourcing did not participate in any of the tenders after the 2017 Bareilly tender. Insofar as the 2017 Moradabad tenders are concerned, it is submitted that, apart from Yash Solutions, M/s Satish Kumar and M/s Siddhi Vinayak and certain other bidders had participated; however, the said tender was awarded to it for being the L-1 bidder and that there was no reason for Yash Solutions to collude with other bidders, it being the bidder offering the lowest quote.
23. In relation to 2018 Moradabad, Bareilly and Aligarh tenders, Yash Solutions has submitted that those tenders were awarded to it for being the L-1 bidder and that, in relation to the Bareilly and Moradabad tenders, bidders other than the present Opposite Parties had also participated.



24. It has also been submitted that the invoices of Yash Solutions which were submitted by it for 2017 Bareilly and Moradabad Tenders were misused by M/s Satish Kumar, M/s Siddhi Vinayak and M/s Saraswati Sales in 2018 tenders without its consent and knowledge. It has also been submitted that Yash Solutions never issued any experience certificates to M/s Satish Kumar, M/s Siddhi Vinayak and M/s Saraswati Sales and that the same were procured and misused by them without their authorisation and knowledge.
25. In relation to the same IP address, Yash Solutions averred that there is no evidence on record to show that the IP address belonged to Yash Solutions or to any of the other Opposite Parties. As for the evidence in the form of CDR indicating telephonic conversations between Yash Solutions and other Opposite Parties, namely, M/s Satish Kumar, M/s Siddhi Vinayak and M/s Saraswati Sales, it has been submitted that they do not bear relevance for not being within the relevant timelines.
26. On the issue of higher bid quotes for Meerut and Saharanpur, Yash Solutions has submitted that they were higher owing to certain logistical reasons.
27. On the issue of penalty, it has been submitted that, in light of the decision of the Apex Court in the case of *Excel Crop Care Limited vs CCI and others (2017) 8 SCC 47*, wherein it was held that ‘turnover’ for the purpose of Section 27(b) is the ‘relevant turnover’ of a company which relates to the product in question in respect whereof the provisions of the Act are found to have been contravened, ‘relevant turnover’ and ‘relevant profit’ details of Yash Solutions may be considered for the purposes of calculation of penalty.

**M/s Satish Kumar and M/s Siddhi Vinayak**

28. M/s Satish Kumar and M/s Siddhi Vinayak, in their objections, stated that they discovered the business of soil testing for the first time only in 2017, when Yash Solutions had applied and was awarded the Bareilly tender for soil testing. For the





purpose of expansion into new projects, they decided to apply for the Moradabad tender in 2017. Mr. Rachit Agarwal, an employee of Yash Solutions who was well-versed in the process of applying for the tenders as well as related work involving soil testing, assured them that they would emerge as winners and will provide them the necessary assistance in carrying out the work of soil testing.

29. It has been submitted that the entire work such as providing the relevant documents, identity proofs, audit reports, *etc.*, relating to tenders of soil testing was undertaken by a team comprising Mr. Suraj Singh, Mr. Vivek Saxena and Mr. Anuj Sharma, who were employees of Yash Solutions, and that M/s Satish Kumar and M/s Siddhi Vinayak, had absolutely no role in the process of applying for the said tenders and were misled to believe that they would win those tenders. It has also been stated that the said tender was not awarded to either of them. As for the evidence in the form of CDR that showed the telephonic conversations of Yash Solutions with M/s Satish Kumar and M/s Siddhi Vinayak, it has been submitted that, as M/s Satish Kumar and M/s Siddhi Vinayak share business and family relations with Yash Solutions, they entered into telephonic conversations with Yash Solutions occasionally, and not for the purpose of engaging in any kind of manipulation or bid-rigging. On the issue of penalty, referring to the decision of the Hon'ble Apex Court in the case of *Excel Corp Limited vs. Competition Commission of India and others (2017) 8 SCC 47*, it has been averred that as the turnover to be calculated under Section 27 of the Act has to be the relevant turnover which relates to the product in question in respect whereof the provisions of the Act are found to be contravened, and as that they could not derive any income from soil testing as they were never involved in the business of soil testing they have nil income and nil turnover.

#### **M/s Saraswati Sales**

30. M/s Saraswati Sales, in its objections/ suggestions to the Investigation Report and during the course of hearing, has contended that M/s Saraswati Sales, unlike other parties under investigation in the instant case, is not engaged in identical/ similar



production of goods and services, *i.e.*, service of soil testing, and thus, would not fall under the same market or industry, leave alone attempt to eliminate or reduce competition and squeeze out competing bidders. It has also been submitted that there was no agreement, arrangement, understanding or action in concert in the instant case, and most importantly, there was no ‘meeting of mind’, which is a *sine qua non* for any agreement to assume validity. M/s Saraswati Sales has also contended that the DG has not only failed to point out any concrete evidence which establishes that there was any form of communication or exchanges of information with M/s Saraswati Sales and other bidders to rig bids in all the tenders under investigation but has also failed to show that M/s Saraswati Sales accepted any mutual rights and obligations or gained any commercial benefits by participating in the three tenders as mentioned above. In fact, the business proposal for submitting the bids for the tenders were in fact pitched to M/s Saraswati Sales by Mr. Praveen Kumar Agarwal. Mr. Praveen Kumar Agarwal was an old family friend and M/s Saraswati Sales had no intention of making any cover bid for anyone or to rig bids. Thus, it has been submitted that Section 3(3)(d) has no applicability *qua* M/s Saraswati Sales. Further, M/s Sarawati Sales has prayed for striking off its name as Opposite Party and with a request to not hold Mr. Sharma personally liable under Section 48 of the Act.

### **Chaitanya Business Outsourcing**

31. Chaitanya Business Outsourcing has submitted that it has not indulged in the alleged bid rigging in any manner whatsoever with respect to any of the soil testing tenders as floated in the year 2017 and 2018 and more particularly in respect of the 2017 Bareilly and Moradabad tenders and 2018 Bareilly, Moradabad and Aligarh tenders.
32. It has submitted that it had no role in bid rigging with respect to the aforementioned tenders as it neither participated in any of the tenders after the 2017 Bareilly tender nor did it collude with any other OPs with respect to the soil testing tenders floated by the Department of Agriculture, Uttar Pradesh. It has further submitted that it



only participated in 2017 Bareilly tender and, on not qualifying, it did not participate in any other tenders floated by the Department of Agriculture, U.P.

33. It has averred that no case of bid rigging can remotely be made out against it in as much as it has not indulged in any incriminating conducts like using the same invoices, submission of tender from same IP address, submission of tender from same Login ID, *etc.*
34. On the issue of penalty, it has submitted that it never participated in any of the soil testing tenders, therefore, there is neither any profit nor any revenue from any alleged bid rigging. It has submitted that, given the fact that it did not earn any profit or revenue for the relevant period/ the relevant market, no penalty be imposed on it. Moreover, it is also registered as an MSME and, therefore, a lenient view may be taken while imposing penalty, if any.

#### **Austere Systems**

35. It has been submitted that Austere Systems cannot be said to be a member of cartel and the DG failed to appreciate that neither the prices nor output is fixed or jointly controlled nor is the market jointly fixed. The investigation concluded that Austere Systems in collusion with Yash Solutions, Delicacy Continental, M/s Toyfort and Fimo Info Solutions emerged as L-1 in the 2017 Meerut and Jhansi tenders. In this regard, it has been submitted that Austere Systems, Fimo Info Solutions and M/s Toyfort had no experience of soil testing work prior to the submissions of their bids in the soil testing tenders of Jhansi and Meerut in 2017. It has been further averred that if Austere Systems did not qualify for tenders, the DG during investigation should have made Austere Systems confront with the officials of the Department of Agriculture, Government of Uttar Pradesh, so that it could have cross examined the officials as to how tenders were awarded to Austere when it did not qualify. It has been submitted that the DG has not been able to establish/ demonstrate a meeting of minds between Austere Systems, Yash Solutions, Delicacy Continental and M/s Toyfort. It has been submitted that the DG tried to establish its case simply on



account of the fact that Austere Systems, Fimo Info Solutions and M/s Toyfort are connected with each other through family relations.

### **Fimo Info Solutions**

36. It has been submitted by Fimo Info Solutions that the DG failed to appreciate that neither the prices nor output is fixed or jointly controlled nor is the market jointly fixed. It has also been submitted that Fimo Info Solutions participated in the tender of 2017 for Meerut and Jhansi regions and remained unsuccessful. It did not participate in other tenders, which does not *ipso facto* mean that there was some coordination between Fimo Info Solutions and other bidders. Further, there is no cogent evidence to indicate any coordination between Fimo Info Solutions and other bidders. It has been submitted that Ms. Esha Gupta was never a Director of Fimo Info Solutions; she acted merely as an authorised signatory and has never been part of the decision-making process.

### **M/s Toyfort**

37. M/s Toyfort has submitted that the DG failed to appreciate that if neither the prices are getting jointly fixed nor is the output is being jointly controlled, nor the market consciously shared, nor any bid being rigged through the practice, then M/s Toyfort cannot be said to be a member of a cartel hence Section 3(3)(c) and (d) read with section 3(1) of the Act are not attracted in so far as M/s Toyfort is concerned. In the tender for the 2017 Meerut and Jhansi divisions, M/s Toyfort remained unsuccessful in view of tough competition and limited resources in terms of both financial and technical expertise. M/s Toyfort, in its own business wisdom, decided not to further engage/ bid in other tenders which might have been floated by the Department of Agriculture, Government of Uttar Pradesh. Merely because M/s Toyfort participated in two tenders and did not participate in other tenders, it cannot be construed that M/s Toyfort was part of an alleged cartel, if any. It has been submitted that the DG is not able to demonstrate with any cogent evidence, either directly/ indirectly, any coordination between M/s Toyfort and other bidders in any other divisions in U. P. Merely because Austere Systems, M/s Toyfort and Fimo



Info Solutions have family relations, that does not *ipso facto* disqualify them to carry their own respective businesses independently and place bid separately. The finding of investigation that the proprietor of M/s Toyfort has submitted bids on behalf of rival bidder Austere Systems for the tender of 2017 in Jhansi and the fact that EMD in respect of Austere Systems and M/s Toyfort in the tender of 2017 for Meerut was submitted by a Director of a rival bidder, Fimo Info Solutions from her husband's account is highly erroneous and misleading. It has been submitted that EMD with respect to M/s Toyfort was prepared by Shikhir Gupta (son of Mr. Jai Kumar Gupta, the brother in law of Mr. Suresh Kumar Gupta, proprietor of M/s Toyfort). Merely because of the fact that the EMD was prepared by a close relative does not mean that there was any coordination or connivance between Toyfort and other competitors. As for M/s Toyfort, Mr. Suresh Kumar Gupta who is the sole proprietor of the concern, has been solely responsible for its day-to-day functioning.

### **Delicacy Continental**

38. In its objections and suggestions, Delicacy Continental has averred that most of the conclusions in the DG report *qua* them are erroneous and misleading. Submissions as filed by Delicacy Continental are similar to those of Austere Systems, M/s Toyfort and Fimo Info Solutions. It has averred that it remained unsuccessful in the tenders of 2018 for the Meerut and Saharanpur divisions and did not participate in other tenders floated elsewhere which, *ipso facto*, does not imply that there was some coordination/connivance with other bidders. It has contended that the DG has not been able to demonstrate with any cogent evidence, either directly or indirectly, any coordination between Delicacy Continental and other successful bidders in any of the divisions in the State of Uttar Pradesh, and the DG has erroneously concluded that Austere Systems in collusion with Yash Solutions, Delicacy Continental, Fimo Infosolutions and M/s Toyfort had rigged bids to emerge as L-1 in the 2017 tenders for the Meerut and Jhansi divisions. It has further contended that the DG has not been able to demonstrate, even remotely, that there was any



meeting of mind, conspiracy to gather undue market power or intent to fix prices/ limit output between various unconnected and competing enterprises. It has also submitted that, simply because Delicacy Continental shares some business relations with Austere Systems, that does not *ipso facto* disqualify it to carry its own business independently and place bids separately.

**F. Analysis of the Commission**

39. The Commission has carefully perused the Investigation Report, the objections/ suggestions thereto received from the Opposite Parties and the respective submissions made by the Opposite Parties during the hearing held on 16.12.2021 and the written submissions filed subsequent to such hearing.
40. The issues which require consideration in the present matter are as under:

*Issue 1: Whether the Opposite Parties have directly or indirectly rigged/ manipulated the tenders of soil testing issued by the Department of Agriculture, Government of Uttar Pradesh, in various regions for the year 2017 and 2018, by indulging in bid rigging, collusive bidding and sharing of market, resulting in contravention of provisions of Section 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act.*

*Issue 2: If the Opposite Parties are found to have contravened the provisions of Sections 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act, then who are the persons in charge thereof and responsible for the conduct of business of the respective enterprises under Section 48 of the Act?*

41. As discussed above, the investigation concluded that Yash Solutions, in collusion with M/s Satish Kumar, M/s Siddhi Vinayak, M/s Saraswati Sales and Chaitanya Business Outsourcing, had rigged the bids in the soil testing tenders in the year 2017 and 2018 for Aligarh, Moradabad and Bareilly divisions issued by the Department of Agriculture, Government of Uttar Pradesh. The investigation also



found that Austere Systems, Fimo Info Solutions and M/s Toyfort, through cartelisation and collusion, *inter se*, rigged the bids of 2017 soil testing tenders of Meerut and Jhansi divisions. It was also brought out by the investigation that Delicacy Continental, in collusion with Austere Systems, had submitted cover bids in the 2018 tenders for Meerut and Saharanpur divisions. It was also brought out by the investigation that Yash Solutions and Austere Systems, through an understanding/ arrangement between them, had geographically allocated the soil testing tenders and either deliberately avoided bidding or submitted supporting bid documents in each other's regions/ areas. Accordingly, the investigation observed that the said entities are indulged in bid rigging in contravention of the provisions of Section 3(3) of the Act.

42. The said Opposite Parties have refuted the findings of the investigation and stated that there exists no cogent or concrete evidence against them to be liable for contravention of the provisions of the Act.

