



**COMPETITION COMMISSION OF INDIA**

***Suo Motu Case No. 03 of 2016***

***In re: Cartelization in Tender Nos. 21 and 28 of 2013 of Pune Municipal Corporation for Solid Waste Processing***

**1. Saara Traders Private Limited**

**S.No. 27, Plot No. 464**

**Pradhikaran, Nigadi**

**Pune-411044.**

**Opposite Party No. 1**

**2. Ecoman Enviro Solutions Private Limited**

**Flat No. G-1002, MSR Queens Town**

**Survey No. 3876, Udyog Nagar, Chinchwad**

**Pune- 411033.**

**Opposite Party No. 2**

**3. Fortified Security Solutions**

**A-10 Shreyas Apartments, Opp. E-Square**

**Shivaji Nagar**

**Pune- 411016.**

**Opposite Party No. 3**

**4. Raghunath Industry Private Limited**

**3, Pushpanjali Apartment, Plot No. 1162/4A**

**Shivaji Nagar**

**Pune-411005**

**Opposite Party No. 4**



**CORAM**

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

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

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

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

**Appearances:**

*For Opposite Party No. 1 and Shri Deepak Bhaskar Phatangare* Ms. Sowmya Saikumar, Advocate  
Ms. Madhurima Ghosh, Advocate

*For Opposite Party No. 2 and Shri Bipin Vijay Salunke* Mr. Vikas Mishra, Advocate

*For Opposite Party No. 3 and Shri Bipin Vijay Salunke* Mr. Vikas Mishra, Advocate

*For Opposite Party No. 4 and Shri Vijay Raghunath Salunke* Mr. Vikas Mishra, Advocate



## **ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002**

### **Introduction**

1. This *suo motu* case originated from the information received by the Commission in Case No. 50 of 2015 disclosing co-ordination amongst Saara Traders Private Limited, Pune (hereinafter, 'OP-1'), Ecoman Enviro Solutions Private Limited, Pune (hereinafter, 'OP-2'), Fortified Security Solutions, Pune (hereinafter, 'OP-3') and Raghunath Industry Private Limited (hereinafter, 'OP-4') to rig Tender nos. 21 and 28 of 2013, which were not being investigated as part of Case no. 50 of 2015, floated by Pune Municipal Corporation (hereinafter, 'PMC') for Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s) in contravention of the provisions of Section 3(3) read with Section 3(1) of the Competition Act, 2002 (hereinafter, 'Act'). Hereinafter, OP-1, OP-2, OP-3 and OP-4 are referred to as the 'OPs'.
2. The Commission notes that the DG during investigation of Case no. 50 of 2015 had come across evidence of possible cartelisation in Tender no. 21 and 28 of 2013 of PMC such as common addresses and phone number details of the bidders in the tender documents and was investigating the same. *Vide* note dated 21.06.2016, the DG had sought amendment of the order dated passed by the Commission under Section 26(1) of the Act and *inter alia* requested that the tenders mentioned in the order as '*Tender no. 21 and 28 of 2014*' be rectified to be read as '*Tender no. 21 and 28 of 2013*'.
3. While the investigation was going on, OP-1, on 01.08.2016 at 12.28 p.m., filed an application under Section 46 of the Act read with Regulation 5 of the



Competition Commission of India (Lesser Penalty) Regulations, 2009 (hereinafter, 'Lesser Penalty Regulations') furnishing information, documents and evidence in relation to Tender nos. 21 and 28 of 2013 floated by PMC in October 2013 to the Commission.

4. A few days thereafter, OP-2 and OP-4 also filed separate applications under Section 46 of the Act read with Regulation 5 of the Lesser Penalty Regulations in Case no. 50 of 2015 whereby they also disclosed the existence of cartelisation in Tender nos. 21 and 28 of 2013. OP-2 filed Lesser Penalty Application on 05.08.2016 at 12:40 p.m. and OP-4 on 05.08.2016 at 02:32 p.m.
5. It was disclosed in the above-stated applications that, with an objective to increase the probability of OP-2 winning both the tenders of PMC, Shri Bipin Vijay Salunke, Director of OP-2, made an arrangement whereby cover bids were to be placed by OP-1 (in which his close friend Shri Deepak Bhaskar Phantangare was a Director) and OP-3 (in which Shri Bipin Vijay Salunke is the sole proprietor). Further, since OP-2 was not engaged in the manufacturing of composting machines at the time when the tenders were issued by PMC, Shri Bipin Vijay Salunke requested his father Shri Vijay Raghunath Salunke (a Director of OP-4) to appoint OP-2 as the authorised distributor of OP-4 in order to make OP-2 eligible to bid in the afore-said tenders.
6. After considering the information revealed during investigation as well as information disclosed by OP-1, OP-2 and OP-4, the Commission was of the *prima facie* opinion that the OPs appeared to have engaged in practices which directly or indirectly resulted in bid rigging or collusive bidding in contravention of the provisions of Section 3(3)(d) of the Act. Accordingly, the DG was directed to carry out investigation in respect of both the tenders *i.e.* Tender nos. 21 and 28 of 2013 *vide* order dated 11.08.2016 passed under Section 26 (1) of the Act.



7. Subsequently, on 20.09.2016 at 03:00 P.M., OP-3 filed an application under Section 46 of the Act read with Regulation 5 of the Lesser Penalty Regulations accepting that it had submitted cover bids in Tender no 21 and 28 of 2013 and provided documents in support thereof.

**Profile of the parties:**

8. 'Saara Traders Private Limited' *i.e.* OP-1, is a private limited company registered under the Companies Act, 1956 with three directors, namely; Shri Deepak Bhaskar Phatangare, Shri Bhaskar Annasaheb Phatangare and Smt. Sushila Bhaskar Phatangare. It is engaged in trading business of laptops, computers, LCDs, medical instruments and some electronic spares and accessories.
9. 'Ecoman Enviro Solutions Private Limited' *i.e.* OP-2, is a private limited company registered under the Companies Act, 1956 with two directors, namely, Shri. Bipin Vijay Salunke and Smt. Sulabha Vijay Salunke. It is stated to be a leading company in the field of decentralized solid waste management having an advanced technology in composting. Furthermore, it claims to have developed a unique solution for decentralised solid waste management by its composting machine named 'Foodie' which converts organic waste into compost in 24 hours.
10. 'Fortified Security Systems' *i.e.* OP-3, is a registered shop and a proprietary concern of Shri Bipin Kumar Salunke established under the Bombay Shops and Establishment Act, 1948. It is engaged in the business of sales and services of electronic security systems, health and medical equipment *etc.*
11. 'Raghunath Industry Private Limited' *i.e.* OP-4, is a private limited company registered under the Companies Act, 1956 with two directors namely, Ms. Sonali Sahasrabudhe and Shri Vijay Raghunath Salunke. It is engaged in field of solid



waste management and manufacturing of composting machines since June 2013 and started manufacturing from July 2013.

**DG's Investigation:**

12. The DG examined cartelisation and bid-rigging/collusive bidding by OP-1, OP-2, OP-3 and OP-4 in Tender nos. 21 and 28 of 2013 pertaining to 'Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s)' floated by PMC.
13. To investigate the above, the DG collected evidence from various sources by issuing probe letters to the parties and third parties including telecom operators, banks and PMC and also recorded the statements on oath.

