



**COMPETITION COMMISSION OF INDIA**

**Case No. 38 of 2011**

**In Re:**

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|--|------------------------|
| <b>1. Indian Sugar Mills Association</b>                               | <b>Informant No. 1</b> |
| <b>2. National Federation of Co-operative<br/>Sugar Factories Ltd.</b> | <b>Informant No. 2</b> |
| <b>3. All India Flat Tape Manufacturers Association</b>                | <b>Informant No. 3</b> |

**And**

- |   |                             |
|---|-----------------------------|
| <b>1. Indian Jute Mills Association</b> | <b>Opposite Party No. 1</b> |
| <b>2. Gunny Trade Association</b>       | <b>Opposite Party No. 2</b> |
| <b>3. Ministry of Textiles</b>          | <b>Opposite Party No. 3</b> |

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Mr. M. L. Tayal  
Member**

**Mr. S. L. Bunker  
Member**

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**

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



**Appearances:** Shri Amitabh Kumar, Gautam Shahi and Ms. Bharti Balaji, Advocates for the informant No. 1

None for the informant No. 2.

Shri Gurdeep Singh, Head, Delhi Office, Advocate for the informant No. 3.

Shri Ramji Srinivasan, Sr. Advocate with Shri Manas Kumar Choudhuri, Shri Sagardeep Rathi and Ms. Aditi Gopal Krishnan, Advocates for the opposite party No. 1.

Shri Pushkar Mehrotra, Advocate for the opposite party No. 2.

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

1. The present information under section 19(1)(a) of the Competition Act, 2002 ('the Act') was filed by Indian Sugar Mills Association ('the informant No. 1'/ ISMA), National Federation of Co-operative Sugar Factories Ltd. ('the informant No. 2'/ NFCSF) and All India Flat Tape Manufacturers Association ('the informant No. 3'/ AIFTMA) against M/s Indian Jute Mills Association ('the opposite party No. 1'/ OP-1/ IJMA), Gunny Trade Association ('the opposite party No. 2'/ OP-2/ GTA) and Ministry of Textiles, Government of India ('the opposite party No. 3'/ OP-3/MoT) alleging *inter alia* contravention of the provisions of section 3 of the Act.
2. The informant No. 1 – ISMA is the apex industry association of Indian sugar manufacturers. It is a registered association under the Trade Unions Act, 1926 having its registered office at New Delhi. There are 226 sugar mills that are the members of ISMA and approximately 46% of the total sugar produced in India is by the members of ISMA.



3. The main objective of ISMA is to promote and protect the trade in the sugar industry. ISMA also encourages the sugar mills in general and its members in particular to discuss and collaborate on policy issues with regard to the industry. It also encourages dealings between producers of sugar and cane growers, distributor of sugar and others connected with sugar industry. It represents all institutions/bodies of sugar industry on the policy issues related to the sugar and sugarcane, before various Government Bodies/Departments.
4. It also prepares a statistical update on domestic and international sugar situation, periodical publications, facilitation of sugar development fund loan, modernization and cane development and facilitation of incentive schemes for the new units and expansion of existing projects. It plays a pivotal role and also helps to make the country self-reliant in respect of sugar for mass consumption.
5. The informant No.2 – NFCSF is also a registered body and works as a national level apex organization of all cooperative sugar factories in India. It is an autonomous organization, governed by the Multi-State Co-operative Society Act, 2002, having its corporate office located in New Delhi.
6. The principal objective of NFCSF is to promote and develop cooperatives of sugarcane growers and to provide support, services and guidelines to its affiliated cooperative sugar factories and state and zonal level federations of cooperative sugar factories for their efficient and sustained working. It has been stated that due to the efforts of NFCSF, there has been phenomenal growth in the Indian Sugar Industry, particularly through its Technical Cell created in 1977. It also represents the concern of the cooperative sector in sugar industry to the various Ministries such as Agriculture, Food, Commerce, Consumer Affairs *etc.* It is stated to have approximately 45% share of sugar produced in India, through its members.



7. The informant No.3 - AIFTMA is the national association of PP/HDPE woven sack (plastic bags) manufacturers which was registered in 1971 at Bangalore. The main objective of this establishment is stated to be for the management of socio-economic and politico-legal aspects of business environment relevant to plastic woven sack industry. Promotion of training, technology and other research and development activities related to the industry are the other important objectives of this Association. AIFTMA is responsible for evolving constructive policies, sound business principles and fair trade practices within the industry and collect, collate and analyze information/ statistics relating to the industry.

### **Facts**

8. Essentially, the case relates to alleged anti-competitive agreement by the members of IJMA and GTA in fixation of sale price of jute packaging material by issuing of daily price bulletin (DPB) by GTA for jute bags for the members of the IJMA and the GTA to follow.
9. The main averments made in the information are as under:

(i) The informants have alleged that because of statutory provisions for compulsory use of jute bags in packaging of sugar and food grains, the members of OP-1 and OP-2 are raising the prices of jute bags in tandem, unreasonably, over the years, imposing unfair and excessive price and limiting the technical development of market which is anti-competitive as per the provisions of the Act. Further, OP-3 through its orders/policy decisions is restricting the packaging materials market for sugar industry only to the jute industry which is unfair.