**Issue 1: Whether the Opposite Parties have directly or indirectly rigged/ manipulated the tenders of soil testing issued by the Department of Agriculture, Government of Uttar Pradesh, in various regions for the year 2017 and 2018, by indulging in bid rigging, collusive bidding and sharing of market, resulting in contravention of provisions of Section 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act.**

43. For the sake of brevity, the analysis of the first issue in the present case is being carried out by grouping the Opposite Parties in sets, as under:
- a) Set 1: Yash Solutions, M/s Saraswati Sales, M/s Satish Kumar, M/s Siddhi Vinayak and Chaitanya Business Outsourcing;
  - b) Set 2: Austere Systems, M/s Toyfort, Fimo Info Solutions and Delicacy Continental; and
  - c) Set 3: Austere Systems and Yash Solutions.



***Set 1: Yash Solutions, M/s Saraswati Sales, M/s Satish Kumar, M/s Siddhi Vinayak and Chaitanya Business Outsourcing***

44. In order to analyse the allegations of bid rigging and collusion against the first set of Opposite Parties, it is imperative to discuss the activities of the said parties as well as their key personnel.
45. **Yash Solutions:** Yash Solutions, a unit of Yash Ornaments Private Limited is based in Bareilly, Uttar Pradesh, and is engaged in jewellery-related work, manpower recruitment agency and business auxiliary services. Mr. Praveen Kumar Agarwal and Ms. Komal Agarwal (W/o Mr. Praveen Kumar Agarwal) are its directors. Mr. Nitish Agarwal, who is the Director of Chaitanya Business Outsourcing, is the CEO of Yash Solutions. It may be noted that Yash Solutions did not have any experience of soil testing before submitting the bids in response to the tender of 2017.
46. **M/s Satish Kumar:** It is a sole proprietorship concern based in Bareilly and stated to be engaged in the retail and wholesale business of food articles such as cereals, milk products, vegetables, *etc.* Mr. Satish Kumar Agarwal is the proprietor. It may be noted that M/s Satish Kumar had no experience in soil testing work and it has neither any soil testing lab nor any soil testing machine.
47. **M/s Siddhi Vinayak:** It is a sole proprietorship concern based in Bareilly and is engaged in the retail and wholesale business of food articles such as prepared food items, cereals, vegetables, *etc.* Ms. Sangeeta Agarwal, w/o Mr. Satish Kumar Agarwal, is the proprietor of the said entity. It may be noted that M/s Siddhi Vinayak had no experience of soil testing work and neither it has any soil testing lab nor did it purchase any soil testing machine.
48. **M/s Saraswati Sales:** It is a sole proprietorship concern and is engaged in works contract services. It is stated to be registered as a 'Category A' contractor for electrical works with the Bareilly Vikas Pradhikaran. Mr. Naresh Kumar Sharma is





the proprietor of the concern. It is pertinent to note that the said concern neither had any infrastructure for soil testing nor did it purchase any soil testing machine.

49. **Chaitanya Business Outsourcing:** It is a group company of Yash Solutions and is engaged in e-governance work such as the preparation of PAN card, NPS data, *etc.* Mr. Nitish Agarwal, who is the CEO of Yash Solutions, is also the Director of Chaitanya Business Outsourcing. The other directors of the company are Ms. Komal Agarwal, w/o Mr. Praveen Kumar Agarwal, who is Managing Director of Yash Solutions and Ms. Vasu Agarwal, w/o Mr. Nitish Agarwal, who is CEO of Yash Solutions. It is observed that the company did not have any soil testing work experience prior to the issuance of soil testing tenders in 2017.

**Participation of the said parties in soil testing tenders and analysis of allegations of bid-rigging and cartelisation**

50. Yash Solutions had submitted its bids in the soil testing tenders of the Department of Agriculture, Government of Uttar Pradesh for the Moradabad and Bareilly divisions in the year 2017 and Bareilly, Moradabad, Jhansi, Saharanpur, Meerut and Aligarh divisions in the year 2018. The financial bids for the Jhansi division in 2018 were not opened, and the tenders were cancelled. Yash Solutions had won contracts in the tenders of 2017 for Bareilly and Moradabad divisions and tenders of 2018 for Bareilly, Moradabad and Aligarh divisions.
51. In his statement before the DG, Mr. Praveen Kumar Agarwal submitted that there were very few companies operating in the soil testing business in 2017, and thus, he decided to submit separate bids on behalf of both his group companies, namely, Yash Solutions and Chaitanya Business Outsourcing in the 2017 tender for Bareilly Division with a view to show competition. The relevant extract from his statement recorded before the DG is as under:



*“Q. 55. When M/s Chaitanya Business Outsourcing is your sister concern having common Director/Employees, why two separate bids were submitted by related firms in the 2017 Bareilly tenders?”*

*A. 55. As in 2017 very few companies were operative in soil testing business that is why we decided to submit separate bids on behalf of both these companies just to show competition in the soil testing market. Although I was fully aware that the bid of M/s. Chaitanya Business Outsourcing will be rejected on the technical grounds.”*

52. Chaitanya Business Outsourcing had submitted bids only in the 2017 tender for Bareilly division. It may be noted that Mr. Nitish Agarwal, Director of Chaitanya Business Outsourcing, had also submitted that the reason for participation in the soil testing tenders of Bareilly division in 2017 was that as there were few companies present in the business of soil testing, therefore they had submitted their bid with their group company, Yash Solutions, due to apprehension that the tenders for soil testing may get cancelled due to lack of bids. The relevant extract from his statement recorded before the DG is as under:

*“Q. 5. Has your Firm ever bid in any tenders for Soil Testing floated by Govt. of UP? If yes, please provide details?”*

*A. 5. Yes, my firm M/s Chaitanya Business Outsourcing Pvt. Ltd had participated in the tenders for Bareilly division in 2017, as very few companies were present in the business of soil testing. Hence, we had submitted our bids along with M/s Yash Solutions, as we were apprehensive that tender may be cancelled due to lack of bids. However, my company had been disqualified on technical basis in the said tender. Further, in 2018 only M/s Yash Solution had submitted bids, as in 2017 tenders M/s Yash had got the contract being the L-1 party. Therefore, M/s Chaitanya Business had not participated in any future tenders as both were group companies.”*

53. From the above statement, it is clear that Mr. Nitish Agarwal had stated that Chaitanya Business Outsourcing had not participated in any future tenders since Yash Solutions, its group company, had already got the contract in 2017 in the soil testing tender. Further, Mr. Nitish Agarwal had submitted that his company neither had any soil testing lab nor any soil testing machine. The Commission notes, as brought out by the investigation, that Chaitanya Business Outsourcing had also



submitted a false undertaking to the Department of Agriculture, Government of Uttar Pradesh, of having established a soil testing lab. The Commission also noted that Mr. Nitish Agarwal is also the CEO of Yash Solutions and that he was the authorised signatory for Yash Solutions and had submitted bids in the tenders of 2017 for Moradabad and Bareilly divisions as well as Bareilly, Moradabad, Meerut and Aligarh in relation to the tenders of 2018. Accordingly, the Commission observes that Mr. Nitish Agarwal had submitted cover bids (on behalf of Chaitanya Business Outsourcing) in the 2017 tender for Bareilly division in support of its group company, Yash Solutions, to ensure that the tender did not get cancelled due to lack of bids and thus, manipulated the process of bid rigging by eliminating/reducing competition and that both the Opposite Parties could not bring forth any cogent reasons refuting the findings of the investigation in this regard either in their objections/suggestions to the investigation or during the course of hearing or in subsequent submissions. The relevant extract from the statement of Mr. Nitish Kumar Agarwal recorded before the DG is as under:

*“Q. 6. Did your firm purchase soil testing machine before submission of bids in 2017 tenders?”*

*A. 6. No machine was purchased by M/s Chaitanya Business Outsourcing (CBO).*

*Q. 7. Did you or your Firm had any experience in soil testing work when you had bid in the Soil testing tenders of UP Government during 2017?*

*A. 7. No prior soil testing work experience.*

*Q. 8. Did your firm fulfil the technical eligibility criteria in the said tenders, when you had no prior soil testing experience*

*A. 8. No.*

*Q. 9. Where was your company’s soil testing Lab situated?*

*A. 9. There was no Lab*

*Q. 11. I am showing you the “Undertaking” dated 01.08.2017 submitted by your Firm to the Department during the tender process for having established a lab for soil testing in Bareilly (Exhibit - 1). Why you submitted the said Undertaking when you had no Lab?*

*A. 11. I do not know.*



*Q. 12. When your firm did not have any Machine or Lab, why did you submit a false Undertaking?*

*A. 12. I do not know*

*Q. 14. You were Director in M/s Chaitanya Business Outsourcing Pvt. Ltd as well as CEO & Authorised Signatory of M/s Yash Solutions, in the 2017 and 2018 soil testing Tenders. How you were holding positions in two rival firms at the same time, which are submitting bids in a Public Procurement tender?*

*A. 14. I was the founder director of CBO since 2013 and CEO of M/s Yash Ornaments since 2016.”*

54. The Commission further notes that even though the 2017 soil testing tenders for Bareilly and Moradabad divisions did not prescribe any prior soil testing experience, the 2018 soil testing tenders for Bareilly, Moradabad and Aligarh divisions had prescribed prior experience of analysing 50,000 soil samples. The eligibility conditions in the said tenders also required the bidders to conduct tests on an ICP-OES soil testing machine.
55. The Commission notes that M/s Satish Kumar had submitted its bids in the soil testing tenders of 2017 for Moradabad division. It had also submitted bids in the 2018 tenders for the Bareilly, Moradabad and Aligarh divisions. M/s Satish Kumar had also submitted bids in the soil testing tenders of 2017 and 2018 for M/s Siddhi Vinayak. Ms. Sangeeta Agarwal, in her deposition before the DG, stated that her husband, Mr. Satish Kumar Agarwal, manages the affairs of her concern, M/s Siddhi Vinayak, including tender-related work and her role was only to sign the documents on behalf of the concern, as she was the sole proprietor of the said concern. She stated that she was an ostensible owner of M/s Siddhi Vinayak, and all the decisions were taken by her husband, Mr. Satish Kumar Agarwal, he being the *de facto* proprietor of the both the concerns.
56. The Commission also notes that the investigation revealed that M/s Satish Kumar and M/s Siddhi Vinayak submitted experience certificates of soil testing work



issued by rival entity in the tender, the same being Yash Solutions, despite admitting before the DG that both his concerns had no experience of soil testing work nor did they have any soil testing lab or any soil testing machine. The Commission notes that Mr. Satish Kumar Agarwal could not come forth with any justification as to why such false certificates were issued by Yash Solutions to the above concerns. The Commission also notes that the experience certificates issued by Yash Solutions to M/s Satish Kumar and M/s Siddhi Vinayak bore the same date and were issued despite the fact that those entities never had any soil testing experience or experience of working on ICP-OES machine, and these were fake. The relevant extract from the statement of Mr. Satish Kumar Agarwal recorded before the DG is as under:

*“Q. 6. Please explain your understanding of Government’s Soil testing Program?”*

*A. 6. No, I was not aware about the soil testing program as it was newly launched.*

*Q. 7. Do you or your Firm have any experience in soil testing work?”*

*A. 7. No, either of my firms have no any experience in soil testing.*

*Q. 12. Has either of your Firm ever bid in any tenders for Soil Testing floated by Department of Agriculture, Govt. of UP? If yes, please provide details.*

*A. 12. Yes, I had bid in the name of M/s Satish Kumar Aggarwal and another tender in the name of my other firm namely M/s Siddhi Vinayak & Sons which is registered in the name of my wife Mrs. Sangeeta Agarwal.*

*Q. 40. I am showing you the copy of “Work Orders” submitted in the Bareilly & Moradabad tenders (Exhibit- 25 and 26) issued by M/s Yash Solutions another bidder in the said tenders, to your firm namely M/s Satish Kumar Agarwal for conducting 50,000-55,000 soil samples and also to M/s Siddhi Vinayak & Sons (Exhibit-27 & 28) for conducting 50,000 to 60,000 soil samples for Bareilly and Moradabad divisions.*

*A. 40. Yes, I have seen it.*

*Q. 41. I am showing you the “Experience Certificates” dated 02.11.2017 and 05.12.2017 issued by M/s Yash Solutions in favour of your Firm Satish Kumar Agarwal (Exhibit- 29, 30 & 31) which was submitted by your firm in the Moradabad, Bareilly & Aligarh tenders. Why the aforesaid fake “Work Orders” & “Experience Certificates” for conducting Soil Sample testing were issued to both of*



your firms namely M/s Satish Kumar Agarwal and M/s Siddhi Vinayak & Sons (Exhibit- 32 & 33) by Yash Solutions?

A. 41. I have nothing to say.

Q. 42. M/s Yash Solutions have certified that your Firm had conducted 52000 sample tests for them. How did your Firm receive this work as a sub-contract from M/s Yash Solutions as the original contract for 2017 was allotted by Department of Agriculture, Govt. of UP to M/s Yash Solutions?

A. 42. I do not know.

Q. 43. How did your Firm conduct those sample tests in absence of any soil testing machinery or Lab required for the work?

A. 43. I have nothing to say.

Q. 44. Why M/s Yash Solutions Pvt. Ltd. issued a false "Experience Certificate" dated 05.12.2017 in favour of your Firm?

A. 44. I do not know."

57. The Commission also notes that Mr. Praveen Kumar Agarwal in his statement before the DG admitted that fake work orders and experience certificates were issued by Yash Solutions to rival bidders M/s Satish Kumar and M/s Siddhi Vinayak in the 2018 soil testing tenders for Aligarh, Bareilly and Moradabad divisions. However, Mr. Praveen Kumar Agarwal submitted in his deposition that he did not know why such fake experience certificates and work orders were issued by his company to rival bidders. Mr. Praveen Kumar Agarwal, in his statement, could not come up with any cogent explanation for issuing such fake certificates and work orders. The relevant extracts from the statement of Mr. Praveen Kumar Agarwal recorded before the DG are as under:

"Q. 21. I am showing you the Work Order dated 02.11.2017 & "Experience Certificate" dated 05.12.2017 issued by your company M/s Yash Solutions to M/s Siddhi Vinayak & Sons for analyzing 55,300 soil samples for your company [Exhibit – 4 (6 pages)] which was submitted by the said firm in the tenders of Aligarh, Bareilly and Moradabad in the year 2018.