*Tender nos. 21 and 28 of 2013:*

14. With respect to Tender nos. 21 of 2013 the DG noted that three entities *i.e.* OP-1, OP-2 and OP-3 participated in the tender and OP-2 emerged as L1 bidder with the lowest bid of Rs. 9,85,000/-. The second lowest bid was quoted by OP-1 and highest bid by OP-3. In Tender nos. 28 of 2013, the same three entities *i.e.* OP-1, OP-2 and OP-3 placed their bids for the tender, of which OP-2 emerged as the L1 bidder with the lowest bid of Rs. 10,55,750/- for 125 kg composting machine and Rs. 7,65,750/- for 75 kg composting machine. The second lowest bid was quoted by OP-1 and highest bid by OP-3.

*Address and Contact Details*

15. On examination of the documents of OP-2 and OP-3 submitted with PMC for the two tenders, it was found that even though OP-2 and OP-3 were separate legal entities and had bid as competitors, they had a common place of business. Also, both were being managed by a common person *i.e.* Shri Bipin Vijay Salunke. While OP-2 is a private limited company with Shri Bipin Vijay Salunke and Smt. Sulabha Vijay Salunke as its two directors, OP-3 is a proprietorship



firm with Shri Bipin Vijay Salunke as its proprietor.

16. Further, the online filing of the tenders required the contact details of a person for the bid. On examination of these details, it was found that the name of the person designated to file the tenders was mentioned as Shri Deepak Bhaskar Phatangare for OP-1, Shri Amol Chitamber for OP-2 and Shri Bipin Vijay Salunke for OP-3. However, phone number specified in the tender document for OP-1 and OP-3 belonged to Shri Parimal Salunke who was working as Executive Director in OP-2 and was also related to Shri Bipin Vijay Salunke. The phone number specified in the tender document for OP-2 belonged to Shri Bipin Vijay Salunke Director of OP-2. The fact that OP-1 and OP-3 had quoted phone number of another competitor or a person working in the competitor concern as its contact person showed that they were likely to have knowledge of each other's bid and indicated existence of an agreement amongst the bidders.

*Demand Drafts for Earnest Money Deposit:*

17. Further, the DG found that the Demand Draft (hereinafter, 'DD') of OP-1 required for the Earnest Money Deposit (hereinafter, 'EMD') in Tender no. 21 of 2013, was prepared from Bank of Maharashtra on cash payment by Sh. Bipin Vijay Salunke, who was neither a director nor an employee of OP-1, but a director of OP-2 and proprietor of OP-3 *i.e.* the other two bidders for the tender. In case of Tender no. 28 of 2013, the DG observed that the DDs submitted by OP-1 and OP-2, both drawn at Bank of India, were prepared on the same day and had consecutive numbers. It was found that the DDs of OP-1 and OP-2 as well as OP-3 (drawn at Bank of Maharashtra) were prepared by debiting the account of Shri Bipin Vijay Salunke.

*Internet Protocol Address used for Uploading Tender Documents:*

18. Further, in Tender nos. 21 of 2013, the DG noted that the same Internet Protocol address (hereinafter, 'IP address') was used by OP-1 and OP-3 for uploading the



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documents required for the bid, which was registered in the name of Shri Vijay Raghunath Salunke, Director of OP-4 and father of Shri Bipin Vijay Salunke. The documents of OP-1 and OP-3 were uploaded from the IP address within a gap of two hours. On examination of IP addresses of parties that had bid for Tender nos. 28 of 2013, it was found that all the three bidders i.e. OP-1, OP-2 and OP-3 had uploaded the documents required for the bid immediately one after the other from the same IP address, registered in the name of Shri Vijay Raghunath Salunke, Director of OP-4 and father of Shri Bipin Vijay Salunke.

19. Apart from collecting the above evidences, the DG also confronted the same and recorded statements of key officer(s)/ person(s) of the OPs while conducting the investigation. These statements were recorded after the submission of application under Section 46 of the Act by the OPs. The observations of the DG from statements of OPs are summarised in succeeding paragraphs.

Statement of Shri Deepak Bhaskar Phatangare, Director of OP-1

- i. In his statement on oath, Shri Deepak Bhaskar Phatangare submitted that he had no expertise in the area of solid waste management. He accepted that he was a part of the cartel and disclosed the *modus operandi* of the cartel. He admitted that OP-1 had bid as a proxy bidder to ensure that there were atleast three eligible bidders in the first round of bidding itself and tender would be ultimately awarded to OP-2.
- ii. Shri Deepak Bhaskar Phatangare submitted that all this was done at the behest of Shri Bipin Vijay Salunke, who was his friend. He disclosed that Shri Bipin Vijay Salunke had filed all the tender documents and price bids on behalf of OP-1. He only provided relevant documents for filing of tenders, which was collected by Shri Parimal Salunke. Uploading of documents *etc.* and other work was done by Shri Bipin Vijay Salunke.
- iii. Further, he stated that he did not personally or monetarily benefit from participation in the tenders and OP-1's participation was solely to help Shri





Bipin Vijay Salunke.

Statement of Shri Vijay Raghunath Salunke, Director of OP-4

- i. In his statement on oath, Shri Vijay Raghunath Salunke, Director of OP-4, accepted that OP-4 had authorized OP-2 as its authorized distributor of composting machines to enable it to participate in Tender nos. 21 and 28 of 2013 floated by Pune Municipal Corporation. OP-4 rendered this help at the behest of his son Shri Bipin Vijay Salunke to ensure that atleast three eligible bids were placed for the tenders as at that point of time OP-2 was not engaged in manufacture of composting machines.
- ii. However, Shri Vijay Raghunath Salunke denied being aware of the details of the cartel but accepted that he was aware that Shri Bipin Vijay Salunke would be taking help of other bidders for the submission of bid in the said tenders.

Statement of Shri Bipin Vijay Salunke, Director of OP-2 & Proprietor of OP-3

- i. Shri Bipin Vijay Salunke in his statement categorically accepted the existence of cartel. He accepted that the phone numbers belonging to Shri Parimal Salunke were given in the contact person details for OP-1 and OP-3 in the concerned tenders and that Shri Parimal Salunke had submitted all relevant documents on behalf of OP-1 and OP-3 for procuring digital key and, thereafter, registered his mobile number for telephonic verification by PMC.
- ii. Further, he admitted that Shri Parimal Salunke prepared DDs for EMD for the bidders / competitors in Tender nos. 21 and 28 of 2013 on his instructions either by depositing cash or debiting his bank account.
- iii. He stated that the IP addresses were same for various bidders because the technical and price bid were scanned and uploaded by Shri Parimal Salunke from the office of OP-2 and that rates of other bidders were also determined by him.
- iv. He admitted that the role of OP-1 and OP-3 was limited to providing the relevant documents for the tender and act as proxy bidders. He stated that no



consideration of any kind – monetary or otherwise was given by OP-2 to any of the entities acting as proxy bidders.

- v. He claimed that the role of his father was limited to issuing various authorization certificates and facilitating preparation of DDs.

*Affidavit of Shri Parimal Salunke, Executive Director of OP-2*

The DG also took into consideration the affidavit of Shri Parimal Salunke, an Executive Director of OP-2, dated 20.12.2016 in which Shri Parimal Salunke fully accepted the relevant portions of the statement of Shri Bipin and his own role in the cartel.