(ii) As per the provisions of the Jute Packaging Materials (Compulsory Use in Packaging Commodities) Act, 1987 ('the JPM Act') there was mandatory use of jute bags for packaging commodities such as cement, fertilizer, food grains and sugar since 1987. However, in year 1998 cement was exempted



and in 2002 fertilizer was also exempted from compulsory use of jute bags in packaging. But no exemption to sugar industry in this regard was given. Thus, the sugar industry now entirely depends on jute industry for packaging materials for sugar. By virtue of the aforesaid statutory protection by the Government of India, OP-1 and OP-2 are enjoying monopoly position in the market of supply of jute bags in India.

(iii) Using their monopoly position, the members of OP-1 and OP-2 are charging unreasonably high prices for jute bags from the sugar manufacturers and are also frequently changing the prices. The informants have submitted that the price of a jute bag (for 50 kg. sugar packaging) was Rs. 53.50 in April, 2010 which was increased to Rs. 64.50 in February, 2011 *i.e.* during a period of less than one year the prices were increased by more than 20% which is unreasonable and unfair.

(iv) As per the informants, the members of OP-2, in agreement with the members of OP-1, are fixing the prices of various types of jute bags manufactured by the members of both OP-1 and OP-2. Members of both OP-1 and OP-2 are deciding the prices of various jute bags after formal discussion and meeting and the decision in this regard is approved by a committee consisting of some members and office bearers of OP-2. Thereafter, the decision is conveyed to the members of both OP-1 and OP-2 through a daily price bulletin and circulars issued by OP-2. The price fixed thereby is followed by the members of both OP-1 and OP-2. Thus, there is collusion among the members of OP-1 and OP-2 in fixation of the prices of jute bags.

(v) The informants have also submitted that the aforesaid practice of the members of OP-1 and OP-2 is not new. In the past as well, the prices of jute bags have increased manifold because of understanding/agreement between the members of OP-1 and OP-2. Further, the increase in the prices of jute bags over the years is more than the increase in the Minimum Support Price



(MSP) for jute as declared by the Government. The MSP is nothing but the cost of purchasing/procuring raw jute by the mill owners. The MSP per quintal of jute in 2006-07 was Rs. 1,000 and in 2010-11 it was Rs. 1575 per quintal *i.e.* during the stated period there was 57% hike in MSP by the Government. But, the increase in the prices of jute bags during the same period was 90% as it was Rs. 3069 per quintal in 2006-07 and it increased to Rs. 5823 per quintal in 2010-11. This disproportionate increase in the price of jute bags against the increase in cost of raw jute shows that the members of OP-1 and OP-2 are taking undue advantage of their monopolistic and dominant position in the market of supply of jute bags. Because of the statutory sanction, the members of OP-1 and OP-2 are facing no competition from other manufacturers who are producing substitute products of jute bags such as woven sacks.

(vi) The informants have submitted that the exclusive use of jute bags for packaging sugar has many disadvantages to the consumers, sugar industry and to the manufacturers who are producing substitute products such as HDPE/PPE woven sacks. The same has been described in detail in the information provided.

10. Based on the above facts and circumstances, the informants alleged that the opposite parties have violated the provisions of the Act in the following manner:

(i) The members of OP-1 and OP-2 have cartelized the market for packaging material for sugar and thereby contravened the provision of section 3(3) of the Act by jointly deciding the sale price of jute bags and limiting technical development of the jute industry.

(ii) The members of OP-1 and OP-2 have abused their dominant position by imposing unfair and excessive price and limiting the technical development of market which is in contravention of section 4 (2) (a) of the Act.



(iii) Through its impugned order, OP-3 is restricting the packaging materials markets for sugar industry only to the jute industry which is anti-competitive as per section 4(2)(b) of the Act.

11. The Commission, after considering the entire material available on record, *vide* its order dated 02.08.2011 passed under section 26(1) of the Act directed the Director General (DG) to cause an investigation to be made into the matter and to submit a report.

**Report (s) of the DG**

12. The DG, after receiving the directions from the Commission, investigated the matter and submitted the investigation report dated 17.07.2012.
13. The report of the DG was considered by the Commission in its ordinary meeting held on 18.09.2012. On a careful consideration of the report, the Commission *vide* its order of even date decided to direct the DG to conduct further investigation on certain issues detailed in the order.
14. Pursuant to the aforesaid order the DG made further investigation and submitted report to the Commission. The supplementary report submitted by the DG was considered by the Commission in its ordinary meeting held on 20.06.2013. On consideration of the supplementary investigation report, the Commission noted that the DG did not investigate the role of individual officers in decision making and accordingly, the Commission *vide* its order dated 20.06.2013 directed the DG to issue notices to the office-bearers of the managing committee/ executive committee of IJMA to explain their role in the decision making in respect of practices/ circulars which were found by the DG to be anti-competitive. Similar order was also issued in respect of the office-bearers of GTA on 23.10.2013.