A. 21. Yes, the said orders and experience certificate were issued by my company.

Q. 22. I am showing you the Work Order dated 02.11.2017 & "Experience Certificate" dated 05.12.2017 issued by your company M/s Yash Solutions to M/s



*Satish Kumar Agarwal for analyzing 52,000 soil samples for your company [Exhibit – 5 (6 pages)] which was submitted by the said firm in the tenders of Aligarh, Bareilly and Moradabad in the year 2018.*

A. 22. *Yes, the said orders and experience certificate were issued by my company.*

Q. 23. *Why did you sublet the work of Soil testing to the aforesaid firms?*

A. 23. *I do not know.*

Q. 24. *Before giving sub-contract to M/s Siddhi Vinayak & Sons and M/s Satish Kumar Agarwal, did you ever visited their soil testing labs to ensure if they have all the necessary infrastructure such as Machine, and trained manpower to conduct the Soil Samples testing?*

A. 24. *No.*

Q. 25. *Where is/was their soil testing labs situated?*

A. 25. *I do not know.*

Q. 26. *Did your Firm entered into any agreement or MoU with M/s Siddhi Vinayak & Sons and M/s Satish Kumar Agarwal, for carrying out the soil testing work for your Firm?*

A. 26. *I do not know.*

Q. 27. *I am showing you the relevant extracts of the statement dated 12.01.2021 i.e Q. 18, 19 & 22 (Exhibit – 6), submitted by Sh. Satish Kumar Agarwal, Proprietor of M/s Satish Kumar Agarwal.*

A. 27. *Yes, I have seen.*

Q. 28. *In view of the above said statement on oath by Sh. Satish Kumar Agarwal it is clear that your Firm had issued fake “Experience Certificates” to M/s Satish Kumar Agarwal and M/s Siddhi Vinayak & Sons for conducting soil sample tests for your Firm. Why did your firm issue fake certificate to both the said firms?*

A. 28. *I do not know why such fake experience certificate and work orders were issued to both these firms. However, I have no justification for issuing such fake certificates to my rival bidders.”*

58. The Commission further notes that Mr. Satish Kumar Agarwal had submitted invoices for the purchase of soil testing machine, i.e., ICP-OES machine, with identical account number and serial number of the invoices submitted by other bidders such as Yash Solutions, M/s Siddhi Vinayak and M/s Saraswati Sales in the soil testing tenders. However, Mr. Satish Kumar Agarwal was persistently evasive with replies of “*I do not know*” and came up with no explanation as to how the



invoices bore identical accounts and serial numbers and who arranged the said invoices, which the Commission finds highly improbable. The Commission also notes that M/s Satish Kumar Agarwal had submitted invoices for the purchase of lab consumables related to soil testing, issued by M/s Today Tech Scientific Solutions, Ambala Cantt, with exactly the same number of items, amount and time mentioned therein, as other invoices furnished by other bidders namely, Yash Solutions and M/s Siddhi Vinayak, which again the Commission finds highly improbable and inconceivable. Mr. Satish Kumar Agarwal, in his statement before the DG, admitted that the said invoices were fake/ altered; however, he evasively replied “*I do not know*” when questioned as to who provided the said invoices and for what purpose. The relevant extracts from the statement of Mr. Satish Kumar Agarwal recorded before the DG are as under:

*“Q. 22. Did you Purchase any Soil testing Machine (ICP-OES) for analysing soil samples?”*

*A. 22. Both my firms namely M/s Satish Kumar Aggarwal and M/s Siddhi Vinayak & Sons had never purchased any Soil testing Machine (ICP-OES) that is before or after submitting the bids in soil testing tenders during 2017 and 2018.*

*Q. 23. I am showing you the Commercial Invoices for purchase of the ICP-OES machine by your firm Satish Kumar Agarwal (Exhibit- 10 and 11). The same were submitted by your firm during the soil testing tenders for Bareilly & Moradabad divisions.*

*A. 23. I do not remember.*

*Q. 24. Were the aforesaid Commercial Invoices issued by the seller to your firm?*

*A. 24. I do not know.*

*Q. 25. How is the said Invoice submitted by you in the Bareilly Moradabad tenders are having common Account Number 1532236 and Serial Number IC74DC173313 for Your firm & the Invoice of Siddhi Vinayak & Sons (Exhibit - 13 & 14)?*

*A. 25. I do not know.*

*Q. 26. How is the said Invoice submitted by you in the Moradabad tenders is having same Account Number 1532236 and Serial Number IC74DC173313 for Your firm & the Invoice of Saraswati Sales Corporation submitted in the Bareilly & Moradabad tenders (Exhibit-15 &16)?*





A. 26. *I do not know.*

Q. 27. *How is the said Invoice submitted by you in the Moradabad tenders are having same Account Number 1532236 and Serial Number IC74DC173313 for Your firm & the Invoice of M/s Yash Solutions Pvt Ltd submitted in the Bareilly & Moradabad tenders (Exhibit-17 & 18)?*

A. 27. *I do not know.*

Q. 30. *I am showing the letter received from M/s Thermo Fisher Scientific India Private Limited confirming that no sale of any ICP-OES machine was made to either to M/s Satish Kumar Aggarwal and M/s Siddhi Vinayak & Sons (Exhibit-19). Why did you submit fake invoices for said machine in the tenders of soil testing in Moradabad and Bareilly Divisions during 2018?*

A. 30. *I had submitted the said fake invoices with an intention to service the contract if it was awarded to my firms.*

Q. 31. *I am showing you the Invoice bearing no. 7000 dated 01.07.2017 raised by M/s Today Tech Scientific Solutions, Ambala Cantt in favour of your Firm M/s Satish Kumar Agarwal for purchase of certain items, which was submitted by your Firm to the Department of Agriculture, Govt. of UP, during the tendering process in the year 2018-19 for Bareilly and Moradabad divisions (Exhibit-20,21).*

A. 31. *Yes, I have seen it.*

Q. 32. *Why were the aforesaid items procured by your firm?*

A. 32. *I do not know.*

Q. 33. *Were the aforesaid Commercial Invoices issued by the seller to your firm?*

A. 33. *Yes.*

Q. 34. *How is the invoice submitted by your firm and that of M/s Yash Ornaments (Exhibit- 11) having same time i.e. 02:37PM?*

A. 34. *I do not know.*

Q. 35. *How is the invoice submitted by your firm and that submitted by M/s Siddhi Vinayak & Sons in the Bareilly & Moradabad tenders (Exhibit- 22 & 23) having same time i.e.02:37PM?*

A. 35. *I do not know.*

Q. 36. *Who provided the said Invoices to you and why?*

A. 36. *I do not know.*



*Q. 37. I am showing you the letter by Dy. Excise & Taxation Commissioner(ST) dated 30.06.2020 (Exhibits- 24) confirming that against the above said invoices raised by M/s Today Tech Scientific Solutions, Ambala Cantt in favour of both your firms namely M/s Satish Kumar Agarwal and M/s Siddhi Vinayak & Sons for purchase of certain items, that no sales were made to both your aforesaid firms.*

*A. 37. Yes, I have seen it.*

*Q. 38. Why were the said Invoices submitted after alteration in the bids of Soil testing tenders issued by the Uttar Pradesh Agriculture department?*

*A. 38. Yes, it was a mistake on my part to submit fake documents/invoices.*

*Q. 39. When your firm did not have any Machine or Lab, why did you submit a false Undertaking?*

*A. 39. It was a mistake on my part to submit such fake documents in the soil testing tenders.”*

59. Further, the Commission also notes that M/s Saraswati Sales, which had no experience, infrastructure such as soil testing machine and manpower for conducting soil testing work, had participated in the soil testing tenders of 2018 for Bareilly, Moradabad and Aligarh divisions and had also submitted fake invoices for the purchase of ICP-OES soil testing machine in the soil testing tenders of 2018 for which the Commission has already recorded its view in the preceding paragraphs. The Commission also heeds the fact that Mr. Naresh Kumar Sharma of M/s Saraswati Sales, in his statement before the DG, admitted that the said invoices were arranged by Mr. Praveen Kumar Agarwal of Yash Solutions, and that Mr. Praveen Kumar Agarwal in his statement agreed with the aforesaid statement of Mr. Naresh Kumar Sharma. The relevant extracts from the statements of Mr. Naresh Kumar Sharma and Mr. Praveen Kumar Agarwal are as under:

***Extract from the statement of Mr. Naresh Sharma of M/s Saraswati Sales:***

*“Q. 10. How did you procure Invoices for purchasing of ICP-OPs machine which is used for soil testing as shown in (Exhibits – 5 & 6 above)?*

*A. 10. The said invoices were arranged by Sh. Praveen Agarwal and I have no knowledge from where the said invoices were arranged.”*



***Extract from the statement of Mr. Praveen Kumar Agarwal of Yash Solutions***

*“Q. 35. I am also showing you the relevant extracts of the statement dated 29.12.2021 i.e Question no. 10, of Sh Naresh Kumar Sharma., Sole Proprietor of M/s Saraswati Sales Corporation Bareilly (Exhibit - 14). Please submit your comments.*

*A. 35. Yes, I have seen. I agree whatever Sh. Naresh Sharma has submitted in his statement.*

*Q. 36. Why and how did you supply the Invoice for purchase of ICP-OES Machine to Saraswati Sales Corporation?*

*A. 36. No comments.”*

60. The Commission further notes the fact that Mr. Naresh Kumar Sharma, on being questioned as to why he bid for the tenders, stated that he submitted the bids on the request of Mr. Praveen Kumar Agarwal of Yash Solutions to submit a cover bid or supporting bid so that Yash Solution’s bid could not be rejected due to insufficient number of bids. The Commission also takes note of the fact that Mr. Praveen Kumar Agarwal decided the bid price quotation for the 2017 and 2018 tenders for Bareilly and Moradabad divisions. In his statement, Mr. Naresh Kumar Sharma regretted his decision to submit supporting bids and said that it should not have happened. He also stated that the experience certificates from Austere Systems were arranged at the instance of Mr. Praveen Kumar Agarwal. Even the undertaking for the establishment of a lab was arranged at the instance of Mr. Praveen Kumar Agarwal. The Commission also notes that Mr. Rahul Teni of Austere Systems, in his statement before the DG, submitted that his company had not issued any experience certificate for analysing soil samples to M/s Saraswati Sales, which is indicative of the fact that fake experience certificate was furnished by M/s Saraswati Sales to fulfil eligibility criteria under the pertinent tenders. The relevant extracts from the statement of Mr. Naresh Kumar Sharma recorded before the DG are as under:

*“Q. 2. Why did you bid for the above said tenders when you did not have any experience, Infrastructure such as soil testing machine and manpower for conducting soil testing work?*



A. 2. *Sh. Praveen Agarwal of Yash Solutions suggested that soil testing tenders are being issued by the Agriculture Department, U.P Government and accordingly he requested me to prepare the documents and EMD for submitting the same to the Agriculture department. Sh. Praveen Agarwal informed me that he needed a supporting bid/cover bid from my firm in support of his firm Yash Solutions so that his bid is not rejected due to insufficient number of bids. I had submitted supporting bids to help Sh. Praveen Agarwal's firm Yash Solutions during the tenders issued in 2017 and 2018.*

Q. 3. *How did Sh. Praveen Agarwal request you to help him?*

A. 3. *During a personal meeting in 2017 when the soil testing tenders issued by UP Government, Sh. Praveen Agarwal requested me for submitting supporting bid/cover bid to help his firm Yash Solutions in the said tender.*

Q. 4. *Why did you agree to submit supporting bids/cover bids to help Sh. Praveen Agarwal's firm namely Yash Solution?*

A. 4. *Because I had very long and good family relationship with Sh. Praveen Agarwal, I decided to help him in the aforesaid tenders."*

61. From the above, it is clear that there was no other reason for M/s Saraswati Sales to submit bids in the 2018 tenders of soil testing for Bareilly, Moradabad and Aligarh divisions with fake and fabricated documents other than to submit cover bids in support of Yash Solutions.
62. The Commission also notes that Mr. Praveen Kumar Agarwal of Yash Solutions submitted evasive replies to the questions regarding the similarity in the invoices for the purchase of lab consumables from M/s Today Tech Scientific Solutions and soil testing machine from M/s Thermo Fisher Scientific Pvt. Ltd. (Singapore), which were submitted by Yash Solutions, M/s Satish Kumar, M/s Siddhi Vinayak and M/s Saraswati Sales in the 2018 soil testing tenders. The relevant extracts from the statement of Mr. Praveen Kumar Agarwal are as under:

*"Q. 30. I am showing you the Invoice bearing no. 7000 dated 01.07.2017(2:37PM) issued in favour of M/s Satish Kumar Agarwal (Exhibits - 7), Invoice bearing no. 7017 dated 17.07.2017(2:37PM) in favour of M/s Siddhi Vinayak & Sons (Exhibits - 8) & Invoice bearing no. 7001 dated 07.07.2017(2:37PM) in favour of M/s Yash Ornaments (Exhibits - 9) raised by M/s Today Tech Scientific Solutions, Ambala Cantt, for purchase of disposable items for running Soil testing labs, which were*



*submitted by the aforesaid Firms to the Department of Agriculture, Govt. of UP, during the Soil tendering process in the year 2018.*

*A. 30. Yes, I have seen.*

*Q. 31. How are the items, total Invoice amount and the time mentioned in the said invoices exactly the same?*

*A. 31. I do not know.*

*Q. 32. I am showing you the Commercial Invoices of purchase of Soil Testing Machine submitted during tendering process in the year 2018-19 by your Firm (Exhibit - 10) as well as the Invoices submitted by the other bidder firms namely M/s Saraswati Sales Corporation (Exhibit - 11), M/s Satish Kumar Aggarwal (Exhibit - 12) and M/s Siddhi Vinayak & Sons (Exhibits - 13) in the Bareilly and Moradabad tenders of 2018.*

*A. 32. Yes, I have seen.*

*Q. 33. How are the aforesaid Invoices having same Account Number i.e. 1532236, by all four firms?*

*A. 33. I do not know.*

*Q. 34. How all the aforesaid Invoices having same material number BRE0002947 and Serial Number IC74DC173313 in respect of all the aforesaid 04 Firms?*

