



COMPETITION COMMISSION OF INDIA

Ref. Case No. 02 of 2019

In Re:

**CP Cell, Directorate General Ordnance Service,
Master General of Ordnance Service, CP Cell/OS Dte,
Room No. 101, D-II Wing 1st Floor, Sena Bhawan,
New Delhi-110001**

Informant

And

**M/s NCFD,
16/97, Shvoy Tower, The Mall,
Kanpur-208001**

Opposite Party No. 1

**M/s Kaushalya Industries,
128/800, K Block, Kidwai Nagar,
Kanpur-208014**

Opposite Party No. 2

**M/s AVR Enterprises,
D-23, Panki Industrial Estate, Site No. 1,
Kanpur- 208022**

Opposite Party No. 3

**M/s PN Gupta & Sons,
105/535, Anand Bagh,
Kanpur- 208001**

Opposite Party No. 4

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**



Order under Section 26(2) of the Competition Act, 2002

1. The instant reference dated 06.09.2019, has been filed by CP Cell, Directorate General Ordnance Service, Master General of Ordnance Service (“**Informant**”) under section 19(1)(b) of the Competition Act, 2002 (“**Act**”) against M/s NCFD (“**NCFD**”), M/s Kaushalya Industries (“**KI**”), M/s AVR Enterprises (“**AVRE**”) and M/s PN Gupta & Sons (“**PNGS**”) alleging contravention of the provisions of Section 3 of the Act.
2. The Informant in the present case had floated a Tender No. A/59919/Shirt Khakhi/DGOS/OS-PII/Proc Sec, dated 19.06.2017 for procurement of 1,38,251 Shirt Man’s Cellular Cotton 1973 Pattern (Modified) Khaki (“**Item**”). The Informant has stated that out of 14 firms which participated, only 09 qualified for the opening of their commercial bids.
3. The Informant has averred that Commercial Negotiation Committee (‘CNC’) observed that the rates may have been quoted after collusion by the said four firms (Opposite Parties). As submitted by the Informant, details of the bid are reproduced in the table below:

Table 1: Details of Bidders

S. No	Firm Name	Rate (in Rs)	Status
(i)	M/s NCFD, Kanpur (NCFD)	155.00	L-2
(ii)	M/s Kaushalya Industries Kanpur (KI)	155.00	L-2
(iii)	M/s AVR Enterprises, Kanpur (AVRE)	185.00	L-6
(iv)	M/s PN Gupta & Sons, Kanpur (PNGS)	185.00	L-6



4. The Informant has further alleged that on checking the Internet Protocol addresses ('IP') of these firms, it was found that their IPs were also the same. However, the Informant has not provided evidence in this regard.
5. Based on its submission, *i.e.*, quotation of similar rates *vis-à-vis* NCFD & KI and AVRE & PNGS and similarity in their IP addresses, the Informant has alleged that these four firms cartelised in the tender floated by it.
6. The Informant has further submitted that since the item was required urgently by recruits, the CNC, with due approval of Competent Financial Authority has processed the placement of Supply Order on L-1 firm only.
7. The Informant has prayed that the Commission may direct the Director General ('DG') to conduct an investigation into the matter under Section 26(1) of the Act to examine if there is any contravention of the provisions of Section 3 of the Act, so that further action may be taken.
8. The Commission considered the matter in its ordinary meeting held on 01.10.2019, and observed that the information provided was not complete in terms of description of the tender floated by the Informant as the details of bids submitted by qualified bidders were not provided. Further, the allegation of the Informant that the IP addresses of these firms were the same was not corroborated by any documentary evidence. Accordingly, the Commission sought additional information from the Informant with respect to details of the impugned tender, details of bidders who participated in the impugned tender, minutes of the meeting of tender approval committee, instances of alleged violation of terms and conditions of tender along with relevant documents in support of its allegation of bid rigging, etc. The Informant filed certain additional submissions before the Commission on 26.11.2019.