15. Accordingly, the DG, after receiving the directions from the Commission, again investigated the matter and submitted the supplementary investigation report (2) dated 31.12.2013.
16. The methodology and findings of the DG reports have been summarized in the following paragraphs.
17. During the course of investigation, the DG *inter alia* issued notices to the parties *i.e.* both the informants (ISMA, NFCFS, AIFTMA) and the opposite parties (IJMA, GTA, Ministry of Textile-Government of India) to elicit information. Besides, representatives of IJMA and GTA were summoned to appear in person for examining them on oath. In particular, the Chairman of daily price bulletin sub-committee of GTA was examined on oath. Other members of daily price bulletin sub-committee of GTA were also asked to submit the mechanism for fixing the prices on daily basis. The Director General- ISMA, Managing Director-NFCFS and Convener of AIFTMA were summoned and their statements were recorded on oath. The Ministry of Textiles, Government of India was also requested to submit relevant information and documents. The Jute Commissioner, Ministry of Textiles was also requested to submit data regarding jute industry being the nodal agency for jute related matters.
18. Based on the replies and submissions, the DG conducted the analysis regarding price fixation, demand & supply and production.
19. The DG tabulated the informations/data of sales and purchases provided by ISMA, NFCFS and the members of IJMA and GTA regarding actual transactions. It was noted therefrom that the price of actual transactions were taking place close to the GTA DPB price. It was also noted that various jute mills have categorically stated in their correspondence with GTA that they follow the GTA DBP prices and have expressed their concern about the reported prices. It was deduced by the DG from the above that had there been



no such price indications in the form of DPB, the competition would have been fair, market driven, where the consumer, which is sugar industry in the instant case, would have had more space to negotiate. In this regard, it was also noted by the DG that due to JPM Act, the sugar manufacturers have to necessarily pack their products in A-Twill jute bags. The bags cannot be imported also because the JPM Act and further statutory orders stipulate that the bags should be manufactured in India and that too from the raw jute produced in India.

20. It was further noted by the DG that the price mentioned in some of the actual transactions were either higher or lower than the DPB price but the GTA DPB of next day was not revised on the basis of that price. Therefore, the DG concluded that price of GTA DPB could not be stated to be the last transacted price or near to the price of transaction in the market as claimed by the GTA members on various occasions. Hence, the movement of GTA DPB price was found not to be governed by the market price, but controlled manually by the GTA and its members in a concerted manner, by meeting and applying their minds, publishing and disseminating to the interested parties.
21. In view of the above, it was concluded by the DG that such act is nothing but to decide and control the price, other than the market force, through a tacit agreement. Based on the investigation and analysis, the DG noted that members of GTA under the aegis of GTA, publish daily price bulletin, which is being followed by the members of IJMA also, as suggested through the transacted price, which is in accordance with the GTA DPB. Accordingly, it was noted by the DG that this action in concert by the members of GTA under the aegis of GTA to determine and control the price by publication of GTA DPB was in contravention of the provision of section 3(3)(a) read with section 3(1) of the Act.
22. The DG was strengthened in this view from the exchange of correspondence between GTA and IJMA which showed that IJMA as an association had



interacted with GTA with respect to the daily price bulletin and also accepted the fact that jute mills sell their products on the basis of GTA quotations and they have requested to increase the price in GTA bulletin for the benefit of their members, thereby instigating them to increase the price further more. This showed that the forum of IJMA was used for expressing the collective concern of the members of IJMA to put pressure to increase the price.

23. On analysis of the acts and conduct of the opposite parties with respect to the alleged violation of section 3(3)(a) of the Act based on their behavior and economic analysis, the DG found that GTA and IJMA as associations and their members had violated the provisions of section 3(3)(a) of the Act on account of reasons specified in the report. Further, the limiting and controlling production and supply in the market in a concerted manner through understanding by the members of IJMA and GTA was found to be in contravention of the provisions of section 3(3)(b) of the Act.

#### **Consideration of the DG Report (s) by the Commission**

24. The Commission considered the above three reports in its ordinary meeting held on 15.01.2014. *Vide* an order of even date, the Commission decided to send a soft copy of each of the investigation reports (non-confidential version) to the parties as also to the office-bearers of the opposite party Nos. 1 & 2 for filing their respective replies/ objections. The Commission also directed the opposite parties Nos. 1 & 2 and their office-bearers to file their Profit & Loss Accounts/ Balance Sheets/ Turnover for last three financial years *i.e.* 2010-11, 2011-12 and 2012-13. The parties were directed to appear for oral hearing, if so desired.

#### **Replies/ Objections/ Submissions of the parties**

25. On being noticed, the parties filed their respective replies/ objections/ submissions to the report of the DG besides making oral submissions.