*A. 34. I do not know.”*

63. The Commission also observes that as per the reply of M/s Thermo Fisher, dated 14.04.2020, Yash Solutions had purchased soil testing machines from it; however, no sale was ever made to M/s Satish Kumar, M/s Siddhi Vinayak and M/s Saraswati Sales, which implies that the invoices submitted by them in the soil testing tenders of 2018 were fake and fabricated.
64. The Commission also notes that, as per reply dated 30.06.2020 of the Excise Department, Haryana, filed before the DG, no sale was ever made by M/s Today Tech Scientific to M/s Satish Kumar and M/s Siddhi Vinayak. Accordingly, the Commission is of the view that the invoices so submitted by them were fake.
65. The Commission also notes that Mr. Satish Kumar Agarwal, in his statement, had admitted that he had submitted fake documents and bids separately for both his



सत्यमेव जयते



concerns, M/s Satish Kumar and M/s Siddhi Vinayak, in the 2017 soil testing tenders for Moradabad and 2018 soil testing tenders for Aligarh, Moradabad and Bareilly divisions, just to show that there was enough competition and to avoid cancellation of tenders due to lack of participation. The Commission further notes that the name of Yash Solutions appeared in the affidavits submitted by M/s Satish Kumar and M/s Siddhi Vinayak. Further, the phone number of the authorised signatory of Yash Solutions, *i.e.*, Mr. Rachit Agarwal, appeared in the character certificate issued to Ms. Sangeeta Agarwal of M/s Siddhi Vinayak. The Commission also notes that Mr. Satish Kumar Agarwal persistently submitted evasive replies “*I do not know*” or “*I do not remember*” and submitted no explanation for the alleged linkages. It is also noted that Mr. Satish Kumar Agarwal initially denied knowing Mr. Praveen Kumar Agarwal of Yash Solutions; however, when confronted with the CDR of his mobile number, he admitted having regular interactions with Mr. Praveen Kumar Agarwal. He also admitted to be in regular communication with Mr. Nitish Agarwal, CEO of Yash Solutions, as well as Mr. Rachit Agarwal, General Manager of Yash Solutions. Mr. Satish Kumar Agarwal admitted that he used to take Mr. Rachit Agarwal’s assistance in completing and submitting tender formalities of both his concerns. The Commission notes that Mr. Satish Kumar Agarwal also admitted that the Department of Agriculture, Government of Uttar Pradesh, had blacklisted both his concerns namely M/s Satish Kumar Agarwal and M/s Siddhi Vinayak, questioning the authenticity of the documents submitted by his concerns in the soil testing tenders and he had not appealed against that order as he did not want to escalate the matter further and appeal in the court, as he was aware of the fact that both his concerns have submitted manipulated documents in the said tenders.

66. The Commission notes that the investigation revealed that Mr. Suraj Singh, an employee of Yash Solutions, had submitted bids as an authorised signatory in the 2017 soil testing tenders for Bareilly and Moradabad divisions and in 2018 for Bareilly, Aligarh and Moradabad divisions on behalf of M/s Satish Kumar and M/s



Siddhi Vinayak on the directions of Mr. Praveen Kumar Agarwal. Further, Mr Vivek Saxena, another employee of Yash Solutions, had submitted bids as an authorised signatory in respect of M/s Saraswati Sales in the soil testing tenders of 2018 for Aligarh, Moradabad and Bareilly divisions, and in his capacity as an authorised signatory of M/s Siddhi Vinayak in the 2017 tenders for Moradabad division. Mr. Anuj Sharma, an employee of Yash Solutions, had submitted bids as an authorised signatory in respect of M/s Satish Kumar in the 2018 soil testing tenders for Bareilly, Aligarh and Moradabad divisions. Mr. Praveen Kumar Agarwal of Yash Solutions submitted evasive replies and could not provide any plausible justification as to why his own employees, Mr. Suraj Singh, Mr. Vivek Saxena and Mr. Anuj Sharma, had submitted bids on behalf of rival bidders in the 2017 and 2018 soil testing tenders on his directions. Further, Mr. Praveen Kumar Agarwal stated that there was no justification for the actions of his senior employee Mr. Rachit Agarwal (General Manager) in assisting the submission of bids of rival bidder, M/s Siddhi Vinayak. The relevant extracts from the statement of Mr. Praveen Kumar Agarwal as recorded before the DG are as under:

*“Q. 42. Why did you direct Sh. Suraj Singh to submit bids of your rival Firms namely M/s Satish Kumar Agarwal in the Moradabad tenders of 2017 and for M/s Siddhi Vinayak & Sons for the 2018 soil testing tenders for Bareilly, Moradabad and Aligarh divisions (Exhibit-19), when he was your employee during the period the said bids were submitted?”*

*A. 42. I have no comments about the same.*

*Q. 46. When Sh Vivek Saxena and Sh. Anuj Sharma were your employees, why did they submit bids of rival bidders namely M/s Saraswati Sales Corporation (Exhibit-23), M/s Siddhi Vinayak & Sons (Exhibit-24) and M/s Satish Kumar Agarwal (Exhibit-25) in the 2017 & 2018 soil testing tenders*

*A. 46. I have no comments to submit.*

*Q. 49. Is Mr Rachit Agarwal your employee?*

*A. 49. Yes, he is a senior employee in my company since 2015-16.*

*Q. 54. Why did Sh Rachit Agarwal General Manager and Authorised Signatory of your firm for the soil testing tenders, assisted your rival bidder/competitor in the soil testing tenders in procuring Character Certificate?*



*A. 54. The action of Sh. Rachit Agarwal in submitting bid documents of my rival bidder cannot be justified and illegal also.”*

67. The Commission also notes that Mr. Satish Kumar Agarwal submitted evasive replies of “*I do not know*” when he was questioned about the authorised signatories namely, Mr. Suraj Singh and Mr. Vivek Saxena, employees of Yash Solutions, who had submitted bids in respect of his concerns M/s Satish Kumar and M/s Siddhi Vinayak as well as of rival bidders, namely, M/s Saraswati Sales, in the 2017 and 2018 soil testing tenders. Further, Mr. Satish Kumar Agarwal admitted to have known Mr. Nitish Kumar Agarwal (CEO of Yash Solutions and Director of Chaitanya Business Outsourcing) and Mr. Rachit Agarwal (General Manager of Yash Solutions). In his statement before the DG, Mr. Satish Kumar Agrawal admitted to taking Mr. Rachit Agarwal’s assistance in completing and submitting the tender documents of both his concerns. The relevant extracts from the statement of Mr. Satish Kumar Agarwal as recorded before the DG are as under:

*“Q. 59. Do you know Mr. Nitish Agarwal (CEO of Yash Solutions)?*

*A. 59. Yes, I know Mr. Nitish Agarwal and I am in regular touch with him.*

*Q. 60. I am also showing you CDR of Sh. Rachit Agarwal (Authorised Signatory of M/s Yash Solutions) (Exhibit- 40) which shows that you were in regular communication with him during the period of processing of the said tenders. What did you discuss during those calls?*

*A. 60. Yes, I know Mr. Rachit Agarwal and I used to take his help in completing and submitting the tender documents of both my firms.*

*Q. 61. Who was your Authorised Signatory in the Bareilly & Moradabad tenders for both of your Firms namely M/s Satish Kumar Aggarwal and M/s Siddhi Vinayak & Sons?*

*A. 61. I do not remember.*

*Q. 62. I am Showing you the authorization letter issued by your firm M/s Siddhi Vinayak & Sons in favour of Mr. Vivek Saxena and copy of Aadhar of Mr. Vivek Saxena (Exhibits- 41 and 42).*

*A. 62. Yes, I have seen it.*





*Q. 63. I am showing you the authorization letter issued by M/s Saraswati Sales Corporation, Bareilly in favour of Mr. Vivek Saxena and Copy of Aadhar of Mr. Vivek Saxena (Exhibits- 43 and 44)*

*A. 63. Yes, I have seen it.*

*Q. 64. Is Mr. Vivek Saxena the same person in the both the cases?*

*A. 64. Yes, he is the same person.”*

68. The Commission further notes that Mr. Naresh Kumar Sharma, of M/s Saraswati Sales, initially feigned ignorance with respect to the submission of bids by his proprietorship concern in the soil testing tenders in question. However, when he was confronted with the authorisation letter issued by him in favour of Mr. Vivek Saxena, an employee of Yash Solutions, he stated that his signatures may have been misused. In another statement recorded before the DG, he stated that Mr. Vivek Saxena was his authorised signatory and had discussed with him before bidding in the said tenders and the bid was submitted with his consent and knowledge. The relevant extracts from the statement of Mr. Naresh Kumar Sharma are as under:

*“Q. 37.I am showing you authorization letter (Exhibit- 11 & 12) issued in respect of Shri Vivek Saxena to represent & sign on behalf of the firm Saraswati Sales Corporation for various Tenders. The said documents have been submitted in soil testing tenders in Bareilly and Moradabad division in 2018. I am showing you copies of Pan and Aadhaar cards (Exhibit- 13 & 14) of Shri Vivek Saxena which were submitted in these tenders.*

*“A. 37.I have never authorized Shri Vivek Saxena to sign on behalf of my firm namely M/s Saraswati Sales Corporation to bid in soil testing tenders of U.P. Government. My signatures may have been misused for submission of the said documents. The photograph affixed on the authorization letter does not belong to Sh. Vivek Saxena who was working for my firm. However, the photographs affixed on Pan and Aadhaar cards are of Vivek Saxena who was working for my firm.*

*Q. 1. This is in continuation of your statement recorded on oath on 05.12.2020 copy shown to you as (Exhibit- 1). As you had denied in your earlier statement dated 05.12.2020 that you had not submitted any bids in the soil testing tenders issued by Bareilly & Moradabad divisions of the Deputy Director Soil testing, Uttar Pradesh Government in 2018, I would request you to confirm the same.*

*A. 1. Yes, I admit that my firm had submitted bids in the U.P Government Soil testing tenders for Bareilly and Moradabad Divisions during 2017 and 2018. Shri Vivek Saxena, who was my authorized signatory had discussed with me before*



*bidding the above said tenders and the bid was submitted with my consent and full knowledge.”*

69. The Commission, from the above, notes that it clearly comes out to the fore that fake and fabricated documents were arranged/ provided by Yash Solutions, to M/s Satish Kumar, M/s Siddhi Vinayak and M/s Saraswati Sales with a view to ensure their technical eligibility and submission of cover bids in favour of Yash Solutions in the 2017 tenders for Bareilly and Moradabad divisions and in the 2018 tenders for the Bareilly, Moradabad and Aligarh divisions.
70. The Commission further notes that, as per records of e-bidding submitted by the National Informatics System, the bids of Yash Solutions, M/s Siddhi Vinayak and M/s Satish Kumar were submitted from the same IP Address in the Bareilly tenders of 2018. Further, in the Moradabad tenders of 2018, the bids of Yash Solutions, M/s Siddhi Vinayak, M/s Saraswati Sales and M/s Satish Kumar Agarwal were also submitted from the same IP Address. The bids submitted by M/s Siddhi Vinayak in both the tenders were submitted using the login id [acs.yop@gmail.com](mailto:acs.yop@gmail.com), which is the email address of Yash Solutions.
71. The Commission notes that, in response to the notices of the investigation dated 25.03.2021 regarding common IP address for submission of e-bids, Mr. Satish Kumar Agarwal of M/s Satish Kumar and M/s Siddhi Vinayak and Mr. Praveen Kumar Agarwal of Yash Solutions, *vide* their affidavits, submitted that, being technically incapable, they could not submit any clarifications in the matter. Further, Mr. Naresh Kumar Sharma of M/s Saraswati Sales could not comment as to how the same IP address was used in submitting the said bid. In this regard, the Commission, in agreement with the DG finding, observes that it is highly inconceivable as to how all the aforesaid bidders, who were independent entities having separate ownership, had a common IP address, which indicates collusion and cartelisation by Yash Solutions, M/s Siddhi Vinayak, M/s Saraswati Sales and M/s Satish Kumar Agarwal in the soil testing tenders of 2018.



72. The Commission observes that the evidence on record coupled with the statements of the individuals of the above-mentioned Opposite Parties point to their complicity in manipulating the tenders issued by the Department of Agriculture, Government of Uttar Pradesh. Further, even acts of forgery were resorted to in such processes, which speaks about the conduct of such Opposite Parties. Further, Yash Solutions, M/s Satish Kumar and M/s Siddhi Vinayak were blacklisted by the procurer. The Commission does not find any merit in the submissions made by the said Opposite Parties in their objections/ written submissions as well as the arguments advanced during the oral hearing and in subsequent submissions. The Commission thus concludes that Yash Solutions, M/s Satish Kumar, M/s Siddhi Vinayak, M/s Saraswati Sales and Chaitanya Business Outsourcing have contravened the provisions of Section 3 (3)(d) read with Section 3(1) of the Act.

***Set 2: Austere Systems, M/s Toyfort, Fimo Info Solutions and Delicacy Continental***

73. Based on the evidence on record, the DG concluded that the bidders, namely, Austere Systems, M/s Toyfort and M/s Fimo Info Solutions, were related concerns and also had an *inter se* business relationship prior to the issuance of soil testing tenders of 2017. Mr. Rahul Teni, Director of Austere Systems also admitted to have sub-contracted the soil testing work allotted to his company to Delicacy Continental without any permission from the Department of Agriculture, Government of Uttar Pradesh. The DG found the said Opposite Parties in contravention of the relevant provisions of the Act.
74. Austere Systems, in its objections to the Investigation Report has, *inter-alia*, stated that the DG erred in observing that Austere Systems has contravened the provisions of Section 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act. It has been stated that neither were the prices were getting jointly fixed nor was the output jointly controlled, nor the market being consciously shared, nor any bid being rigged through the practice, and accordingly provisions of Section 3 of the Act are not



सत्यमेव जयते



attracted. It has also been stated that the DG has not been able to demonstrate any coordination between Austere Systems and other successful bidders in any of the divisions in the State of Uttar Pradesh. Further, the DG has not provided any evidence of coordination between Yash Solutions and Austere Systems which could suggest geographic allocation of territories by them or either deliberately avoiding bidding or submitting bids in each other's regions. The DG has only tried to establish the case simply on account of the fact that Austere Systems, M/s Toyfort and Fimo Info Solutions are connected with each other through family relations. It has been submitted that the said three Opposite Parties are acting independently of each other for the last twenty years, and merely because they are related does not *ipso facto* disqualify them from carrying their businesses independently. With respect to Delicacy Continental, Austere Systems has stated that, except for the relation as enumerated in the Memorandum of Understanding dated 01.09.2017, Austere Systems has no other concern/ relation/ coordination with Delicacy Continental. Thus, the findings of the DG that Delicacy Continental in collusion with Austere Systems submitted cover bids for the benefit of Austere Systems in the 2018 tenders for Meerut and Saharanpur Divisions is erroneous.