20. Thus, from the evidences gathered during the investigation and the statements of person(s)/ officer(s) of the OPs, the DG concluded that there was bid rigging/ collusive bidding in the Tender nos. 21 and 28 of 2013. There was also meeting of minds and co-ordination between various individuals which included the proprietor/ director of OP-1, OP-2, OP-3 and OP-4.
21. The Commission considered the investigation report of the DG on 30.08.2017 and decided to forward the same to the OPs and also to the person(s)/ officer(s) found to be liable under Section 48 of the Act by the DG *i.e.* (i) Shri Deepak Bhaskar Phatangare (for OP-1); (ii) Shri Bipin Vijay Salunke (for OP-2); and (iii) Shri Vijay Raghunath Salunke (for OP-4), for filing their objections/ suggestions thereof and to appear for hearing before the Commission. On 16.11.2017, the Commission heard the matter. The submissions of the OPs are summarised below.

**Submissions of the OPs**

*OP-1 and Shri Deepak Bhaskar Phatangare (Director of OP-1)*

22. OP-1 and Shri Deepak Bhaskar Phatangare in their combined written



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submission, while accepting the findings of the DG and their respective role in the same, have stated that they should be granted the benefit of 100% reduction in penalty as they were the first to make a vital disclosure by submitting sufficient and material evidence of a cartel. At the time the disclosure was made by them, the DG did not possess material evidence to establish the contravention in relation to Tender nos. 21 and 28 of 2013. The relevant information provided by them enabled the DG to establish the same.

23. Further, OP-1 and Shri Deepak Bhaskar Phatangare cooperated fully and expeditiously on a continuous basis throughout the investigation/ inquiry into the matter by the office of the DG as well as before the Commission and provided all information and evidence in their possession or available to them. Further, at the time when the evidence was submitted to the Commission, OP-1 had already ceased to have any participation in the cartel, which was only in relation to Tender nos. 21 and 28 of 2013 as OP-1.
24. During the course of the investigation by the DG, OP-1 made full disclosures regarding the alleged anti-competitive conduct of Shri Bipin Vijay Salunke, Director of OP-2, regarding manipulation of the tender process of PMC. Also, the role of Shri Parimal Salunke of OP-2 was revealed by OP-1.
25. Further, OP-1 did not monetarily or otherwise benefit in any manner through any anti-competitive practice perpetrated by Shri Bipin Vijay Salunke. No tender was awarded to it by PMC for Solid Waste Management. In fact, OP-1 did not participate in any such tender pre or post October 2013. Even in Tender nos. 21 and 28 of 2013, OP-1 got inadvertently involved through Shri Deepak Bhaskar Phatangare in order to help his friend Shri Bipin Vijay Salunke. Further, OP-1 and Shri Deepak Bhaskar Phatangare regret the actions taken by them and undertake not to do so in future. In any case, OP-1 is not in business anymore and is not operational as on date.



OP-2 and Shri Bipin Vijay Salunke (Director of OP-2)

26. OP-2 and Shri Bipin Vijay Salunke in their combined written submission submitted that they have already admitted to their role in the acts investigated by the DG and have no objection to the conclusion arrived at in the DG report. Further, they co-operated fully with the DG in the investigation and disclosed their own role and that of its officers in the alleged bid rigging of Tender nos. 21 and 28 of 2013, which was a new information not within the knowledge of the Commission.
27. In their reply, OP-2 and Shri Bipin Vijay Salunke have submitted that their present reply relates to two broad aspects (i) entitlement to lesser penalty and (ii) procedural and substantive errors in the investigation report of the DG.
28. With respect to the first aspect it is submitted that perusal of the investigation report shows that virtually no investigation was required as all the facts and evidence were provided in the Lesser Penalty Application. OP-2's application made detailed disclosure of precise *modus operandi* adopted by it to coordinate between various OPs bidding for the tender. Further, details of alleged cartelisation including the objective of alleged cartelization *i.e.* to ensure that PMC does not extend tender period, names of persons who participated, nature of their relationship with OP-2 and its officers and dates when concerted actions were done, were provided by OP-2. With respect to the documentary evidences, bank statement of Shri Bipin Vijay Salunke indicating preparation of DDs for Tender nos. 21 and 28 of 2013, copies of documents of including Affidavits, DDs and authorization letters, box containing actual digital keys/pendrives obtained by Shri Parimal Salunke from PMC for all bidders were submitted by it which were vital piece of physical evidence establishing cartelisation.
29. OP-2 has stated that it was unaware of provisions of Competition Act, and thus,



inadvertently contravened the same by setting up other OPs as bidders to ensure that clause 2.4.5 regarding extension of time was not triggered. It is averred that this was done *bonafide* as it is a matter of record that apart from OP-2 no other eligible bidder participated in PMC tender between 2013 to 2015, despite extension of period of bidding. Therefore, as such, no actual loss was caused to PMC, nor did OP-2 foreclose the market to other competitors.

30. With respect to the other aspect of procedural and substantive errors in the investigation report, OP-2 has alleged that certain lapses occurred in course of investigation and preparation of investigation report by the DG, which adversely affected the reputation of OP-2 and its officers as well as their rights under the Act. It is averred that inclusion of entire, non-redacted statement of Shri Bipin Vijay Salunke in the investigation report of the DG amounted to gross violation of confidentiality of OP-2 and Shri Bipin Vijay Salunke in terms of Regulation 6 of the Lesser Penalty Regulations. It is alleged that this resulted in actual harm as the report and the statement were quoted in local newspapers of Pune, which caused embarrassment to Shri Bipin Vijay Salunke and his family members. OP-2 has requested that the harm already caused to Ecoman and Shri Bipin Vijay Salunke be also considered as a factor while evaluating any reduction in penalty.
31. Further, OP-2 has contended that the investigation report appears to ignore the fact that Lesser Penalty Application was filed by OP-2 and instead gives an impression that the entire investigation was carried out solely by the efforts of the DG. OP-2 has submitted that it was incumbent upon the DG to prepare two versions of the investigation report *i.e.* confidential and public version. In the confidential version of the report he should have indicated precisely how much assistance was obtained from its disclosures.
32. Thus, OP-2 has prayed that on account of substantial value addition done by it by way of disclosing new facts and documents in Lesser Penalty Application and



oral statements, as well as considering the prejudice caused to it on account of the flaws in the DG report, maximum reduction of penalty permissible in law should be granted to it in accordance with its priority status.

OP-3 and Shri Bipin Vijay Salunke (Proprietor of OP-3)

33. OP-3 and Shri Bipin Vijay Salunke have submitted that they have already admitted to their role in the acts investigated by the DG. and have no objection to the conclusion arrived at in the investigation report of the DG. Accordingly, their present reply relates only to two aspects *i.e.* entitlement to lesser penalty and procedural and substantive errors in the investigation report of DG.
34. OP-3 has contended that even though summons issued to it by the DG pertained only to Case no. 50 of 2015, Shri Bipin Vijay Salunke co-operated with the DG and answered all questions relating to the present *suo motu* case without demur. Moreover, bare reading of the investigation report shows that practically no *de novo* investigation was required to be done into the particular facts and circumstances of the tender covered by the instant case, possibly because the disclosures in the Lesser Penalty Application of OP-3 were so comprehensive that they sufficed to establish violations of provisions of the Act.
35. OP-3 has stated that in its Lesser Penalty Application as well as oral statements it gave a detailed description of how the alleged cartelisation was carried out along with other OPs, including names of persons who participated, nature of their relationship with OP-2 and its officers and dates of when various concerted actions were done. It is averred that these precise facts were not within the knowledge of the DG at that stage. In addition to disclosing the *modus operandi* of the cartel, OP-3 also provided documentary evidence such as bank statements, emails, Affidavits, authorization letters and physical digital keys/ pen drives obtained from Pune Municipal Corporation. In view of foregoing, it is contended the disclosures made by OP-3 in the Lesser Penalty Application and oral



statements added significant value to the investigation.