Replies/ objections/ submissions of the informant No. 1

26. Elaborating on the anomalies in economic indices of the industry, the informant No. 1 submitted that although the installed sacking capacity of the jute mills and production of raw jute have increased between 2007 and 2012, capacity utilization has not shown a corresponding increase. It is uncontroverted fact that both A-Twill bags and B-Twill bags have similar cost of production. However, a comparison of the DPB price of A-Twill bags with B-Twill bags shows that the difference between the price of two types of jute bags has risen to as high as 72%.
27. With regard to the issue of price fixation by GTA, the informant No. 1 submitted that the DPB provides daily rate as well as rates for forthcoming months of various jute products which serve as a price indicator and a point of reference for undertaking actual transactions. The prices are relied upon by jute mills to determine the sale price of jute products.
28. It was further submitted that various communications issued by jute mills viz. Shri Gouri Shankar Jute Mills Ltd. and Northbrook Jute Co. Ltd., members of both IJMA and GTA, are on record (pages 1602 and 1609 of vol.VI of the DG report) to support the fact that actual transactions are undertaken on the basis of the DPB price. *Vide* the communications, request was made to GTA to increase the DPB price in the interest of both traders and manufacturers.
29. It was also stated that the act of price fixation of jute products which served as point of reference by jute mills clearly falls foul of section 3 of the Act amounting to a '*practice carried on or decision taken by any association of enterprise*'. In this regard, reliance was placed on the order of the Commission in *M/s Santuka Associates Pvt. Ltd. v. All India Organization of Chemists and Druggists & Ors.* Case No. 20 of 2011.



30. It was further submitted that gunny traders are representatives/ selling agents of jute mills and have undertaken concerted action along with jute manufacturers to collect, discuss and fix price of jute products which are duly followed by member constituents. From the demand perspective, both the jute mills and the traders are engaged in selling jute bags to the sugar mills and that such concerted action amounts to an 'agreement' to fix price and undermines the operations of market forces of demand and supply.
31. Detailed submissions, as detailed below, were made to demonstrate the presence of essential characteristics/ elements of a cartel in the present case.
32. It was submitted that the total installed capacity for sacking has increased from 1.371 MMT in 2007-08 to 1.707 MMT in 2011-12. However, the total capacity utilization does not match the said increase in capacity which falls from 83.3% in 2007-08 to 68.2% in 2011-12.
33. It was submitted that in accordance with the provisions of the JPM Act and directives issued by Ministry of Textiles ('MoT') sugar packaging has to be mandatorily undertaken using jute bags. It was further submitted that the aforesaid statutory requirement has put in place a consistent demand for A-Twill jute bags and no substitution permitted.
34. It was also stated that as per the JPM Act, imported A-Twill jute bags cannot be used for packaging of sugar and that the statutory orders also postulate that the bags should be manufactured in India using raw jute produced in India. In view of the aforesaid statutory requirements, A-Twill jute bags used for packaging of sugar do not have any substitutes and hence, face no competition in India.
35. The informant No. 1 submitted that the jute mills operating in India were reporting losses to the tune of crores of rupees in the years 2001-02, 2002-03 and 2003-04 and began reporting huge profits from 2004-05 onwards.



36. It was further submitted that between 1991 and 2004, there has not been any default in supply of jute bags. However, 2006 onwards, there has been default in dispatch of jute bags at 13.3% in 2006-07 at 60% in 2009-10 and at 55% in 2010-11. It was alleged that under-utilization of capacity, as established by evidence on record, can be considered to be a major factor contributing towards such default. In this regard, the informant No. 1 has also placed reliance on Page 375 of Vol-II of the DG report which lists out annual data on requirement and dispatch of jute bags.
37. The informant No. 1 stated that the production of A-Twill jute bags has declined from 0.209 MMT in 2007-08 to 0.99 MMT in 2010-11 (paragraph 8.11.6 of Vol. I of the DG report, pg. 106). It was further contended that the price of A-Twill jute bags is 50% higher than B-Twill jute bags, on an average and this clearly establishes concerted action to reap cartel price.
38. With regard to the issue of discussion of price sensitive information by OP-1 members using OP-1/ IJMA as a platform, the informant No. 1 reproduced the minutes of special meeting of Committee of IJMA dated 30.07.2007 stated that *“while some jute mill cos. are outside the membership of the Association, all mill cos., within and outside the membership of the Association met together and take a joint decision whenever serious problems like strike threat, crisis in raw jute arising out of short-supply and/ or surplus supply, supply/ disruption of jute bags to food grains and sugar sector etc. arose.*
39. The informant No. 1 submitted that *vide* communication dated 31.07.2011, IJMA had expressed concern over the DPB price of B-Twill jute bags which were stated to be on the lower side. Thus, the communication and subsequent conduct of increasing the DPB price of A-Twill bags are indicative of the fact that members of IJMA and GTA were acting in concert. The informant No. 1 has also noted that 30 of the 34 members of IJMA are also members of GTA



and this commonality in membership facilitates undertaking such concerted action. It was contended that such price fixation and indulgence in concerted conduct undermines and thwarts competition in the market of sale of A-Twill jute bags and is blatant violation of the provisions of the Act.