75. M/s Toyfort, in their objections/ suggestions, have made submissions which are similar to those of Austere Systems as discussed in the paragraphs above. It has averred that, in relation to the 2017 soil testing tenders for Meerut and Jhansi divisions, it remained unsuccessful in view of tough competition and limited resources in terms of both financial and technical expertise, and in its own business wisdom, decided to not further engage in other tenders which might have been floated by different divisions of the Department of Agriculture, Government of Uttar Pradesh. It has also stated, that merely because it participated in two tenders and did not participate in other tenders would in itself not be presumed that it was part of the cartel.
76. Fimo Info Solutions averred that it had participated in the 2017 tenders for Meerut and Jhansi divisions and remained unsuccessful. It did not participate in other



tenders, which does not, *ipso facto*, mean that there was some coordination between Fimo Info Solutions and other bidders. It has been, *inter alia*, stated that the DG has not adduced any evidence which could suggest collusion or action in concert on part of M/s Toyfort and Fimo Info Solutions. The DG has only tried to establish the case simply on account of the fact that Austere Systems, M/s Toyfort and Fimo Info Solutions were connected with each other through family relations.

77. Delicacy Continental, in their objections and suggestions, have filed their submissions, which are similar to those of Austere Systems, M/s Toyfort and Fimo Info Solutions and has refuted the observations made by the DG. It has been averred that simply because Delicacy Continental has business relations with Austere Systems does not, *ipso facto*, disqualify it from carrying its respective business independently and from bidding separately.
78. Before beginning the analysis of allegations of bid-rigging against the Opposite Parties of this set, it is imperative to discuss the business activities carried on by each of these entities as well as the key personnel of these entities.
79. **Austere System:** As per the statement of Mr. Rahul Teni, Director of Austere Systems, Austere Systems is engaged in software development, onshore development, staffing, augmentation, technology consulting, business consulting, data entry, soil analysis and automation. The shareholding pattern of Austere Systems is as under:

S. No.	Name	% Shareholding
1.	Mr. Rahul Gajanan Teni	40
2.	Mr. Shikhir Gupta	30
3.	Mr. Piyush Gupta	10
4.	Mr. Suresh Kumar Gupta	20
	Total	100



80. Apart from Mr. Rahul Teni, who manages the business as well as the technological aspect of the company, Mr. Piyush Gupta is the other Director who looks after the financial matters of the company. Mr. Piyush Gupta is the son of Mr. Suresh Gupta (sole proprietor of M/s Toyfort) who holds 20 percent shareholding in the company and is also stated to be a strategic investor and had purchased a second-hand soil testing machine in 2017. Mr. Shikhir Gupta, another Director who looks after the business development of the Company. Mr. Rahul Teni stated that his company did not have any prior soil testing experience before participation in the soil testing tenders in question.
81. **M/s Toyfort: It** is a proprietorship concern and is engaged in the business of sale of toys, stationery items, *etc.* Mr. Suresh Kumar Gupta is the proprietor of M/s Toyfort and is stated to be responsible for all the decisions of the said concern. M/s Toyfort had no experience of soil testing work when the bids were submitted in the soil testing tenders issued by the Meerut and Jhansi divisions in 2017.
82. **Fimo Info Solutions:** It is engaged in the business of provision of support services, legal consultancy services, management consultancy, *etc.* Mr. Jai Kumar Gupta is the Director of the said company and he looks after the entire business operations of the company. Ms. Esha Gupta, w/o Mr. Shikhir Gupta, is also a Director in the said Company. Mr. Shikhir Gupta is the son of Mr. Jai Kumar Gupta, who is one of the Directors of Austere Systems. Fimo Info Solutions had no experience of soil testing work.
83. **Delicacy Continental: It** is engaged in the production and sale of rice. It has three Directors, namely, Mr. Ankur Kumar, Ms. Rajesh Rani and Mr. Abhijeet Singh. The company was not engaged in soil testing work at any prior point in time.



### **Participation of the said parties in soil testing tenders and analysis of allegations of bidrigging and cartelisation**

84. The Commission notes that Austere Systems bid for 2017 soil testing tenders for the Meerut and Jhansi divisions and in the 2018 soil testing tenders for Meerut, Saharanpur and Bareilly divisions. As per the evidence available on record, Austere Systems did not have any experience in soil testing work at the time of the submission of bids for the said tenders. Mr. Rahul Teni, Director of Austere Systems submitted that the company participated in the tender as there were very few players in the soil testing business.
85. The Commission notes that Fimo Info Solutions and M/s Toyfort had also bid in the Meerut and Jhansi tenders of 2017. As stated above, Fimo Info Solutions and M/s Toyfort had no experience in soil testing work. However, Fimo Info Solutions and M/s Toyfort could not win any of the aforesaid tenders.
86. Delicacy Continental, despite having no experience in soil testing work, had participated in the 2018 soil testing tenders for Meerut and Saharanpur divisions. However, it also could not win in any of those tenders.
87. The Commission notes that the investigation also found that the demand draft submitted on behalf of Austere Systems in the Meerut tender of 2017 was made by Ms. Esha Gupta, Director of Fimo Info Solutions, from her own account, with a bank having its branch at Gurugram, Haryana.
88. The Commission also notes that Mr. Rahul Teni, Director of Austere Systems, on being questioned by the DG about why the demand draft was prepared by the rival bidder, stated that he had no information as to how the demand draft submitted by his concern was prepared by Ms. Esha Gupta and had no justification for the same. The relevant extracts from the statement of Mr. Rahul Teni recorded before the DG are as under:



*“Q.16.As per reply of ICICI Bank (Exhibit - 7), the Demand Draft Bearing No. 505282 in respect of your company M/s Austere Systems, which was submitted in the Meerut tenders of 2017 (Exhibit - 8), was made by Ms. Esha Gupta, a Director, M/s FIMO INFO Solutions Pvt. Ltd, from her own account. How and why did the Director of another Firm got prepared a Demand Draft for your company from her own account despite the fact that both were rival bidders in the said tenders?”*

*A.16. I do not know. I knew Mrs. Esha Gupta who is w/o Shri Shikhir Gupta a Director in my company and she is my Professional friend and also a Director of M/s Fimo Info. I have no information how the demand draft submitted by my firm was got prepared by Mrs. Esha Gupta from her own bank account and I do not have any justification for the same.”*

89. Mr. Jai Kumar Gupta, Director of Fimo Info Solutions was also questioned by the DG as to why the demand draft was submitted by Ms. Esha Gupta. In response, Mr. Jai Kumar Gupta stated that, *“Mrs. Esha Gupta is wife of Shri Shikhar Gupta, who is my son and shareholder of M/s Austere, hence the DD was made by her from her own bank account”*.

90. Mr. Rahul Teni admitted that Mr. Shikhir Gupta is one of the Directors of the Austere Systems and is the husband of Ms. Esha Gupta, Director of Fimo Info Solutions. The Commission notes that Mr. Rahul Teni, in his statement before the DG admitted that his company was registered at the address of the rival bidder, Fimo Info Solutions, as they had prior business relations. The relevant extracts from the statement of Mr. Rahul Teni are as under:

*“Q.17. I am showing you a copy of Experience Certificate issued to your company M/s Austere System Private Limited, by the Agriculture Department Haryana (Exhibit - 9) in which the address of your company is the same as that of your rival bidder firm M/s FIMO Info solution Pvt Ltd in, as per it’s GST registration details (Exhibit - 10) i.e C-58, Suncity, Sector 54, Gurgaon. Please explain how your company has been registered at the address of your rival bidder firm.*

*A. 17. Because, I had business relationship with M/s Fimo Info. I registered their address for my company also*

*Q. 20. Who is Shikhar Gupta?*

*A. 20. Shri Shikhir Gupta who is one of the directors of my company is also husband of Mrs. Esha Gupta who is director of M/s Fimo Info. I knew Shri Shikhar*





*Gupta when I was working with Cognizant technologies as he was also working in the same company.*

*Q.24. Why your company M/s Austere transferred such amounts at different intervals to M/s FIMO's bank account?*

*A. 24. Both the companies had business relationship, as both were doing data entry work for each other and the said payment was made by M/s Austere to M/s Fimo Info. However, I do not remember exactly for which data entry work the above said payment were made to M/s Fimo Info."*

91. From the above facts and statements, the Commission amply notes that Austere Systems and Fimo Info Solutions had relations and, in respect of the aforementioned tenders, were not acting independently but in association with each other in furtherance of their common object.
92. With respect to the relationship between Austere Systems and Fimo Info Solutions, the Commission notes that Mr. Jai Kumar Gupta initially feigned ignorance with respect to the relationship with his son, Mr. Shikhir Gupta. On being confronted with evidence, he admitted that his son had a shareholding of 30% in Austere Systems. Mr. Jai Kumar Gupta, Director of Fimo Info Solutions, in his statement before the DG, also submitted that he looks after the entire affairs of the company, had no experience of soil testing work, did not fulfil the terms and conditions for eligibility in the said tenders and had submitted tenders with the hope of receiving the tender in his favour. Further, Mr. Jai Kumar Gupta submitted evasive replies such as "I do not know" as to why separate bids were submitted by the three closely related entities.
93. With respect to M/s Toyfort, Mr. Suresh Kumar Gupta, in his statement before the DG, admitted that his concern had no experience of soil testing work and did not fulfil the eligibility for the said tenders. Relevant extracts from the statement of Mr. Suresh Kumar Gupta are as under:

*"Q. 10. I am showing you the GST registration of your firm Toyfort (Exhibit – 1), as per which your firm is engaged in the business of Toys, stationery items, articles*



& equipment for general exercise etc., however no mention has been made regarding soil testing work. Why?

A. 10. As my firm did not have any soil testing work experience hence, no mention has been made regarding the said work.

Q. 11. As per condition no 16 of the terms and conditions for the Meerut tender issued in 2017 (Exhibit - 2) the Bidder should have experience of 12 parameters soil testing. This experience should be from Government/ Semi Government or standard Agencies. Further, the company/firm's Proprietor/Director should also have experience of soil testing work of 15 years, for which experience certificate is to be enclosed with bid. As your firm Toyfort was a Proprietorship concern, did you and your firm fulfil the aforesaid condition before submission of bids in the aforesaid tender?

A. 11. No, my firm M/s Toyfort did not have any experience of soil testing work and hence, as per the terms and conditions of the Meerut soil testing tender issued in 2017 and my firm did not fulfil the aforesaid conditions.

Q. 12. As per condition no 18 for the Meerut Division tender (Exhibit -2) and condition 14 of the Jhansi Division tender (Exhibit -3) of the terms and conditions for soil testing tenders of 2017, it was required that the bidder should have experience of working on high tech equipment ICP (Inductivity Cupeled Plasma Spectrometer). Did your firm had any experience of soil testing on ICP machine/ high tech soil testing machine?

A. 12. No, my firm had no experience of working on high tech equipment ICP (Inductivity Cupeled Plasma Spectrometer) and hence, as per the terms and conditions of the Meerut and Jhansi soil testing tender issued in 2017 my firm did not fulfil the aforesaid conditions.”

94. The Commission further notes that Mr. Suresh Kumar Gupta, proprietor of M/s Toyfort, admitted in his statement before the DG that he had submitted bids in the 2017 soil testing tenders for Meerut and Jhansi divisions on the suggestion of his employees. The Commission also notes that Mr. Piyush Gupta, son of Mr. Suresh Kumar Gupta and Director of Austere Systems, had submitted the bids for M/s Toyfort. Mr. Suresh Kumar Gupta, on being questioned by the DG as to why Mr. Piyush Gupta submitted bids for M/s Toyfort when Mr. Suresh Kumar Gupta was the proprietor, he replied “I do not know”. Further, Mr. Rahul Teni, on being questioned about the same, had no explanation in this regard. The Commission also



takes cognizance of the finding of the investigation that the bid documents of Austere Systems in the soil testing tenders of 2017 for the Jhansi division were signed and submitted by Mr. Suresh Kumar Gupta. In his statement recorded before the DG, Mr. Suresh Kumar Gupta feigned ignorance as to how he submitted the bids of his rival bidder. In his statement, he stated that he had no relationship with Austere Systems. However, he accepted that he and his son, Mr. Piyush Gupta were shareholders in Austere Systems and had a combined shareholding of 30 percent in Austere Systems. Further, on being asked why and how the sole proprietor of M/s Toyfort submitted a bid on behalf of Austere Systems for the said soil testing tender, Mr. Rahul Teni did not have any answer. The relevant extracts from the statements of Mr. Suresh Kumar Gupta and Mr. Rahul Teni, in this regard, are as under:

***Extracts from the statement of Mr. Suresh Kumar Gupta, Director, M/s Toyfort***

*“Q.18. Your firm Toyfort had submitted bids in the Jhansi & Meerut soil testing tenders of 2017 (Exhibit – 7 & 8) wherein the bid documents of your firm have been submitted by Sh. Piyush Gupta*

*A. 18. Yes, Seen.*

*Q. 19. Who is Piyush Gupta?*

*A. 19. Sh. Piyush Gupta is my son.*

*Q. 20. How did Sh Piyush Gupta submit bids of your company in the soil testing tenders when you were the Proprietor.*

*A. 20. I do not know.*

*Q. 21. I am showing you the bid submitted by Austere Systems Pvt Ltd in the Jhansi tenders of 2017 and the minutes of the tender committee dated 31.08.2017 (Exhibit – 9 & 10), wherein the bid documents of the said firm have been signed & submitted by you and M/s Austere was represented in the tender committee meeting by you. Why did you submit bid of your rival firm in the Soil testing tender of the Government of Uttar Pradesh?*