36. Further, OP-3 has alleged that some procedural/ substantive errors were committed in the investigation by the DG, which adversely affected its rights and reputation at large. It has contended that the DG while preparing the investigation report has breached the confidentiality under Regulation 6 of the Lesser Penalty Regulations by appending entire statement of Shri Bipin Vijay Salunke, in the public version of the investigation report and incorrectly stating that no confidentiality was claimed. Regulation 6 of the Lesser Penalty Regulation accords confidentiality to both the identity of the informant as well as to the 'information' provided by it. OP-3 has contended that the term 'information' must be taken to cover both the written application as well as any subsequent oral statement made to the DG as any other interpretation would mean that a fact assured confidentiality in the written application would not be entitled to confidentiality if stated during oral examination by the DG.
37. In view of above, OP-3 has prayed for grant of maximum reduction of penalty permissible in law for OP-3 on account of providing a substantial value addition by disclosing the new facts and documents in lesser penalty application and oral statements, as well as on account of the flaws in the DG report.

OP-4 and Shri Vijay Raghunath Salunke (Director of OP-4)

38. OP-4 and Shri Vijay Raghunath Salunke in their combined written submission submitted that they have no objection to the conclusion arrived at in the investigation report of the DG and has already admitted to its role in the acts investigated by the DG. Further, OP-4 has cooperated genuinely, fully and continuously with the investigation and disclosed its entire role and that of its officers in the alleged bid rigging of tenders by way of written submissions and oral statements and ceased the anti-competitive activities.



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39. OP-4 has contented that on account of the disclosures made by it practically no *de novo* investigation was required to be done by the DG into the instant *Suo Motu* Case. It disclosed not only the objectives of the alleged cartelization but also made comprehensive disclosure about the *modus operandi* of the cartel, the manner in which OP-4 assisted the cartel and provided evidences such as bank statements, Affidavits, authorization letters *etc.*, which are vital pieces of evidences establishing cartelization /bid rigging that could not have been obtained without cooperation of OP-4.
40. OP-4 has submitted that only a manufacturer of the composting machines or an authorized distributor of the said manufacturer was eligible to participate in PMC tenders, and as OP-2 did not qualify this condition, Shri Vijay Raghunath Salunke, Director of OP-4, a manufacturer of composting machines, on the insistence of his son, Shri Bipin Salunke agreed to provide authorization to it as authorized distributor of the Applicant to help it to qualify for PMC tenders. OP-4 has contented that this was done with *bona fide* intent, as apart from OP-2 no other eligible competitor or bidder participated in PMC tenders between 2013-2015 despite extension of period of bidding. It is averred that neither any consideration was offered nor received by OP-4 for this purpose. The assistance was provided merely due to personal relationship with OP-2 and Shri Bipin Vijay Salunke, who is the son of Shri Vijay Raghunath Salunke. Moreover, no actual loss was caused to PMC due to inadvertent acts of OP-4, nor did such acts foreclose the market to other competitors.
41. Additionally, OP-4 has pointed out some procedural and substantive errors in the investigation report of the DG. It has stated that the DG by submitting only one public version of the report, which appended the entire non-redacted statement of Shri Vijay Raghunath Salunke, acted in complete breach of confidentiality of OP-4. Further, the DG report did not provide sufficient





guidance to Commission to decide lesser penalty application as it completely ignores the fact that application for lesser penalty was filed by OP-4.

42. In view of the foregoing, OP-4 has prayed that on holistic evaluation of the value addition due to facts and documents disclosed by OP-4 in the Lesser Penalty Application and oral statements, as well as the prejudice cause to it on account of the flaws in the DG Report, maximum reduction of penalty permissible in law be granted to it.

**Analysis:**

43. Before proceeding to decide the case on merits, the Commission notes that OPs have raised certain procedural issues such as breach of confidentiality by the DG/ Commission and incompleteness of the investigation report of the DG as it does not reveal the fact that Lesser Penalty Applications had been filed by various OPs in the matter or the value addition provided by such applications. In this regard, it is observed that these issues have already been dealt with by the Commission in Case no. 50 of 2015 (Nagrik Chetna Manch v Fortified Security Solutions and Ors.). The observations of the Commission are reproduced here for completeness of this order.

**Legal Issue:**

*Whether Section 3(3) of the Act is applicable in the instant case when not all OPs are engaged in 'identical or similar trade of goods or provision of services'.*

44. In this regard, it is observed that a plain reading of Section 3(3) of the Act shows that any agreement, practice, or decision, including cartels, by enterprises, persons or association thereof is amenable to the jurisdiction of the Commission if the parties that are engaged in identical or similar trade of goods of provision of service are directly or indirectly engaged in bid rigging/ collusive bidding, which means that they are competitors in the market. Some OPs herein, however,



contend that they are not competitors as they are engaged in different trades and are, therefore, not covered by the provision of Section 3(3) of the Act.

45. The issue before the Commission here is that in a scenario where there is clear evidence and even acknowledgement of bid rigging in a tender process, can the bidders still contend that they are not covered by the provisions of the Act as they were not in that business activity at the time of bidding. In other words, the issue is whether in the context of Section 3(3)(d) of the Act the phrase 'engaged in' ought to be accorded the literal meaning or a meaning that advances the objective of the Act. Literal meaning would imply that the phrase would cover only those business(s), which the parties 'were' or 'are' actually engaged in; the other interpretation would include even those business(s) which the parties propose to undertake and for which they submit bid. In this regard, the Commission notes that it is a well settled principle of law that when two interpretations are feasible, the one that advances the remedy and suppresses the evil has to be preferred as envisioned by the legislature.
46. In the instant case, the Commission is of the view that it is the business activity of the parties that they are actually bidding for and the one regarding which the violation of law has been alleged which is relevant for the purpose of the applicability of Section 3(3)(d) Act rather than any other business activity(s) parties 'were' or 'are' actually engaged in. If the parties are allowed to escape the grasp of the Act by considering them as not competitors on the pretext that they are actually engaged in varied businesses, it will defeat the very purpose of the provisions of Section 3(3) (d) of the Act. Any construction other than this would mean that new entrants are totally exempt from the provisions of bid rigging for the reason that they are or were not involved in that business at the time of bidding. This would not only render the provision of Section 3(3)(d) nugatory but would make it totally redundant, thus taking out a large segment of the agreements related to bidding out of the purview of the Act.