40. It was alleged that the policy of mandatory packaging of sugar of MoT in jute bags is creating an economic environment which encourages cartelization by the OPs. It was submitted that *vide* notification dated 28.09.2004 issued under section 3(1) of the JPM Act, MoT mandated that 90% of the total production of sugar has to be packaged in jute bags. Also *vide* notification dated 27.08.2010, MoT mandated that 100% of sugar production has to be packaged in jute bags. The informant No. 1 further stated that it has already been shown earlier that there was a sudden spurt in the price of jute bags and also, in the profitability of sugar mills post 28.09.2004.
41. In this context, it was contended that the said policy restricts choice of customers (in this case, sugar mills) and forces them to buy jute bags which are not best suited for the purpose, at non-competitive price. In the absence of competitive constraint, the OPs chose to cartelize and share the booty of an ill-designed policy.
42. The informant No. 1 further submitted that IJMA had stated that the jute bags can be reused and hence, in the long run, the higher cost of jute bags as compared to HDPE/ PP bags evens out. The informant No. 1, however, argued that as a matter of practice, it was not the correct position. It was pointed out that food grain and sugar handling are largely manual and the handling labour takes support of hooks to lift jute bags owing to which leakage, spilling and bursting are very common. It was pointed out that each jute bag undergoes 10 different stages of handling.
43. It was further submitted that there were significant problems with the quality of the jute bags available in the market and the issues were not restricted to



the material component of the bags but also encompasses other standards like length, width and weight of the jute bags. Lower weight of jute bags in comparison to the prescribed BIS standard of 630 grams for a 50 Kg bag, requires the sugar mills to put additional sugar to match the gross weight as prescribed by BIS. It was stated that the jute bags have gaps of around 1.5 cms which not only allows leakages of sugar but also allows moisture regain, which deteriorates the quality of sugar, known to be highly hygroscopic.

44. Lastly, it was submitted that in all the neighbouring countries, sugar is packed in HDPE/ PP bags. Even in Bangladesh, the largest producer and exporter of jute, sugar is packed in HDPE bags. The above detailed conduct of GTA and IJMA alongwith their constituent members are in clear violation of the provisions of section 3 of the Act while the conduct of MoT is in violation of section 4 of the Act.
45. Subsequently, the informant No. 1 also filed additional written submissions wherein *inter alia* it responded to the questions posed by the Commission to it during the course of the ordinary meeting held on 15.05.2014 and it was submitted that members of the answering informant association are not member of OP-2/ GTA and further the allegation of OP-1 that members of the answering informant association issued tenders for purchase of jute bags based on DPB prices was denied.

*Replies/ objections/ submissions of the informant No. 2*

46. NFCSF supported the conclusion drawn by the DG and stated that the same were based on incontrovertible evidence and facts.
47. NFCSF stated that the DG's report brought out various contradictions in the submissions of the opposite parties. The following are the contradictions which were highlighted in its submissions:



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- a) No clarity on whether the DPB price are indication of price for the previous day or closing quotations of the previous day or forecasting trend for ensuing day.
  - b) No clarity on whether the price of the last day's quotation is averaged out or moderated at one place or is the price based on the perception of market price by a member and not the actual transaction.
  - c) No documents to support the basis for DPB determination and no plausible reason provided for DPB publication on daily basis if the prices are known to the jute mills.
  - d) There is no clarity on the methodology adopted.
  - e) No clarity on how panel members collect price information.
  - f) No clarity on when the charges suggested by members of DPB Sub-Committee are incorporated in the DPB and when they are not.
48. NFCSF supported the findings of the DG that the DPB price is artificially determined. It was pointed out that DPB increases and decreases prices only in multiples of 50. That this itself shows that the DPB is artificially determining the price of A-Twill jute bags.
49. NFCSF submitted that a month-wise comparison of DPB price of A-Twill bags with price of raw jute reflects that both do not move in tandem and that the DPB prices are a result of meeting of minds through concerted actions, independent of market forces.
50. It was further submitted that the total installed capacity for sacking has increased from 1.371 MMT in 2007-08 to 1.707 MMT in 2011-2012. Owing to low capacity utilization, there has been severe shortage in catering to the demand of A-Twill jute bags by sugar industry.



51. On questions posed by the Commission as to whether members of NFCSF are members of GTA, it was submitted that they are not. On the poser as to whether members of NFCSF have issued tenders for purchase of jute bags at DPB price, NFCSF stated that OP-1 had relied upon tenders issued for supply of A-Twill bags by U.P. Co-operative Sugar Factories Federation Ltd. dated 09.08.2008 and Tamil Nadu Co-operative Sugar Federation Ltd. dated 26.09.2011 to impute vexatious intent to the informant No. 2.
52. Lastly, it was submitted that the co-operative sugar mills falling within the ambit of U.P. Co-operative Sugar Factories Federation Ltd. and Tamil Nadu Co-operative Sugar Federation Ltd. operated under genuine belief that the price published in the DPB is the market price of the previous day. That the DPB is not a publicly available document and there is no other source from where information on price of jute bags could be obtained. It was pointed out that the co-operative sugar factories are under the control of respective state governments. That in order to avoid any vigilance issues, the above mentioned federation of co-operative sugar factories placed reliance on DPB price.
53. In view of the above, it was submitted that the conduct of OP-1 and OP-2 alongwith their constituent members was in clear violation of the provisions of section 3 of the Act.