*A. 21. Yes, I had submitted the aforesaid bids but I do not remember why I signed the said bids.*



*Q. 22. What was your & your firm's relationship with Austere System Private Limited, when bids were submitted in the aforesaid tenders issued in 2017?*

*A. 22. No relationship.*

*Q. 23. What was Piyush Gupta's relationship with Austere System Private Limited, when bids were submitted in the aforesaid tenders issued in 2017?*

*A. 23. I do not know.*

*Q. 24. I am showing you list of shareholders as on 31.03.2018 in Austere System Private Limited (Exhibit - 11), wherein your's and your son Piyush's shareholding in the firm is 30% and the remaining shareholding is with Rahul Teni and Shikhir Gupta. Who is Shikhir Gupta and Rahul Teni?*

*A. 24. Yes, I have seen it. I am one of the shareholders and Director of M/s Austere Systems Pvt. Ltd., However, I do not know who is Mr. Shikhir Gupta or Mr. Rahul Teni. I had only signed the documents as shown in the Exhibit."*

***Extracts from the statement of Mr. Rahul Teni, Director, Austere Systems***

*"Q. 26. I am showing you the bid submitted by your company M/s Austere Systems Pvt Ltd in the Jhansi tenders of 2017 and the minutes of the tender committee dated 31.08.2017 (Exhibit – 15 & 16), wherein the bid documents of your company have been signed & submitted by Sh. Suresh Kumar Gupta, sole proprietor of M/s Toyfort, a rival bidder in the said tender. Sh Gupta also represented company M/s Austere Systems Pvt Ltd in the tender committee meeting. Why and how did the Sole Proprietor of a separate entity submitted bid of your company in the said Soil testing tender?*

*A. 26. I do not know, how it had happened*

*Q. 27. I am showing you the bid submitted by M/s Toyfort in the Jhansi tenders of 2017 (Exhibit 17), wherein the bid documents M/s Toyfort have been signed & submitted by Sh. Piyush Gupta. Sh Piyush Gupta also represented Toyfort in the tender committee meeting.*

*A. 27. Sh. Piyush Gupta who is son of Sh. Suresh Kumar Gupta. Sh. Suresh Kumar Gupta was also shareholder and director in our company with a 10% holding. Sh. Piyush Gupta is currently a director in M/s. Austere Systems"*



95. The investigation also revealed that Austere Systems had formed a consortium with M/s Toyfort in which M/s Toyfort had undertaken printing of soil health cards for Austere Systems in 2018. For the said purpose, an MOU between them was also entered into. The said MOU mentioned that M/s Toyfort and Austere Systems were sister concerns. Further, Mr. Rahul Teni as well as Mr. Suresh Kumar Gupta could not provide any justification as to why bids were submitted by related/ sister concerns which had no experience of soil testing work and did not even qualify the terms and conditions of the 2017 Meerut and Jhansi tenders. The relevant extracts from the statements of Mr. Suresh Kumar Gupta and Mr. Rahul Teni in this regard are as under:

***Extracts from statement of Mr. Suresh Kumar Gupta, Director, M/s Toyfort***

*“Q. 28. I am showing you the copy of an MoU (Exhibit - 15) between M/s Toy Fort & M/s Austere System Private Limited dated 19.02.2018 for sharing of soil testing work. It is mentioned therein that Toy Fort & Austere System Private Limited are sister concerns and share common director Sh. Suresh Kumar Gupta.*

*A. 28. Yes, seen.*

*Q. 29. If both M/s Toy Fort and M/s Austere System Pvt. Ltd. were sister concerns, having common directors, why your firm submitted a separate bid in the soil testing tenders of Jhansi & Meerut divisions in 2017?*

*A. 29. I do not know.”*

***Extracts from the statement of Mr. Rahul Teni, Director, Austere Systems***

*“Q. 25. I am showing you the schedule forming part of the balance sheet of M/s Toyfort (Exhibit - 14). There is a transaction mentioned as “Advanced Paid to Suppliers” between your company and M/s Toyfort, which shows both the firms were well known to each other and had business relationship.*

*A. 25. As explained earlier my company formed a consortium M/s Toyfort in which Toyfort has to do printing of soil health cards for my company and the above said payment was made for the card printing work. Further, my company prepared domain name and website hosting for M/s Toyfort for which our company received a payment of Rs. 3500 from M/s Toyfort.*



*Q. 30. What is the justification for submission of bid documents and EMD by competitors on behalf of rival bidders as well as the competitors/bidders being related concerns shows?*

*A. 30.I have no justification.*

*Q. 31. Why bids from all three related /sister concerns having no experience of soil testing work as mentioned in the terms of conditions, wherein bid & EMD were submitted for each other?*

*A. 31.I have no justification”*

96. The Commission also notes that Mr. Suresh Kumar Gupta as well as Mr. Jai Kumar Gupta could not submit any explanation regarding the submission of EMD on behalf of their entities from the bank account of Mr. Shikhir Gupta, son of Mr. Jai Kumar Gupta, Director of Fimo Info Solutions. Further, neither persons could justify how Fimo Info Solutions was registered at M/s Toyfort’s address. The relevant extracts of the respective statements of Mr. Suresh Kumar Gupta and Mr. Jai Kumar Gupta in this regard are as under:

***Extracts from statement of Mr. Suresh Kumar Gupta, Director, M/s Toyfort***

*“Q. 25. I am showing you a copy of the Demand Draft Nos 505279 (Exhibit – 12) issued by ICICI Bank Gurgaon Suncity Branch Gurgaon, to M/s Toyfort, which was submitted in the soil testing tenders of 2017 in Meerut Division.*

*A. 25. Yes, seen.*

*Q. 26. As per reply of ICICI Bank (Exhibit - 13) the Demand Draft in respect of M/s Toyfort was made by Sh Shikhir Gupta, from his own account. Why was a Demand Draft for submission in a Government soil testing tender by Toyfort was got prepared by Shikhir Gupta who is associated with another firm M/s FIMO Infosolutions which was also your rival bidder in the Jhansi & Meerut tender, from his own bank account, although you were the sole Proprietor of M/s Toyfort?*

*A. 26. I do not know.*

*Q. 27. I am showing you a copy of the registration of FIMO Info solutions Pvt Ltd with the Ministry of Corporate Affairs (Exhibit - 14). As per the said data the Registered address of the said firm is the same as of your firm M/s Toyfort. Please explain how common address for both the firms?*

*A. 27. I do not know.”*



***Extracts from statement of Mr. Jai Kumar Gupta, Director, Fimo Info Solutions***

*Q. 29. As per reply of ICICI Bank (Exhibit- 13) the Demand Draft Bearing No. 505279 in respect of M/s Toyfort were made by Sh Shikhir Gupta, from his own account. Why was a Demand Draft for submission in a Government soil testing tender by Toyfort was got prepared by Shikhir Gupta from his own account although M/s Toyfort's Proprietor was Sh. Suresh Kumar Gupta?*

*A. 29. I cannot comment on this question.*

*Q. 30. I am showing you a copy of the registration of your firm with the Ministry of Corporate Affairs (Exhibit -14). As per the said data the Registered address of your firm is E-99 Kamala Nagar New Delhi, which is also the address of another bidder in the said tenders namely M/s Toyfort as per its GST Registration (Exhibit -15). Please explain how two rival firms in a Government tender firms have common address.*

*A. 30. Yes, because M/s Toyfort had space available with them, hence, we took the space for registration of our company*

*Q. 31. What was the purpose for submitting three different bids by related firms in the aforesaid tenders?*

*A. 31. I do not know*

97. In view of the foregoing, the Commission is of the view that three bidders, namely, Austere Systems, M/s Toyfort and Fimo Info Solutions, which were related concerns through family as well as business relationships, made concerted efforts and rigged the bids in 2017 soil testing tenders for Meerut and Jhansi divisions with a common objective to ensure that Austere Systems wins those tenders. The Commission is in agreement with the DG's finding that bids submitted by M/s Toyfort and Fimo Info Solutions were not submitted with the intention to compete and win but to create a façade of competition.



98. The Commission also takes note of the fact that the investigation revealed that Delicacy Continental had submitted experience certificates of soil testing issued by Austere Systems and it had no experience of soil testing work.
99. The Commission notes that Mr. Ankur Kumar, Director of Delicacy Continental, had submitted that he was introduced to the soil testing work through Mr. Rahul Teni of Austere Systems and was offered sub-contract work of soil testing by Austere Systems, which had won the tender. Mr. Ankur Kumar submitted that although his entity did not have any soil testing machine, they were offered the contract due to good relations with Austere Systems. The relevant extracts of the statement of Mr. Ankur Kumar, Director, Delicacy Continental, recorded before the DG are as under:

*“Q. 9. Who else was associated with your firm for Soil Testing work?”*

*A. 9. In 2017 one of our employees Mr. Ashok Kumar introduced me to Shri Arun Bharat, who was a retired government servant of Haryana Government and had experience in soil testing work as he was looking after soil testing work in the Government department during his service. Shri Arun Bharat introduced me Mr. Rahul Teni of M/s Austere Solution Pvt. Ltd. I had a telephone discussion with Shri Rahul regarding soil testing work in Uttar Pradesh. During the telephone discussion Mr. Rahul Teni offered me to help him in soil testing work as his firm had won a tender of soil testing from U.P government*

*Q. 10. Whether your firm had soil testing machine when you had spoken to Shri Rahul Teni?*

*A. 10. No, my firm did not have soil testing machine.*

*Q. 11. Why was the offer given to your firm for soil testing when you had no machine and no experience in soil testing work?*

*A. 11. Because of good relationship with Austere they offered a sub-contract to my firm. During end of 2017 and beginning of 2018 we conducted soil testing work for Austere in Saharanpur. We had set-up a lab in Saharanpur for the said work.”*

100. Mr. Ankur Kumar of Delicacy Continental, had also submitted that a laboratory was set up in Saharanpur for sub-contract work of soil testing for Austere Systems, although he had never visited the said laboratory. Mr. Ankur also submitted that he





was not aware of the terms and conditions of the tenders and also was not aware as to whether any MOU existed for the same. The relevant extracts from the statement of Mr. Ankur Kumar are extracted below:

*“Q. 12. Where in Saharanpur was your lab and whether you had visited it any time?”*

*A. 12. The Lab was set up in the office of Assistant Director (Culture/soil testing) Saharanpur. I had never visited the lab.*

*Q. 13. How was the company setup in the laboratory in the premises of a Government office?*

*A. 13. I have no information.*

*Q. 14. What were the term and conditions for the soil testing work carried out for M/s Austere Systems and whether any MoU was signed with Austere for the said work and any copy is available with you?*

*A. 14. I am not aware whether any MOU existed. However, the staff conducting the soil testing work was arranged by one Mr. Arun Bharat and the payment was made by Delicacy. The payment made by Austere for conducting the soil testing work was Rs. 80 to 90 per sample for one type of sample while Rs. 120 to 130 for another type of sample.”*

101. Further, the Commission takes note of the fact that no permission of the Department of Agriculture, Government of Uttar Pradesh, was taken before Austere Systems sub-contracted the work to Delicacy Continental. In his statement, Mr. Rahul Teni admitted that, although Delicacy Continental had no experience of soil testing work, his company had sub-contracted the work, as the entire work was being executed under Austere System’s supervision. The relevant extracts of Mr. Rahul Teni’s statement in this respect are as under:

*“Q32. Why did your Firm sub-let this work to M/s Delicacy Continental, which is a separate entity altogether, as the original contract was allotted by Department of Agriculture, Govt. of UP to your Firm i.e. M/s Austere System Pvt. Ltd?”*

*A. 32. The tender was sub-let by my company to Delicacy as our company did not have financial resources to undertake the soil testing work for aforesaid three Divisions of U.P Government for soil testing.*

*A. 33.*

*Q33. Did you take permission/NOC from Government before sub-letting as such subletting are not allowed in Government tenders?*



सत्यमेव जयते



A 33. No

*Q. 38. Why did your company issue work orders for soil testing to M/s Delicacy Continental which had no prior experience of soil testing work?*

*A. 38. As the Entire work was being done under our supervision for this work and M/s Delicacy purchased the ICP machine on our request we sub-let the work to M/s Delicacy.*

*Q. 40. Have you ever met or had any communication with any of the Directors or any other employee of M/s Delicacy Continental?*

*A. 40. I had interacted with one of the directors of M/s Delicacy on telephone whose name I do not remember regarding the soil testing work. M/s Delicacy was only an investor in soil testing work for Saharanpur, Meerut and Jhansi Division and beyond that they did not have any interest in soil testing work."*

102. The Commission notes that the investigation also revealed that Mr. Ankur Kumar of Delicacy Continental submitted two versions of MOUs related to the sub-contract of soil testing work by Austere Systems. The Commission notes that both the copies of the MOU were fabricated to prove that the parties had a contract amongst them, thereby indicating a prior business relationship. Moreover, it was brought out by the investigation that one of the copies of the MOU was sent by Mr. Mandar Teni of Austere Systems just before the recording of the statement of Mr. Ankur Kumar before the DG.
103. Mr. Rahul Teni, in his statement before the DG, also submitted that an MOU was executed with Delicacy Continental for undertaking soil testing work. However, he could not submit any comments on the statement of Mr. Ankur Kumar, Director of Delicacy Continental, that there was no MOU between Austere Systems and Delicacy Continental. The Commission notes that this shows that Austere Systems had complete control over Delicacy Continental and its Directors.
104. The Commission notes that Mr. Ankur Kumar had also submitted that none of the Directors had decided the bid price to be submitted in the 2018 soil testing tenders for Meerut and Saharanpur divisions, and it was decided by its employees in discussion with Austere Systems. The Commission agrees with the investigation



that Mr. Ankur Kumar was evasive in his replies and tried to shift the entire responsibility of collusion and bid rigging upon the employees of Delicacy Continental.