Procedural Issues:

A. *Breach of confidentiality by the DG/ Commission*

47. It is noted that one objection that almost all OPs have taken is the issue of breach of confidentiality by the DG/ Commission. The OPs have claimed that DG, by disclosing the contents of their statements made before it in the investigation report as non-confidential information, has in effect disclosed the contents of their respective Lesser Penalty Application in breach of confidentiality accorded in terms of the Lesser Penalty Regulations. Further, the Commission by forwarding such report to the OPs has aided the breach of confidentiality.
48. The Commission, on careful consideration, finds this contention of the OPs to be misconceived. It is noted that application by an Applicant under Lesser Penalty Regulations and statements of the OPs before the DG, are separate set of evidences. The application under Section 46 of Act is filed before the Commission in terms of the Lesser Penalty Regulations. The confidentiality on such an application is governed in terms of the said Regulations. The confidential treatment granted under Lesser Penalty Regulations does not extend to evidence obtained or collected by the DG, even if such an evidence is obtained from a Lesser Penalty Applicant. Therefore, statements of the OPs recorded by DG are an independent evidence. These may or may not contain the information submitted in the Lesser Penalty Regulations. The confidentiality on such an evidence can only be in terms of Regulation 35 of the General Regulations, for which the tests laid down in Regulation 35(3) and 35(9) of the General Regulations have to be satisfied. There is nothing on record to show that the OPs sought confidential treatment on their statements or the same was granted by the DG under those Regulations. It goes without saying that if confidential treatment is neither sought nor granted on any evidence, it shall be treated as non-confidential for the purposes of the case. In such a scenario, including this material evidence in the investigation report is essential to enable the parties to



the case to exercise their right of defence.

49. At the same time, it is pertinent to note that even in the case of information submitted under the Lesser Penalty Regulations, where confidentiality granted to information is over and above that granted under Regulation 35 of the General Regulations, the confidentiality will remain subject to the provisions of Section 57 of the Act under which the Commission can disclose such information for the purposes of the Act.
50. Be that as it may, in the instant case, it is noted that OPs are claiming reputational harm not because of disclosure of confidential information in the investigation report of the DG but because of disclosure of such information to the public at large. In this regard, the Commission observes that it is well recognized fact that the investigation report is not a public document and is not to be shared with public. This aspect is enshrined in Regulation 47 of the Competition Commission of India (General) Regulations, 2009 (hereinafter, 'General Regulations'), which clearly provides that the proceedings before the Commission are not open to public, except where the Commission so directs. In the instant case, there being no direction to make proceedings open to public, there was no question of sharing of the investigation report of the DG with anyone other than the OPs.
51. It seems that the contention of the OPs regarding sharing of investigation report in the instant case emanates from an incident in Case no. 50 of 2015 whereby the Informant had shared the investigation report with the media. The OPs have merely made similar contention of breach of confidentiality in this case also without placing on record evidence to show that the contents of investigation report in this case were also disclosed in public domain. The instant case being taken up *suo motu*, the investigation report was not shared with anyone other than the OPs. Since the OPs were themselves involved in the conduct, they were



well aware of each other's conduct and disclosure of their statements to each other cannot be considered to cause reputational harm.

52. In view of the foregoing, contention of the OPs that reputational harm has been caused due to action/ omission of the DG/ Commission appears to be misplaced. Such harm, if any, has been caused due to OPs own acts of collusion in contravention of the provisions of the Act. The allegation against the DG/ Commission is nothing more than a ruse to get reduction or discharge from imposition of penalty under the Act.

*B. The Investigation report of the DG does not reveal the fact that Lesser Penalty Applications had been filed by various OPs in the matter or the value addition provided by such Applications:*

53. Some OPs have contended that the investigation report did not adequately deal with and distinguish between the evidences/ information that had been gathered by the DG on its own *vis-à-vis* those that had been furnished by the Lesser Penalty Applicants. Further, it is averred that by excluding the fact that OPs had filed Lesser Penalty Applications and the value addition that was provided by their information, investigation report has remained incomplete.

54. In this regard, the Commission observes that what OPs have referred to as incompleteness, in fact protects the identity of the Lesser Penalty Applicants. If the investigation report was to identify the evidences furnished by the Lesser Penalty Applicant(s), it would not only disclose the identity of such Applicant(s) but also the contents of Lesser Penalty Application, on which OPs have themselves vehemently claimed confidentiality. Further, the decision on significant value addition by the Lesser Penalty Applicant and consequent reduction in penalty to the Applicant is something which only the Commission can decide and not the DG. Such a decision would be made looking into the contents of the Lesser Penalty Application, documents/ additional evidence



obtained during investigation by the DG, investigation report of the DG and submissions of the OPs thereon. The observation in this regard would form part of the order of the Commission and not the investigation report of the DG. Hence, the Commission finds no inconsistency or incompleteness in the investigation report of the DG.

#### Establishment of Violation:

55. The Commission has perused the facts of the case, the investigation report of DG, submissions made in Lesser Penalty Applications and submissions of the OPs thereon. On consideration of the same, it is observed that the evidence adduced by the DG during investigation and the admissions of OPs under Section 46 of the Act categorically establish cartelisation and bid rigging in Tender nos. 21 and 28 of 2013.
56. The investigation into the case reveals that the main role in the cartel was played by Shri Bipin Vijay Salunke, who is a director in OP-2, the L1 bidder, and also the sole proprietor of OP-3. The objective of cartelisation was to assist OP-2 emerge as L1 bidder by placing proxy bids and, thereby, win the tenders. In order to do so, Shri Bipin Vijay Salunke ensured that there were minimum three eligible bidders in each of the two tenders in order to comply with the tender process guidelines that specified a minimum of three technically qualified bidders for each bid. For doing so, Shri Bipin Vijay Salunke approached the director of OP-1 *i.e.* Shri Deepak Bhaskar Phatangare, to provide relevant documents for filing the online tender as a proxy bidder in Tender nos. 21 and 28 of 2013. Also, Shri Bipin Vijay Salunke submitted another bid on behalf of OP-3, in which he himself was a proprietor.
57. To enable the participation of OP-2, which did not have any experience or background in solid waste management, Shri Bipin Vijay Salunke arranged the



authorization certificates for OP-2 from OP-4 in which his father Shri Vijay Raghunath Salunke was a Director. Further, Shri Bipin Vijay Salunke prepared the DDs for EMD for the proxy bidders. Also, for participation in Tender nos. 21 and 28 of 2013, Shri Parimal Salunke obtained the relevant documents from the proxy bidder and uploaded the same on their behalf for the online tender.

58. Shri Bipin Vijay Salunke was assisted by Shri Parimal Salunke and Shri Vijay Raghunath Salunke, for arranging the relevant documents, preparation of DDs and authorization certificates and uploading of tender documents. Also, Shri Deepak Bhaskar Phatangare, Director of OP-1 acquiesced to request of Shri Bipin Vijay Salunke and provided the relevant documents to place proxy/ cover bid in Tender nos. 21 and 28 of 2013 and aided the cartel.
59. Thus, it is evident from the above that that there was meeting of mind and collusion amongst OP-1, OP-2 and OP-3 to rig the bid in Tender nos. 21 and 28 of 2013 floated by PMC.
60. As regards the role of OP-4, it is observed that OP-4 certified OP-2 as authorized distributor of composting machines to enable it to participate in the two tenders. In his statement on oath, Shri Vijay Raghunath Salunke, director of OP-4 accepted that he was aware that Shri Bipin Vijay Salunke would be taking help of other bidders for submission of tenders. This shows that OP-4 not only aided OP-2 to bid for tender but also played a pivotal role in the operation of the cartel. Strangely, despite having the requisite experience, OP-4 did not participate in the tender itself, which also assisted OP-2 to win the tenders. Thus, the Commission finds that contravention of provisions of Section 3(3)(d) of the Act is made out in instant case not only against OP-1, OP-2 and OP-3 but also against OP-4.