9. The Commission has perused the information and the additional information/documents filed in the matter.
10. The Commission notes that the bid rigging is defined in explanation under Section 3(3)(d) of the Act as, any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding. The Commission observes that bid rigging or collusive bidding in a tender can be done in various ways, which include any agreement to submit identical bid or deciding on who shall submit lowest bid or who shall refrain from submitting a bid and even includes designation of bid winners in advance on rotational basis/ geographical basis or customer allocation basis. Any such agreement is said to be in contravention of Section 3(3)(d) read with Section 3(1) of the Act.
11. Coming to the facts of the present case, the Commission notes that the RFP was invited by the Informant in the Tender No. *A/59929/ Shirt Khaki/ DGOS/ OS-PII/ Proc Sec* on 19.06.2017 for procurement of Shirt Man's Cotton Cellular, 1973 Pattern (Modified) Khaki for 1,38,251 units. The RFP was divided into 05 parts which contained general information and instructions, essential details of items required, standard as well as special conditions of RFP to form part of contract with successful bidder, and evaluation criteria and format for price bids respectively. The said tender contained clauses prescribing terms and conditions which appear to be in nature of a standard agreement for procurement by Government department.
12. The Informant has provided minutes of the meeting of Tender Evaluation Committee (TEC) held on 06.04.2018. As per the minutes, the indent rate was "*Rs. 168.00 per Nos*" and the entire quantity was to be supplied within ten months. The minutes of



meeting mentioned that total 14 firms participated in the bid out of which the TEC declared 09 firms as RFP compliant.

13. The Commission further notes that in respect of these 09 shortlisted firms, it had been updated on Government eProcurement System (GeM) on 10.05.2018 that the commercial bid was under evaluation and outcome was to be uploaded after CNC meeting. L-1 bidder was stated to be Shri Shyam Textile by Commercial Negotiation Committee (CNC) with L1 basic rate of Rs.144.00 along with details of price bids of other 08 firms. As averred previously, the identical bids have been received from two L-2 bidders (NCFD and KI) and two L-6 bidders (AVRE and PNGS).
14. Further, as per minutes of meeting of CNC held on 17.05.2018, the commercial bid was opened on 04.05.2018 wherein “*benchmarked price was fixed as Rs 175/-*”. As per the CNC minutes, rates quoted by the qualified firms were as follows:

No.	Firm's Name	Basic Rate (in Rs)	MPC* (in Nos.)	ML# (in Cr)	DP** in Months	Qty to be loaded	Ranking
(a)	M/s Shri Shyam Textile, Kanpur	144.00	10,000	4.20	10	1,00,000	L1
(b)	M/s NCFD, Kanpur	155.00	10,000	6.81	10	1,00,000	L2
(c)	M/s Kaushalya Industries	155.00	10,000	4.40	10	1,00,000	L2
(d)	M/s AV Tex, Kanpur	166.30	30,000	8.32	10	3,00,000	L3
(e)	M/s Manmohan Commercial Ltd., Kanpur	169.00	42,000	1.79	10	4,20,000	L4
(f)	M/s Shiva Industries, Kanpur	178.00	76,000	25.10	10	7,60,000	L5
(g)	M/s AVR Enterprises, Kanpur	185.00	40,000	10.82	10	4,00,000	L6



(h)	M/s PN Gupta & Sons, Kanpur	185.00	10,000	3.04	10	1,00,000	L6
(i)	M/s NYL Exports, Kanpur	195.00	10,000	1.72	10	1,00,000	L7

*MPC- Modular Package Contract

#ML- Monetary Limit

**DP-Delivery Period

15. Additionally, the Commission notes that the CNC had unanimously decided to load quantity of 1,00,000 units to L-1 firm at the rate of Rs. 144.00 (basic) and the loading of balance quantity to be considered once the case gets cleared from cartelisation in case of Cap Front Side (Cap FS). However, from the Informant's submission it is not clear whether supply order of balance quantity was given to L-2 or any other bidder.
16. The Commission after consideration of the information noted that the Informant has provided information with regard to price parallelism in respect of L-2 and L-6 bidders. The Commission *vide* its order dated 01.10.2019, had sought documentary evidence in respect of allegation pertaining to similarity of IP addresses of these firms, which informant failed to provide. In the absence of any material having been brought on record by the Informant in the information or in the additional information/documents suggesting or indicating concert among these parties to submit such bids, the Commission is unable to find such conduct to be in contravention of the Act. Price parallelism, in the absence of other evidence, in itself, may not be sufficient to launch a full fledged investigation.
17. In view of the foregoing, the Commission is of the opinion that there exists no prima facie case and the information filed is closed herewith under Section 26(2) of the Act.



18. The Secretary is directed to inform the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 21.02.2020