*Replies/ objections/ submissions of the informant No. 3*

54. No reply/ objections/ submissions were filed on behalf of the informant No. 3.

*Replies/ objections/ submissions of the opposite party No. 1*

55. IJMA filed its detailed reply to the DG's reports before the Commission dated 08.05.2014.



56. At the outset, IJMA denied that it was involved in fixing the price of A-Twill jute bags. It contended that the DG has not adduced any evidence that proves that there was an 'agreement' between either; (i) IJMA and GTA; or (ii) between members of jute companies within IJMA to either 'fix' the DPB or make any changes to the DPB. That there is no evidence to show that there was any discussion of prices between the members of IJMA at an association level.
57. It was further contended that the evidence submitted by the DG was inadequate and far fetched to fulfill the criteria to prove an 'agreement' under section 3(3)(a) read with section 3(1) of the Act. It stated that after an agreement is found amongst market participants in the same business, an investigation shall follow to establish factors that cause an appreciable adverse effect on competition in India under section 3 read with section 19(3) of the Act. It was submitted that unless both these parameters are proved unambiguously, the allegation of cartel fails. It was further submitted that the both these parameters have not been proved much less conclusively proved in the DG's reports and the evidence submitted does not indicate 'meeting of minds' which is the cornerstone of an 'agreement'.
58. Reliance was placed on the Commission's order dated 24.01.2012 in MRTTP Case No. 161/2008 (In Re: Glass Manufacturers of India) where it was held that '*...[i]n the absence of any evidence of an agreement or action in concert on record among the glass manufacturing companies, the Commission feels, there is no reason to disagree with the conclusions drawn by the DG*'.
59. The answering opposite party pointed out that the data relied on to show difference in price of A-Twill and B-Twill bags was incorrect and the same cannot be relied on by the DG to show concerted action between the opposite parties. It was pointed out the fundamental basis that the DG has relied on to show that the GTA DPB price of A-Twill bags are fixed arbitrarily, is the



difference between the price of B-Twill bags fixed by the Jute Commissioner and the price of A-Twill bags.

60. In this regard, it was mentioned that as per the DG's report there was no correlation between the price of A-Twill bags with that of B-Twill bags which raises suspicion especially because the basic material and production cost remained the same and that the price of A-Twill bags on per gram basis is higher by approximately 50% with that of B-Twill bags. It was submitted that the basic flaw in the logic is that the price of B-Twill jute bags considered is not the price of 1020gm B-Twill but 665 gm B-Twill bags. By taking a wrong product's price instead of GTA's price of 1020 gm B-Twill jute bags, inflated figures have been arrived at.
61. Furthermore, the information the DG has relied on is patently incorrect and misleading. It was also submitted that the misrepresentation in the data is that the figures shown to be for B-twill bags of 1020 gms is actually data for 665 gms of B-Twill bags. Therefore, it stated that in making a comparison between the two categories of bags, the DG has relied on price pertaining to 1200 gms of A-Twill bags and only 665 gms of B-Twill bags which is only approximately half the weight of A-Twill bags.
62. It was stated that the price of B-Twill jute bags of 1020 gram as per the DG report as well as GTA has been tabulated in the DG's report and this brought out the clear and obvious misrepresentation in arriving at price per gram figure of B-twill jute bags. That instead of the price of A-Twill jute bags being higher by approximately 50% compared to 1020 gms of B-Twill jute bags, the price difference over a period of 3 years *i.e.* July 2008 and June 2011, is only 3.69% and is in the range of -2.87% to +7.68%. Further, the Jute Commissioner fixes the price of B-Twill bags as a fair remuneration bearing in mind a fair return on costs of producing of B-Twill bags by the jute manufacturers. That even if the per gram price of 665 gms B-Twill jute bags is taken based on the price notified by the Jute Commissioner, there is



negligible difference in the price of A-Twill and B-Twill bags. Therefore, it was submitted that, with the negligible price difference between A-Twill and B-Twill bags, there can be absolutely no cartel in the production of A-Twill bags that fixes prices at an arbitrary high level. On this basis, it was also submitted that the entire premise of the DG report in finding a cartel *via* an artificial difference in the price of both categories of jute bags is entirely disproved.