105. The Commission further notes that the experience certificates were issued by Austere Systems to Delicacy Continental with a view to make Delicacy Continental eligible in the Meerut and Saharanpur division tenders of 2018.
106. Mr. Ankur Kumar, in his statement recorded before the DG stated that the bid price in soil testing tenders of Meerut and Saharanpur in 2018 tender were decided in consultation with Austere Systems. In this regard, Mr. Rahul Teni submitted that he was not aware if any other directors or employees had discussed the bid price with Delicacy Continental.
107. In view of the above, the Commission is of the view that Delicacy Continental colluded with Austere Systems to rig the soil testing tenders of 2018 for Saharanpur and Meerut divisions.

***Set 3: Austere Systems and Yash Solutions***

108. The Commission notes that Austere Systems had submitted bids in 2018 Bareilly tenders, which was technically rejected due to various reasons, namely, non-submission of three years balance sheet, non-submission of last three years returns, non-availability of ICP machine, *etc.*
109. On being questioned whether the grounds for rejection of 2018 Bareilly tender were appropriate, Mr. Rahul Teni, of Austere Systems, in his statement before the DG submitted that it could have been a mistake and that he was not keen for the tender of 2018 for the Bareilly division although he gave no reasons for the same. The Commission also notes that Mr. Rahul Teni could not give any explanation for not submitting the bids in the Aligarh and Moradabad tenders of 2018, although his company had submitted bids in Meerut and Saharanpur tenders.



110. The Commission notes that Mr. Rahul Teni submitted evasive replies with regard to the reason for not submitting the bids in the 2017 soil testing tenders for the Moradabad division although it had already won a contract for soil testing for Meerut division. In similar fashion, Mr. Praveen Kumar Agarwal, MD, Yash Solutions, in his statement submitted that his entity submitted high price bids in 2018 Meerut and Saharanpur tenders, as he was not interested in winning those tenders.
111. In the objections to the Investigation Report, Austere Systems stated that the DG has not been able to demonstrate with any cogent evidence, either directly or indirectly, which could even remotely suggest that there was any geographic allocation between Austere Systems and Yash Solutions and that either of them deliberately avoided submitting bids in each other's areas. Unless such collusion is established, such erroneous and legally impermissible conclusions would be regarded as pure conjecture and surmise. In this regard, Yash Solutions submitted that it had submitted high price bids in the Saharanpur and Meerut 2018 tenders due to the issue of greater distance and poor connectivity from the head office of Bareilly. Further, the number of samples to be tested in Meerut and Saharanpur were very large, which would have increased the total cost.
112. The Commission notes that Mr. Praveen Kumar Agarwal's statement is self-contradictory. In the first place, Mr. Praveen Kumar Agarwal accepted that he had no interest in getting the soil testing tenders of 2018 for Meerut and Saharanpur divisions. At the same time, he could not explain why his company, Yash Solutions, submitted high price bids in those tenders. In this regard, the Commission finds no merit in the arguments advanced by the said Opposite Party and is in agreement with the DG that there could be no explanation for the submission of high price bids by Yash Solutions except that they were cover bids made in support of bid of Austere Systems in the said divisions and to enable Austere Systems to bag the tenders.



सत्यमेव जयते



113. The Commission observes that only three bidders, namely, Austere Systems, Yash Solutions and Delicacy Continental, had submitted bids in the 2018 Meerut and Saharanpur tenders. From the above, the Commission notes that there was an arrangement/ agreement between the said three entities to manipulate the process of bidding in the soil testing tenders of 2018.
114. The Commission is in agreement with the DG that Austere Systems, under an arrangement/ understanding with rival company Yash Solutions, had geographically allocated the soil testing tenders issued by the Department of Agriculture, Government of Uttar Pradesh, in 2017 and 2018 by not bidding in each other's allocated regions and by submitting supporting bids in favour of each other.

**Issue 2: If the Opposite Parties are found to have contravened the provisions of Sections 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act, who are the persons in charge thereof and responsible for the conduct of business of the respective enterprises under Section 48 of the Act?**

115. Once contravention by the Opposite Parties has been established, the Commission now proceeds to analyse the conduct of directors/ proprietors of the Opposite Parties who were directly involved in the activities and affairs of such parties and had full knowledge and played an active role in the anti-competitive conduct and hence, are liable in terms of Section 48 of the Act. The DG has found the following individuals liable in terms of the provisions of Section 48 of the Act:
- i. Mr. Praveen Kumar Agarwal, Managing Director (Yash Solutions, Unit of Yash Ornaments Private Ltd.)
  - ii. Mr. Satish Kumar Agarwal, Proprietor (M/s Satish Kumar and M/s Siddhi Vinayak)
  - iii. Mr. Naresh Kumar Sharma, Proprietor (M/s Saraswati Sales)
  - iv. Mr. Rahul Gajanan Teni, Director (Austere Systems)



- v. Mr. Ankur Kumar, Director (Delicacy Continental)
- vi. Mr. Jai Kumar Gupta, Director (Fimo Info Solutions)
- vii. Mr. Suresh Kumar Gupta, Proprietor (M/s Toyfort)
- viii. Mr. Nitish Agarwal, Director (Chaitanya Business Outsourcing)

116. The role and responsibility of the key persons of the Opposite Parties is discussed hereinunder, under Section 48 of the Act.

*Mr. Praveen Kumar Agarwal (Yash Solutions)*

117. Being entirely responsible for the affairs of Yash Solutions, the Commission notes that his liability under the Act emanates from the fact that separate bids had been submitted, at his instance, on behalf of both his group companies, namely, Yash Solutions as well as Chaitanya Business Outsourcing, in the 2017 Bareilly tenders, as has been discussed in the preceding paragraphs. Fake work orders and work experience certificates were issued to rival bidders, M/s Satish Kumar and M/s Siddhi Vinayak, in 2018 soil testing tenders for Aligarh, Bareilly and Moradabad divisions to enable them to place cover bids. Fake invoices towards the purchase of ICP-OES machine were issued by his company to M/s Satish Kumar, M/s Siddhi Vinayak and M/s Saraswati Sales, for use against soil testing tenders invited in the year 2018 with his knowledge. It is noted that the bids of the rival bidders were submitted by the employees of Yash Solutions in the 2017 and 2018 Bareilly and Moradabad tenders, which was with his active knowledge. Mr. Praveen Kumar Agarwal could also not submit any justifications for quoting high price cover bids by Yash Solutions in the Saharanpur and Meerut soil testing tenders, which were won by Austere Systems. The Commission notes that Mr. Praveen Kumar Agarwal has not been able to refute in any manner the findings of the DG *qua* him and his liability under Section 48 of the Act.

*Mr. Satish Kumar Agarwal (M/s Satish Kumar and M/s Siddhi Vinayak)*



118. As stated earlier, Mr. Satish Kumar Agarwal is solely responsible for the conduct of business as well as the decisions taken in respect of both M/s Satish Kumar as well as M/s Siddhi Vinayak, in which his wife Ms. Sangeeta Agarwal is the Sole Proprietor. All the decisions pertaining to both concerns are taken by Mr. Satish Kumar Agarwal. Further, Mr. Satish Kumar Agarwal stated that he had bid on behalf of both M/s Satish Kumar as well as M/s Siddhi Vinayak in soil testing Tenders issued by the Department of Agriculture, State of Uttar Pradesh in 2017 and 2018. He also admitted that both his concerns had no infrastructure for soil testing and had never purchased any soil testing machine. Mr. Satish Kumar Agarwal also admitted that he had bid separately for both concerns just to show that there is enough competition and to avoid the cancellation of tenders because of lack of participation by his concerns. The Commission notes that Mr. Satish Kumar Agarwal was evasive in his replies regarding evidence collected by the DG of collusion and bid rigging by way of submission of cover bids in support of Yash Solutions by M/s Satish Kumar and M/s Siddhi Vinayak. He could also not submit any justification for the use of a common IP address in the submission of e-bids by his concerns as well as Yash Solutions in the 2018 Bareilly and Moradabad tenders. The Commission thus observes that Mr. Satish Kumar Agarwal failed to dispel the findings of the DG in relation to his anti-competitive conduct and is thus liable under Section 48 of the Act.

*Mr. Naresh Kumar Sharma (M/s Saraswati Sales):*

119. The Commission notes that Mr. Naresh Kumar Sharma, being the sole proprietor of M/s Saraswati Sales, took all the decisions and solely responsible for the entire affairs of his concern. His concern was engaged only in the business of undertaking electrical contract work for various agencies and had no prior experience, machinery and manpower to undertake any soil testing work. The Commission notes that Mr. Naresh Kumar Sharma has admitted in his statement before the DG that he had submitted cover bids in the soil testing tenders of the Department of Agriculture, State of Uttar Pradesh, in collusion with Yash Solutions. Further, he



admitted that the bid price of M/s Saraswati Sales was decided by Yash Solutions, and the entire bid documents were prepared on behalf of his concern by Yash Solutions, which were subsequently submitted by him in the bid on behalf of his concern. The Commission observes that Mr. Naresh Kumar Sharma has not been able to discharge himself from the findings of the anti-competitive conduct against him and is therefore liable under Section 48 of the Act.

*Mr. Rahul Gajanan Teni (Austere Systems)*

120. The Commission notes that Mr. Rahul Teni, Director, Austere Systems, is responsible for managing the business of the said company. Rahul Teni had admitted that Mr. Suresh Kumar Gupta, Proprietor of M/s Toyfort, a rival bidder in the Meerut and Jhansi tender of 2017, was a “Strategic Investor” in Austere Systems, and had invested funds for procuring a soil testing machine before the 2017 tenders were issued. Mr. Rahul Teni could not submit any explanation when questioned as to how the bids of his company, Austere Systems in the Jhansi division tenders of 2017, were signed and submitted by the Proprietor of a rival bidder M/s Toyfort, who had also attended the meeting of the Tender Committee on behalf of Austere Systems.
121. Further, Mr. Rahul Teni admitted that Mr. Shikhir Gupta, one of the Directors of his company, is husband of Mrs. Esha Gupta Director of Fimo Info Solutions, a rival bidder in the Jhansi & Meerut tenders of 2017. Mr. Rahul Teni had no explanation as to how the EMD of Rs. 1 lakh in respect of his firm in the Meerut tenders of 2017 could be submitted by a Director of a rival bidder, Fimo Info Solutions. Mr. Rahul Teni submitted that there was no justification for the submission of bid documents and EMD by competitors on behalf of rival bidders. He also could not submit any justification for the submission of separate bids by three related concerns/sister concerns in the Jhansi and Meerut tenders of 2017.





सत्यमेव जयते



122. Mr. Rahul Teni stated that Austere Systems had sub-contracted the work to Delicacy Continental, as the entire work was being executed under Austere System's supervision, and Delicacy Continental was a partner for namesake. Mr. Rahul Teni had also issued experience certificates to Delicacy Continental on behalf of Austere Systems, to enable the former to act as a cover bidder for Austere Systems.
123. The Commission notes that Mr. Rahul Teni submitted evasive replies with regard to the reasons for not submitting a bid in the Moradabad Division soil testing tender in 2017, although it had already won a contract for soil testing for the Meerut division. Mr. Rahul Teni submitted that Austere Systems was not keen to bid for the 2018 Bareilly division tender although he gave no reasons for the same. Further, Mr. Rahul Teni could not provide any explanation for not submitting bids in the Aligarh and Moradabad tenders of 2018, although his company had submitted bids in the Meerut and Saharanpur tenders, which were floated after the tendering process of Aligarh and Moradabad was completed. Accordingly, Austere Systems, in collusion with Yash Solutions, had reached an understanding to geographically divide the soil testing tenders issued by the State of Uttar Pradesh during 2017 and 2018 between them. Mr. Rahul Teni played an active role in the anti-competitive conduct unearthed by the DG in relation to Austere Systems. He has not been able to refute the findings against him and is, as such, liable under Section 48 of the Act.

*Mr. Ankur Kumar (Delicacy Continental)*

124. The Commission notes that Mr. Ankur Kumar, Director of the aforementioned company, had placed a bid in the soil testing tenders of UP Government in 2018-19 for the Meerut and Saharanpur divisions. The Commission further notes that Mr. Ankur Kumar knew Mr. Rahul Teni, Director of Austere Systems, and due to their cordial business relationship, Austere Systems had sub-contracted the soil testing work to his company in 2017-18, although his company had no prior experience in soil testing work.



सत्यमेव जयते



125. The Commission notes that Mr. Ankur Kumar falsely submitted that an MOU was entered into with Austere Systems for sub-contract of soil testing work and copies of the MOU were created just for submission to the investigation.
126. The Commission also notes that the price bids in the 2018 tenders for the Meerut and Saharanpur divisions for his firm were decided by employees of his company in discussion with Austere Systems, and the bidding process in the tenders were manipulated. The Commission notes the active role played by Mr. Ankur Kumar in perpetuating the anti-competitive conduct, which remained unrefuted on his part, and he is thus liable under Section 48 of the Act.

*Mr. Jai Kumar Gupta (Fimo Info Solutions)*

127. The Commission notes that Mr. Jai Kumar Gupta looked after the entire business operations of the company. Further, Mr. Jai Kumar Gupta could not submit any explanation for the submission of bids by his concern in the 2017 soil testing tenders of Meerut and Jhansi divisions, although his company had no experience of soil testing and did not even fulfil the terms and conditions for eligibility in the said tenders. Further, his company was registered at the address of M/s Toyfort. The Commission also notes that his concern had prior business relationship with rival bidder Austere Systems, and that a demand draft towards the EMD for the 2017 Meerut Division tender for Austere Systems was prepared by Ms. Esha Gupta, Director of his company, from her own bank account.
128. The Commission also notes that Mr. Jai Kumar Gupta could not submit any explanation for the submission of demand draft for M/s Toyfort, a rival bidder, by his son Mr. Shikhir Gupta, from his own bank account. Further, he could not explain why three different bids were submitted by related firms in the said tenders. All these evidences show the active participation of Mr. Jai Kumar Gupta and his knowledge in relation to the anti-competitive conduct, and he is thus held liable under Section 48 of the Act.