61. Additionally, the Commission notes that some of the OPs have averred that no appreciable adverse effect on competition in India has been caused by way of any alleged meeting of minds in this case, as the tenders that are under investigation were e-auction tenders open for all bidders. Therefore, the entry was not restricted in any manner due to the alleged agreement/ cartel and no actual loss was caused to PMC. Moreover, no consideration was derived from OP-2 by other bidders for submitting their bids, therefore, the latter did not even benefit from bid rigging.
62. In this regard, the Commission observes that under the provisions of Section 3(3)(d) of the Act, bid rigging shall be presumed to have adverse effect on competition independent of duration or purpose and, also, whether benefit was actually derived or not from the cartel. In terms of the provisions contained in Section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Section 3(2) of the Act declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. Further, by virtue of the presumption contained in subsection (3), any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which - (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; (d) directly or indirectly results





in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

63. Thus, in case of agreements listed under Section 3(3) of the Act, once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition and the onus to rebut the presumption would lie upon the OPs.
64. In the present case, OPs have neither been able to rebut the said presumption nor been able to show how the impugned conduct resulted into accrual of benefits to consumers or made improvements in production or distribution of goods in question.
65. Further, with respect to the averment of OPs that as bid rigging has not restricted entry there is no appreciable adverse effect on competition and, hence, no contravention of the provisions of Section 3(3) of the Act, the Commission observes that mere possibility that other bidders could have bid for the tender cannot absolve the colluding OPs from their conduct of bid rigging. Explanation to Section 3(3) of the Act makes it clear that bid rigging even includes an agreement that has the effect of reducing competition for bids or adversely affecting or manipulating the process of bidding. Therefore, even if a subset of bidders collude amongst themselves to rig or manipulate bidding process, it would be a violation of Section 3(3)(d) of the Act.
66. In view of the forgoing, the Commission finds that OP-1, OP-2, OP-3 and OP-4 have indulged in bid rigging/ collusive bidding in the aforesaid tenders of OP-3 in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act.



67. So far as the individual liability of person(s)/ officer(s) under Section 48 of the Act is concerned, the Commission notes that the DG has identified Shri Deepak Bhaskar Phatangare (OP-1), Shri Bipin Vijay Salunke (OP-2 and OP-3), Shri Parimal Salunke (OP-2) and Shri Vijay Raghunath Salunke (OP-4) as the person(s)/ officer(s) involved in the cartel under Section 48(2) of the Act.
68. The Commission is in agreement with the findings of the DG on the role and liability of the person(s)/ officer(s) of the OPs under Section 48(2) of the Act. However, the Commission notes that under Section 48 separate liability arises against the officer(s)/ person(s) of the contravening company including partnership firms but not proprietorship firms. In the Explanation to Section 48 of the Act, the word 'Company' is defined to include body corporate or firms or association of firms but not proprietorship firms. Thus, the Commission is of the view that provisions of this section would not apply to proprietorship firms. Accordingly, since OP-3 is a proprietorship firm in the present case, the Commission decides not to hold its person(s)/ officer(s) separately liable under Section 48 of the Act. However, person(s)/ officer(s) who are the director/ executive director/ partners of OP-1, OP-2 and OP-4, would be liable. The role and liability of these individuals is discussed below:

*a. Role of key persons in OP-1:*

For OP-1, Shri Deepak Bhaskar Phatangare was the key person involved in the cartel. OP-1, a private limited company, has three directors namely; Shri Deepak Bhaskar Phatangare, Shri Bhaskar Annasaheb Phatangare and Sushila Bhaskar Phatangare. In his statement on oath, Shri Deepak Bhaskar Phatangare stated that he was responsible for overall management of the company being the managing director of OP-1. Shri Deepak Bhaskar Phatangare also stated in his confession that he cartelised at the behest of Shri Bipin Vijay Salunke who requested him to provide relevant documents for the bid for acting as a dummy bidder.



b. Role of key persons in OP-2:

*Shri Bipin Vijay Salunke, Director of OP-2*

- i. OP-2, being a private limited company registered under the Companies Act, 1956, has two directors, namely; Shri Bipin Vijay Salunke and Sulabha Vijay Salunke. For OP-2, Shri Bipin Vijay Salunke managed the overall operations and business activity while the role of Smt. Sulabha Vijay Salunke was limited to as being the signing authority for compliance of any legal documents.
- ii. Furthermore, Shri Bipin Vijay Salunke confessed to having formed a cartel to rig the bid. In his statement on oath, he confessed that he knew all the competitors bidding in Tender nos. 21 and 28 of 2013. He stated that Shri Deepak Bhaskar Phatangare (Managing Director of OP-1) was his good friend and gave the documents for submitting cover bid on behalf of OP-1 based on their friendship and relationship for Tender nos. 21 and 28 of 2013.
- iii. Shri Bipin Vijay Salunke also admitted that DDs for EMD for various bidders were prepared by Shri Parimal Salunke on his instructions by depositing cash. He submitted that the technical and price bid for the bidders in two tenders were scanned and uploaded by Shri Parimal Salunke from same IP address. Further, Shri Bipin Vijay Salunke accepted that he sent Shri Parimal Salunke to PMC for purchasing /procuring the digital key for OP-1 and OP-3 by submitting all relevant documents and registered his mobile number for telephonic verification by the PMC.

*Shri Parimal Salunke, Executive Director of OP-2*

- i For OP-2, apart from the Shri Bipin Vijay Salunke, Shri Parimal



Salunke who was Executive Director of OP-2 and cousin of Shri Bipin Vijay Salunke also played an important role in the cartel. The name and contact details of Shri Parimal Salunke were mentioned in tender documents of various bidders for any telephonic verification by PMC.

- ii Further, Shri Parimal Salunke procured the digital keys for various bidders by submitting all the relevant documents in PMC office. Also, DDs for EMD for the various bidders were prepared by Shri Parimal Salunke on the instructions of Shri Bipin Vijay Salunke. Furthermore, relevant documents and the technical and price bids for various bidders in the impugned tenders were scanned and uploaded by Shri Parimal Salunke from the same IP address.
- iii Shri Parimal Salunke when confronted with the statement of Shri Bipin Vijay Salunke describing his role in the cartel, accepted that he assisted Shri Bipin Vijay Salunke in the bid-rigging/cartel with other bidders in the manner as described above.

Role of key persons in OP-3:

For OP-3, Shri Bipin Vijay Salunke was the key person involved in the cartel, who was a proprietor of OP-3. Shri Bipin Vijay Salunke in his statement on oath accepted that he was involved in collusive bidding which was also corroborated by various evidences gathered during the investigation. He also acknowledged that he knew the competitors for these tenders as he himself roped them in and requested them to place proxy bids.

Role of key persons in OP-4:

For OP-4, Shri Vijay Raghunath Salunke, also the father of Shri Bipin Vijay Salunke, was the key person involved in the cartel. He had clear



knowledge about different entities being given authorization by OP-4 as its distributor for participating in the tender, despite these not having any background of solid waste management. In his statement on oath, Shri Vijay Raghunath Salunke accepted that authorization letters/certificates were given to OP-2 but were signed by a former director – Smt. Smita Avinash Shirolkar. Further, the investigation also revealed that IP addresses which were used for uploading the tender documents of various OPs was registered in the name of Shri Vijay Raghunath Salunke. Therefore, Shri Vijay Raghunath Salunke clearly had knowledge of cartel orchestrated by his son Shri Bipin Vijay Salunke and aided the same.