63. IJMA further submitted that the data submitted by ISMA showing price of B-Twill bags of 1020 gms was actually the price of bags weighing only 665 gms. It was stated that the DG had relied on misrepresented facts and failed to conduct an independent investigation that required correct data from the Ministry of Textiles. It was further submitted that the DG had also relied on the fact that the price of A-Twill jute bags had not been moving in relation to cost of raw jute and this required explanation. Therefore, it was submitted that since the DG wrongly concluded the price difference between A-Twill bags and B-Twill bags, his findings relating to the cost of raw jute that goes into manufacturing these bags become irrelevant and are liable to be rejected.
64. It was stated that that not all members of IJMA produce A-Twill bags. That the total production of A-Twill bags by non-IJMA jute companies (supposedly 'non-cartel' members) is almost half of that of IJMA members. It questioned how a 'stable cartel' can be sustained when one-third of the production of the cartelized products is outside the cartel in the 4 year period from 2008-09 to 2011-12. It was stated that 27 mills who are not members of IJMA also produce A-Twill jute bags but they are members of GTA. Had there been a cartel then all these 27 jute mills would also have become members of IJMA. It was submitted that if there were disproportionate profits from sale of A-Twill bags to the jute mills, more companies would have tried to produce A-Twill bags and participated in the profits. That the very fact that only a section of IJMA member mills produce A-Twill jute bags on a regular basis proves that production of A-Twill bags is not very profitable and only



those mills who are able to sell their produced goods to their regular buyers are producing A-Twill bags.

65. Furthermore, IJMA contended that if the jute mills have to rely on the prices quoted in the DPB for pricing their products, then it does not make any business sense to only cartelise for A-Twill bags which comprise only 10% to 11% of the total production of sacking in the industry. The jute mills also have benchmark prices available for the products which comprises the remaining 89% and by this logic, the DPB is used to fix the price of all these products also. It was submitted that this goes to show that the allegation in relation to fixing A-Twill prices is entirely arbitrary and that there is no merit in the finding of the DG since there is no incentive for IJMA members to rely totally on the DPB.
66. It was reiterated that 27 jute mills are members of GTA but not members of IJMA and that the Office of the DG has not been able to thoroughly investigate the non-members and have not found material facts and the investigation report has been merely concluded on the basis of conjectures and surmises.
67. IJMA denied that it had any role in the setting of the DPB released by GTA. As regards the practice of issuing DPB, it was pointed out from the response of GTA *vide* its letter dated 27.10.2011 to the DG that DPB is based on 'the price quotations, which are indicative of the market trend on a particular day and, as far as practicable, are published daily as a calculable exercise on collection of such information from sources approved by the association and state in the fashion of a guiding description, the trend of the market for that particular day. That the indicative price is finalized by a team of monitors under the guidance of the Daily Price Bulletin Sub-Committee'. It was further stated that the DPB is issued daily on each working day and it is found that the prices of jute bags for sugar (A- Twill *i.e.* for 100 kg. packing, Type A and Type B for 50 kg packing) are mentioned therein for per hundred



bags as well as per metric ton. Further, it was mentioned on the top of the bulletin that ‘closing quotations of the previous working day’ and also mentioned on the important notes on the back of the bulletin that ‘these quotations are in no way binding on manufacturers/ dealers/ traders in their individual transactions and entirely based on market trend’. That this clearly indicated the non-binding nature of the DPB that has been accepted by the DG.

68. IJMA submitted that the intention of the DPB has never been to exploit the market under the garb of the JPM Act and neither to drive out competition from the market. It was mentioned that the GTA issues two bulletins daily, one for export market and the other for domestic prices. It reiterated that the intention of the DPB is only to make the customers aware of the market prices.
69. IJMA laid further emphasis on the judgment of the Monopolies and Restrictive Trade Practices Commission (MRTPC) in *DG (I&R) v. Gunny Traders Association* dated 12.01.1987 case where the GTA undertook to modify the DPB to change the word from ‘opening’ to ‘closing quotations’ as per the direction issued by the MRTP Commission. The DPB was further modified to note that the quotations of the DPB were not binding. It was submitted that based on the undertakings, the MRTPC did not consider it necessary to investigate into the restrictive trade practices further.
70. It was further reiterated that DPB has become an ‘indicative industry standard price’ and has been treated by IJMA as such. That IJMA as an association does not disseminate the DPB to its members. It explained that the jute companies purchase the DPB independently without any involvement of IJMA. IJMA and its members simply subscribe to DPB figures as do the jute companies outside IJMA. There is no benchmarking of future demand as there has been no forward trading since December 2011. It was submitted



that the pricing panel of the GTA sets the DPB and there have been no members of IJMA who have been part of the pricing panel.

71. It also reiterated that the DG has not set out any evidence that proves that there has been an 'agreement' between either (i) IJMA and GTA; or (ii) between members of jute companies within IJMA to either 'fix' the DPB or make any charges to the DPB. IJMA contended that there is no evidence to show that there was any discussion of prices between the members of IJMA at an association level.
72. It was stated that the link between IJMA and GTA members is unclear in the theory to fix the DPB. It contended that IJMA and its members have no role in setting the DPB. That the common members of IJMA and GTA have never been part of the pricing panel that decides the DPB on a given day and to corroborate further, IJMA has cited the statement of Shri Narendra S Thacker, Chairperson, Sub-Committee of Daily Price Bulletin of GTA recorded on oath on 31.05.2012. It was further submitted that in so far as inputs from the common members in deciding the DPB is concerned, no evidence has been set out by the DG to prove any sort of communication. IJMA contended that if simply relying on the DPB to set prices is a contravention of the Act, then the sugar mills relying on the DPB in their tenders should also be investigated and should be held to be in contravention of the Act.
73. IJMA argued that on the one hand, members of ISMA and NFCSF want to rely on the DPB issued by GTA and on the other, complained against them for price manipulation with IJMA. It stated that it had provided copies of two tender documents of UP Co-operative and Tamil Nadu Co-operative Sugar Factory to the DG wherein these factories have specified that they would like price quotations on the basis of GTA price bulletin. IJMA pointed out that the DG has not referred to these tenders in its main or supplementary report. It submitted that these tender documents also prove that all members of the



industry alike, both jute manufacturers in and outside IJMA as well as the customers, have used DPB as an indicative industry standard price.