*Mr. Suresh Kumar Gupta (M/s Toyfort)*

129. The Commission notes that Mr. Suresh Kumar Gupta, Proprietor of M/s Toyfort, manages the entire business affairs of his firm and is responsible for all the decisions. It is noted that Mr. Suresh Kumar Gupta had no experience of soil testing work and did not even fulfil the terms and conditions for eligibility in the tenders in question. Further, he could not give an explanation for the submission of bids by his firm in the 2017 soil testing tenders of Meerut and Jhansi divisions. The Commission also notes that Mr. Suresh Kumar Gupta could not submit any explanation as to why EMD in the 2017 soil testing tender of Meerut division in respect for his firm was submitted by Mr. Shikhir Gupta, son of Mr. Jai Kumar Gupta, Director, Fimo Info Solutions, from his own bank account, in the said tender. The Commission also notes that Mr. Suresh Kumar Gupta submitted false replies and attempted to hide his and his son's shareholding in Austere Systems, which was the beneficiary of both Jhansi and Meerut divisions soil testing tenders of 2017. Further, Mr. Suresh Kumar Gupta admitted to submitting bids of rival bidder Austere Systems in the 2017 soil testing tender of Jhansi division when his own concern was also a bidder in the said tender. All the evidence points to the active role played by Mr. Suresh Kumar Gupta in manipulating the bid process in contravention of the provisions of the Act, and he is thus liable under Section 48 of the Act.

*Mr. Nitish Agarwal (Chaitanya Business Outsourcing)*

130. The Commission notes that Mr. Nitish Agarwal, one of the Directors of Chaitanya Business Outsourcing and CEO of Yash Solutions, was responsible for the entire affairs of his company, and all decisions were taken by him. Chaitanya Business Outsourcing had participated in the soil testing tenders for Bareilly division in 2017, with Mr. Nitish Agarwal acting on behalf of such company. The Commission notes that, in his statement before the DG, Mr. Nitish Agarwal stated that, as there



were very few companies present in the business of soil testing, it had submitted its bid along with their group company Yash Solutions, with no intention of submitting any competitive bids but only cover bids in favour of Yash Solutions in the 2017 Bareilly tenders so that the tenders for soil testing do not get cancelled due to lack of bids. Moreover, Mr. Nitish Agarwal had admitted that his company had submitted a false undertaking regarding having a soil testing lab to the Department of Agriculture, Government of Uttar Pradesh. The Commission finds that Mr. Nitish Agarwal played an active role in getting Chaitanya Business Outsourcing to manipulate the bid process in violation of provisions of the Act, for which he is found liable under Section 48 of the Act.

131. It is noted that aforementioned individuals have not been able to rebut or deny before the Commission the respective roles played by them in cartelization, for which the DG has gathered cogent and clinching evidences, which are primarily based on their active conduct in perpetuating the anti-competitive conduct with a view to manipulate and vitiate the tender process as discussed in the foregoing paragraphs. None of these individuals have been able to credibly refute the evidence against them unearthed by the investigation nor been able to explain the conduct. From the statements of the individuals, it can be discerned that they have chosen to be evasive in submitting before the investigation. Mere perfunctory justifications have been proffered to escape their liability. Neither the Opposite Parties nor their individuals have been able to rebut the presumption that stares them in their faces, and the Commission is convinced that the Opposite Parties acted in a concerted manner to rig the tenders, which is in violation of Section 3(1) read with Sections 3(3)(c) and 3(3)(d) of the Act. Therefore, the Commission finds the identified individuals of the Opposite Parties liable in terms of the provisions of Section 48(1) and 48(2) of the Act.



## **ORDER**

132. The Commission notes that cartelisation, including bid rigging, is a pernicious form of anti-competitive conduct under the provisions of Section 3 of the Act. None of the Opposite Parties or their individuals have been able to rebut the evidence found against them by the DG of having indulged in anti-competitive conduct and manipulating the bids/bid rigging in respect of tenders floated by the Department of Agriculture, State of Uttar Pradesh. The Commission finds that certain Opposite Parties and their individuals had also resorted to the production and submission of fake invoices and grant of false certificates for making some of the Opposite Parties eligible for participating in the bid process so as to effectively act as cover bidders in respect of the winning bidders. Some of the Opposite Parties did not even have prior experience and were later blacklisted.
133. In view of the foregoing, the Commission holds Yash Solutions, M/s Satish Kumar Agarwal, M/s Siddhi Vinayak, M/s Saraswati Sales Corporation, M/s Austere System Pvt. Ltd., Delicacy Continental Pvt. Ltd, Fimo Infosolutions Private Limited, M/s Toyfort and Chaitanya Business Outsourcing Pvt. Ltd. to have contravened the provisions of Section 3(1) of the Act read with Section 3(3)(c) and 3(3)(d) thereof, as detailed in this order.
134. Further, the Commission, in terms of Section 27 (a) of the Act, directs the Opposite Parties and their respective proprietors and directors who have been held liable in terms of the provisions of Section 48 of the Act to cease and desist from indulging in practices which have been found in the present order to be in contravention of the provisions of Section 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act, as detailed in the earlier part of the present order.
135. The Commission, for the reasons recorded below, finds the present case fit for imposition of penalty. Under the provisions contained in Section 27(b) of the Act, the Commission may impose such penalty upon the contravening parties as it may deem fit, which shall be not more than ten percent of the average of the turnover for



सत्यमेव जयते



the last three preceding financial years, upon each of such person or enterprises which are parties to such agreement. Further, in cases of cartelisation, the Commission may impose upon each such cartel participant a penalty of up to three times its profit for each year of continuance of the anti-competitive agreement or 10 per cent of its turnover for each year of continuance of such agreement, whichever is higher.

136. It may be noted that the twin objectives behind the imposition of penalty are: (a) to reflect the seriousness of the infringement; and (b) to ensure that the threat of penalties will deter the infringing undertakings from indulging in similar conduct in the future. Therefore, the quantum of penalty imposed must correspond to the gravity of the offence, and the same must be determined after having due regard to the mitigating and aggravating circumstances of the case.
137. On the issue of penalty, most of the Opposite Parties in their objections to the Investigation Report and subsequent submissions have averred, referring the decision of the Hon'ble Apex Court in the case of *Excel Corp Limited vs. Competition Commission of India and others (2017) 8 SCC 47*, that the turnover to be calculated under Section 27 of the Act has to be the relevant turnover, which relates to the product in question, in respect whereof, the provisions of the Act are found to be contravened. The Opposite Parties have averred that, as that they could not derive any income from the soil testing tenders for never being involved in the business of soil testing, zero penalty would naturally arise out of nil income and nil turnover. Some of the Opposite Parties have prayed for mitigation of penalty on the grounds of being Micro Small and Medium Enterprises (MSME).
138. With regard to the submission of the Opposite Parties that they have derived no income from tenders in question and hence zero penalty would arise, the Commission finds no merit in the said submission and no narrow interpretation of the relevant turnover can be taken as suggested. The Commission, in this regard, reiterates its decision dated 03.02.2022 in Suo Motu Case No. 2 of 2020 (*In Re:*



*Alleged anti-competitive conduct by various bidders in supplying and installation of signages at specified locations of State Bank of India across India):*

*“115. In relation to the contention that turnover derived from the Impugned Tender alone should be considered, it is noted that a bare perusal of the Excel Crop Care judgement makes it clear that nowhere it held or otherwise declared that relevant turnover should be limited to the turnover earned from the specific customer or tender. Such a plea would frustrate the underlying policy objective of deterring the cartelists besides providing them a fertile ground for regulatory arbitrage. For example, if owing to the understanding between the bidders, if some or few bidders have refrained from participating in the particular tender under investigation, the turnover of the said parties from the said tender would obviously be nil, resulting in nil penalty. To allow such parties to walk free without incurring any monetary penalty for their anti-competitive conduct simply because they did not have any turnover from the concerned tender, would not only stultify the Parliamentary intent in providing deterrence through penalties against such behaviour but would also run contrary to the underlying spirit of the judgment of the Hon’ble Supreme Court of India in Excel Crop Care judgment. Taking such a pedantic interpretation would provide a virtual free run to the infringing parties and an effective immunity against any antitrust action for their anti-competitive behaviour. This cannot be the purport or intent either of the Parliament or the Hon’ble Supreme Court of India in laying down the parameters and perimeter for imposition of monetary penalty upon the contravening parties. Therefore, such contentions by the OPs need to be rejected.”*

139. The Commission notes that the instant case emanates out of conduct pertaining to public procurement in soil testing tenders and, as such, is a fit case to impose penalties upon the infringing parties. On a holistic appreciation of the facts and circumstances of the case and the mitigating factors put forth by the Opposite Parties, the Commission observes that the findings of the DG clearly indicate the active role played by each of the Opposite Parties in rigging the tenders. The Commission accordingly imposes the penalty upon the Opposite Parties @ 5 percent of the average of their turnover for the three financial years, i.e., 2017-18,



2018-19 and 2019-20. Accordingly, the computation of penalty imposed on each of the Opposite Parties is as follows:

(In Rupees)

S.No.	Opposite Parties	FY 2017-18	FY 2018-19	FY 2019-20	Total	Average	5% of average turnover of three years
1.	Yash Solutions	22,51,68,823	17,28,00,135	10,79,33,393	50,59,02,351	16,86,34,117	84,31,706
2.	M/s Satish Kumar Agarwal	Data not provided	2,88,62,103	3,35,15,936	6,23,78,039	3,11,89,020	15,59,451
3.	M/s Siddhi Vinayak and Sons	Data not provided	3,25,95,945	1,78,84,343	5,04,80,288	2,52,40,144	12,62,007
4.	M/s Saraswati Sales Corporation	1,48,85,150	1,71,16,200	80,17,141	4,00,18,491	1,33,39,497	6,66,975
5.	Austere Systems Pvt. Ltd.	4,85,29,601	11,70,43,789	9,99,60,762	26,55,34,152	8,85,11,384	44,25,569
6.	Delicacy Continental Pvt. Ltd	2,49,16,478	7,85,39,582	9,45,08,248	19,79,64,308	6,59,88,103	32,99,405
7.	Fimo Infosolutions Private Limited	21,86,517	0	0	21,86,517	7,28,839	36,442
8.	M/s Toyfort	2,74,31,913	2,55,95,204	2,06,21,192	7,36,48,309	2,45,49,436	12,27,472
9.	Chaitanya Business Outsourcing Pvt. Ltd.	33,65,279	1,58,21,826	4,15,52,267	6,07,39,372	2,02,46,457	10,12,323

140. The Commission further deems it appropriate and necessary to impose penalty on the individuals identified above for being liable under Section 48 of the Act at the rate of 5 percent of their average income of the financial years 2017-18, 2018-19 and 2019-20 filed with the Commission. However, since M/s Satish Kumar Agarwal, M/s Siddhi Vinayak, M/s Saraswati Sales and M/s Toyfort, are sole proprietorship concerns, no separate penalty is being imposed on their respective





proprietors. Accordingly, the computation of penalty imposed on the aforesaid individuals found liable under Section 48 of the Act are as follows:

(In Rupees)

S. No.	Individuals	FY 2017-18	FY 2018-19	FY 2019-20	Total	Average Income	5% of average income
1.	Mr. Praveen Kumar Agarwal (Managing Director, Yash Solutions)	Data not provided	32,82,490	26,88,128	59,70,618	29,85,309	1,49,265
2.	Mr. Rahul Gajanan Teni (Director, Austere Systems)	7,25,960	11,87,296	7,69,441	26,82,697	8,94,232	44,712
3.	Mr. Ankur Kumar (Director, Delicacy Continental)	3,01,900	4,89,578	3,66,960	11,58,438	3,86,146	19,307
4.	Mr. Jai Kumar Gupta (Director, Fimo Info Solutions)	3,25,034	4,51,762	5,10,000	12,86,796	4,28,932	21,447
5.	Mr. Nitish Kumar Agarwal (Director, Chaitanya Business Outsourcing)	Data not provided	19,30,137	14,51,503	33,81,640	16,90,820	84,541

141. The Commission is of the view that ends of justice would be met in this matter by the imposition of the following penalty on the Opposite Parties and their individuals found liable under Section 48 of the Act:

S.No.	Name of the Party	Amount of penalty (In rupees)	Amount of penalty (In Words)
1.	Yash Solutions	84,31,706	Eighty Four Lakhs Thirty One Thousand Seven Hundred and Six Only
2.	M/s Satish Kumar Agarwal	15,59,451	Fifteen Lakhs Fifty Nine Thousand Four Hundred and Fifty



सत्यमेव जयते



			One Only
3.	M/s Siddhi Vinayak and Sons	12,62,007	Twelve Lakhs Sixty Two Thousand and Seven Only
4.	M/s Saraswati Sales Corporation	6,66,975	Six Lakhs Sixty Six Thousand Nine Hundred and Seventy Five Only
5.	Austere Systems Pvt. Ltd.	44,25,569	Forty Four Lakhs Twenty Five Thousand Five Hundred and Sixty Nine Only
6.	Delicacy Continental Pvt. Ltd	32,99,405	Thirty Two Lakhs Ninety Nine Thousand Four Hundred and Five Only
7.	Fimo Infosolutions Private Limited	36,442	Thirty Six Thousand Four Hundred and Forty Two Only
8.	M/s Toyfort	12,27,472	Twelve Lakhs Twenty Seven Thousand Four Hundred and Seventy Two Only
9.	Chaitanya Business Outsourcing Pvt. Ltd.	10,12,323	Ten Lakhs Twelve Thousand Three Hundred and Twenty Three Only
10.	Mr. Praveen Kumar Agarwal (Managing Director, Yash Solutions)	1,49,265	One Lakh Forty Nine Thousand Two Hundred and Sixty Five Only
11.	Mr. Rahul Gajanan Teni (Director, Austere Systems)	44,712	Forty Four Thousand



सत्यमेव जयते



			Seven Hundred and Twelve Only
12.	Mr. Ankur Kumar (Director, Delicacy Continental)	19,307	Nineteen Thousand Three Hundred and Seven Only
13.	Mr. Jai Kumar Gupta (Director, Fimo Info Solutions)	21,447	Twenty One Thousand Four Hundred and Forty Seven Only
14.	Mr. Nitish Kumar Agarwal (Director, Chaitanya Business Outsourcing)	84,541	Eighty Four Thousand Five Hundred and Forty One Only.

142. The Commission directs the concerned parties to deposit the aforesaid penalty amounts within 60 days of the receipt of this order. It is ordered accordingly.
143. The Secretary is directed to forward copies of this order to all the Opposite Parties and their officials forthwith.

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

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

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

**New Delhi**  
**Dated: 04/04/2022**