## **ORDER**

### **Computation of Penalty:**

69. As regards the penalty to be imposed under Section 27 of the Act, the Commission finds that OP-1, OP-2, OP-3 and OP-4 have entered into an arrangement to rig the bids pertaining to Tender nos. 21 and 28 of 2013 floated by PMC for ‘Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s)’, as brought out hereinabove, and are, hence, responsible for infringement of the provisions of Section 3(3)(d) read with Section 3(1) of the Act and are liable for penalty.
70. Considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty on OP-1, OP-2, OP-3 and OP-4 under Section 27 of the Act by taking into consideration the financial statements filed by them at the rate of 10 (Ten) percent of the average turnover of three financial years 2011-12, 2012-13 and 2013-14. The total amount of penalties imposed on the OPs are set out below:



*Amount – in rupees*

S. No.	Opposite Parties	Turnover for 2011-12	Turnover for 2012-13	Turnover for 2013-14	Average Turnover for Three Years	10% of average turnover
1.	Saara Traders Private Limited*	4,64,52,619	Not available	Not available	4,64,52,619	46,45,262
2.	Ecoman Enviro Solutions Pvt. Ltd. (OP-2)	60,43,875	4,55,65,642	4,73,92,830	3,30,00,782	33,00,078
2.	Fortified Security Solutions (OP-3)	27,05,348	2,56,55,868	46,55,000	1,10,05,405	11,00,541
4.	Raghunath Industry Pvt. Ltd. (OP-4)**	Not available	Not available	2,64,09,403	2,64,09,403	26,40,940

*\*1 year turnover available. As per submissions, OP-1 is non-operational and virtually defunct since 2013. Further, it has stated that no filings have been made by it with the Registrar of Companies since 2009.*

*\*\*1 year turnover available. As per submissions, OP-7 was incorporated on 24.06.2013 and its first financial year was 2013-14.*

71. So far as the individual liability of the person(s)/ officer(s) of OPs in terms of the provisions of Section 48 of the Act is concerned, the Commission has found Shri Deepak B. Phatangare (OP-1), Shri Bipin Vijay Salunke (OP-2), Shri Parimal Salunke (OP-2) and Shri Vijay Raghunath Salunke (OP-4) liable under Section 48(2) of the Act.

72. Resultantly, considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty on these person(s)/ officer(s) in terms of Section 27(b) of the Act calculated at the rate of 10 (ten) percent of average of their income for last three preceding financial years as follows:



*Amount – in rupees*

S. No.	Individuals	Income for 2011-12	Income for 2012-13	Income for 2013-14	Average Income for 3 Years	@ 10 % of average Income
1.	Shri Deepak Bhaskar Phatangare, Director of OP-1	19,78,847	10,01,655	Not available	14,90,251*	1,49,025
2.	Shri Bipin Vijay Salunke, Managing Director of OP-2	1,80,000**	11,00,000**	12,00,000**	8,26,667	82,667
3.	Shri Parimal Salunke, Executive Director of OP-2	3,79,672	1,41,221	4,72,083	3,30,992	33,092
4.	Shri Vijay Raghunath Salunke, Director of OP-7	7,02,375	7,95,899	17,09,425	10,69,233	1,06,923

\*Average income for 2 years as available

\*\*Salary income from OP-2

#### **Evaluation of Lesser Penalty Applications:**

73. In the instant matter, all four OPs filed Lesser Penalty Applications with the Commission. The sequence in which the OPs filed their Lesser Penalty applications was: 1<sup>st</sup> application - OP-1, 2<sup>nd</sup> application - OP-2, 3<sup>rd</sup> application - OP-4 and 4<sup>th</sup> application - OP-3. The evaluation of their Lesser Penalty Applications is as follows:

#### **OP-1 and Shri Deepak Bhaskar Phatangare (Director of OP-1)**

74. In the present matter OP-1 filed an application under Section 46 of the Act, read with Regulation 5 of the Lesser Penalty Regulations on 01.08.2016 at 12.28 P.M. when the investigation was in progress and the Report had not been submitted by the DG.

75. The Commission notes that the OP-1 was the first to accept the existence of a cartel/ bid rigging in Tender nos. 21 and 28 of 2013 of PMC and submit



information in support thereof. At the time OP-1 approached the Commission and admitted to being a part of the cartel, the DG had already gathered evidence which indicated bid rigging/ collusion amongst OPs. This included mention of telephone number of Shri Parimal Salunke of OP-2 in the contact person detail given by OP-1 in the PMC tenders, preparation of DDs furnished as earnest monay for Tender no. 21 and 28 of 2013 by Shri Bipin Vijay Salunke by depositing cash and common IP address for uploading of tender documents by all three bidders *i.e.* OP-1, OP-2 and OP-3.

76. However, OP-1 made a critical disclosure regarding *modus operandi* of the cartel revealing that he was approached by Shri Bipin Vijay Salunke , who was his close friend, requesting to provide documents of OP-1 to place proxy bid in Tender nos. 21 and 28 of 2013. OP-1 also disclosed that the documents were collected by Shri Parimal Salunke from his office. Thus, OP-1 revealed the role of other person involved in the cartel *i.e.* Shri. Parimal Salunke. However, it is observed that the evidences pertaining to the preparation of DD and use of same IP address for uploading the bid documents online were already in the possession of the DG and were not provided by OP-1. Since preparation of bank drafts and uploading of the documents of OP-1 was done by Shri Bipin Vijay Salunke /Parimal Salunke, it is possible that this information was not available with it.
77. The Commission finds that the information provided by OP-1 made reasonable value addition to the ongoing investigation as it provided a better picture of the operation of cartel. The evidence provided in the Lesser Penalty Application and statement of Shri Deepak Bhaskar Phatangare before the DG accepting the existence of cartel substantiated the evidence in the possession of the DG/ Commission and completed the chain of events. The investigation report of the DG shows that the information and evidence furnished by OP-1 were relied upon to establish the existence of the cartel in Tender nos. 21 and 28 of 2013.





78. Further, OP-1 supported the investigation and co-operated fully and expeditiously on a continuous basis throughout the investigation/ inquiry into the matter with the DG as well as the Commission. The Commission is satisfied with the cooperation offered by OP-1 and acknowledges that the evidence and cooperation provided by it helped the Commission's investigation in establishing the existence of a cartel in Tender nos. 21 and 28 of 2013. No doubt, OP-1 was first to file an application under Section 46 of the Act, but he came when some evidence was already in possession of the DG.
79. Thus, considering the above, Commission decides to grant a reduction in penalty of *Fifty percent* to OP-1 than would otherwise have been leviable on it.

OP-2 and Shri Bipin Vijay Salunke (Director of OP-2)

80. OP-2 filed an application in the present matter under Section 46 of the Act, read with Regulation 5 of the Lesser Penalty Regulations on 05.08.2016 at 12:40 P.M.
81. In the Lesser Penalty Application, Shri Bipin Vijay Salunke of OP-2 admitted to having orchestrated the cartel in Tender nos. 21 and 28 of 2013 floated by PMC. He disclosed the *modus operandi* of the cartel. He accepted that he roped in other cover/ proxy bidders so that it was assured that there were atleast three eligible bidders in first round of bidding itself and tender would ultimately be awarded to OP-2. He explained the role of Shri Parimal Salunke in the cartel. He also acknowledged that relevant documents for the tenders were provided by OP-1 and that the DDs for EMD for the tenders were prepared by Shri Parimal Salunke on behalf of OP-1.
82. The Commission observes that when OP-2 approached the Commission, several evidence indicative of collusion amongst OPs had already been gathered by the DG including contact persons named by OPs in tenders, preparation of DDs for



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EMDs and uploading of documents from same IP addresses. Further, OP-1 had already approached the Commission under Section 46 of the Act read with Regulation 5 of the Lesser Penalty Regulations prior to OP-2. Therefore, almost all the information provided by OP-2, including the details of *modus operandi* of the cartel were already available with the Commission at the date and time of its approaching the Commission.

83. Though the statement of Shri Bipin Vijay Salunke of OP-2 admitting cartelisation and disclosing the role of persons involved in Tender nos. 21 and 28 of 2013 is important, statements of Shri Deepak Bhaskar Phatangare of OP-1 had independently disclosed *modus operandi* of the cartel. Only value addition which was made by disclosure of OP-2, was with respect to purchase/ procurement of digital keys by Shri Parimal Salunke for uploading the documents on website of PMC on behalf of other bidders from the computer of OP-2.
84. The Commission finds that although OP-2 disclosed details of the cartelisation, the value addition made by it was minimal. At the time it approached as Lesser Penalty Applicant, most of the information was already in possession of the Commission. Moreover, it is important to note that Director of OP-2, Shri Bipin Vijay Salunke, orchestrated the entire cartel, as a result of which OP-2 emerged as L1 bidder in both the tenders. However, the Commission is also cognizant of the fact that OP-2 co-operated on a continuous basis throughout the investigation/ inquiry and accepted information indicating the *modus operandi* of the cartel and provided all evidence in its possession or available to it.
85. Therefore, considering the stage at which OP-2 approached the Commission, the co-operation extended during investigation, value addition made in establishing the cartel, role played in the cartel and the priority status granted to OP-2, the Commission decides to grant no reduction in penalty to OP-2 in this matter. It



is pointed out that despite being the orchestrator of the cartel, OP-2 has already been granted reduction in penalty in Case no. 50 of 2015 and no penalty is levied in *Suo Motu* Case no. 04 of 2016.

*OP -4 and Shri Vijay Raghunath Salunke (Director of OP-4)*

86. OP-4 filed an application under Section 46 of the Act, read with Regulation 5 of the Lesser Penalty Regulations on 05.08.2016 at 02:32 P.M.
87. In the said application OP-4 stated that in October 2013 Shri Bipin Salunke informed Shri Vijay Raghunath Salunke about the tenders issued by PMC and the condition that only a manufacturer of composting machines or an authorized distributor of the said manufacturer was eligible to participate. Therefore, to help OP-2 participate in the said tenders, authorization certificates as an authorized distributor of OP-4 were issued to OP-2, as the latter itself was not engaged in manufacturing of composting machines. Further, it was also stated that Shri Bipin Vijay Salunke informed Shri Vijay Raghunath Salunke about his intentions of placing cover bid on behalf of OP-3. He accepted the existence of cartel but denied that he was a part of or aware of the cartel even though he accepted that he had knowledge of the fact that his son Shri Bipin Vijay Salunke would be taking help of other bidders for the tenders.
88. The Commission notes that prior to the Lesser Penalty Application of OP-4, there were other applicants who had made disclosure about the cartel in the tenders floated by PMC. At the time OP-4 approached under Section 46 of the Act, evidence gathered by the DG including that of preparation of DDs for EMD and authorization letters by OP-4 to OP-2 in the tender process which were disclosed by OP-4 in its Lesser Penalty Application, was already available with the Commission. Moreover, the information that Shri Vijay Raghunath Salunke was the father of Shri Bipin Vijay Salunke and that the IP addresses which were used for uploading the tender documents of various OPs was registered in the



name of Shri Vijay Raghunath Salunke was also discovered through investigation. Thus, the documents furnished by OP-4 did not provide significant value addition to the evidence already in possession of the DG.

89. In view of the facts and evidences gathered in the present matter, the Commission is of the view that OP-4 did not provide any value addition in establishing the existence of cartel. Accordingly, the Commission decides not to grant any reduction in penalty to OP-4.

### OP-3

90. OP-3 filed an application under Section 46 of the Act, read with Regulation 5 of the Lesser Penalty Regulations on 20.09.2016 at 03:00 P.M. The Commission notes that OP-3 participated in Tender nos. 21 and 28 of 2013. Shri Bipin Vijay Salunke, Proprietor of OP-3 admitted to orchestrating the cartel and propping up OP-1 and OP-3 as proxy bidders so that tender would ultimately be awarded to OP-2.
91. It is observed that at the time OP-3 furnished evidence and documents under Section 46 of the Act, the Commission was already in possession of evidence gathered by the DG and the evidence provided by OP-1 with respect to Tender nos. 21 and 28 of 2013. Therefore, Lesser Penalty Application of OP-3 did not make any significant value addition to the evidence gathered during the investigation.
92. The Commission is of the view that OP-3, no doubt, has supported the investigation and co-operated fully with the investigation/ inquiry throughout and accepted the information indicating the *modus operandi* of the cartel and evidence in its possession or available to it. But all this made no value addition to the evidence gathered.



93. In view of the foregoing, the Commission decides not to grant any reduction in penalty to OP-3.

**Remedies including imposition of fines:**

94. In view of the finding of contravention against OP-1, OP-2, OP-3 and OP-4, the Commission directs them to cease and desist from indulging in such anti-competitive conduct in future.
95. Considering that the Commission has decided to grant *fifty percent* reduction in penalty to OP-1 and NIL reduction in penalty to other OPs under Section 46 of the Act, as recorded hereinabove, the total amount of penalty to be paid by respective OPs is as follows:

*Amount – in rupees*

S. No.	Opposite Parties	Penalty as per Para 70 above	Reduction in Penalty	Penalty Imposed and Payable
1.	Saara Traders Private Limited	46,45,262	50%	23,22,631
2.	Ecoman Enviro Solutions Pvt. Ltd. (OP-2)	33,00,078	NIL	33,00,078
3.	Fortified Security Solutions (OP-3)	11,00,541	NIL	11,00,541
4.	Raghunath Industry Pvt. Ltd. (OP-4)	26,40,940	NIL	26,40,940

96. The Commission directs these OPs to deposit the penalty amount within 60 days of receipt of this order.
97. Considering that the Commission has decided to grant *fifty percent* reduction in penalty to OP-1 and NIL reduction in penalty to other OPs under Section 46 of the Act, as recorded hereinabove, the Commission, also decides to allow the same reduction in penalty to OP-1's officer under Section 46 of the Act. Thus,



the total amount of penalty to be paid by them is as follows:

*Amount – in rupees*

S. No.	Individuals	Penalty as per Para 72 above	Reduction in Penalty	Penalty Imposed and Payable
1.	Shri Deepak Bhaskar Phatangare, Director of OP-1	1,49,025	50%	74,513
2.	Shri Bipin Vijay Salunke, Managing Director of OP-2	82,667	NIL	82,667
3.	Shri Parimal Salunke, Executive Director of OP-2	33,092	NIL	33,092
4.	Shri Vijay Raghunath Salunke, Director of OP-4	1,06,923	NIL	1,06,923

98. The Commission directs the parties to deposit the respective penalty amount within 60 days of receipt of this order.

99. The Secretary is directed to inform the parties accordingly.

Sd/-  
(Devender Kumar Sikri)  
Chairperson

Sd/-  
(Sudhir Mital)  
Member

Sd/-  
(Augustine Peter)  
Member

Sd/-  
(U. C. Nahta)  
Member

New Delhi  
Dated: 31.05.2018