74. It was further submitted that the correspondence that were relied on by the DG in arguing that there is an 'agreement' between IJMA and GTA are *inter alia* letters from individual member companies to GTA with no role played by IJMA as an association. As regards the letters from and to IJMA, it was submitted that the DG report has misrepresented the context of these letters to present a case of 'agreement' between IJMA and GTA.

75. A detailed reference was made to the correspondence exchanged and the same were sought to be explained in the following manner:

- (i) Reference has been made to letter No. T-100/198D, dated 31.07.2001 written by Shri Sanjay Kajaria, Chairman, IJMA to Shri S.S. Agarwal, President, GTA Kolkata where the DG referred to the sentence '*if necessary, they could meet at a mutually convenient date and discuss the matter in greater details*'.

IJMA submitted that no meeting was fixed as a result of this communication and the suggestion of a meeting to discuss the matter of discontinuance of the DPB in no way proves any element of an 'agreement' between IJMA and GTA. That the contents of the letter clearly indicate the dissatisfaction and absolute disagreement of IJMA with the unscientific method of setting the DPB and recommended that it should be discontinued.

- (ii) With reference to letter dated 08.08.2001, written by Shri S. S. Agarwal, President, GTA to Chairman, IJMA, it was submitted that from the contents of the said letter, GTA was defending its position and the method of preparing DPB by telling IJMA that it should not '*cast aspersions on the integrity of the members of GTA*'. That this indicates



the diametrically contrary positions of the GTA and IJMA on the issue of DPB. It also stated that the said letter also does not prove any agreement as IJMA itself has no knowledge of any members who put any pressure on the brokers to influence the price and cannot be held to be accountable on an organization-level to influence the DPB. That there is no indication in this letter as to which members tried to influence the DPB either and in what way pressure was being put on the brokers. It further submitted that in the absence of any substantiating information or even names of the members involved, this allegation remains vague and cannot be proof of any foul play by IJMA or any of its members.

- (iii) With regard to letter dated 10.09.2009 written by Chairman, IJMA addressed to the Secretary, GTA, IJMA submitted that this letter also clearly indicates that there was absolute lack of involvement or knowledge of IJMA and dissatisfaction with the method of calculating DPB. However, given that it is bound as an industry to the DPB, it is suggesting that a correct basis be applied to arrive at realistic prices.

76. IJMA submitted that on perusal of the letters put forward by the DG that indicate an 'agreement' between the opposite parties, that if anything, these correspondence actually prove the opposite which is that IJMA was dissatisfied with the DPB and these letters highlight the expression of such dissatisfaction. That these letters also indicate IJMA members and office-bearers were constantly questioning the basis of the DPB of which they had no input or knowledge.

77. As regards similarity in price of A-Twill bags of the members of IJMA, it was mentioned that this type of jute is a standard product with no 'product differentiation' and there is likely to be similarity in price even in the absence of an 'industry standard indicative price'. That this 'industry standard



indicative price' is issued by GTA, an association of traders and brokers that is in the downstream market to jute manufacturers.

78. IJMA reiterated that the use of DPB by members of IJMA does not constitute information exchange in violation of the provisions of section 3(3)(a) of the Act. That IJMA has had no role in setting the DPB released by the GTA. As regards the actual use of the DPB, it was submitted that it has only considered this as market information that brings transparency to the market. The DPB is meant to be and is considered by IJMA as an indicative price given and not as a final 'fixed price'. Members of the jute industry (IJMA members and non-members) consider the DPB as a non-binding indicative price. The reliance by IJMA on such market information cannot be held as an anti-competitive 'agreement'. To substantiate further, IJMA has placed reliance on the decision rendered by US courts *viz. Maple Flooring Manufacturers Associations v. US; United States v. United States Gypsum Company etc.* where the US courts have held that information about prices, costs, capacity and availability do not have anti-competitive effects.

79. IJMA denied that it was involved in reducing the production of A-Twill bags in violation of section 3(3)(b) read with section 3(1) of the Act. Moreover, it was pointed out that the DG expanded the scope of the investigation in as much as the Commission in its order dated 02.08.2011 passed order under section 26(1) of the Act did not direct the DG to investigate the violation of section 3(3)(b) of the Act. On this ground, it was submitted that the analysis and conclusions of the investigation report should be rejected forthwith.

80. It was stated that the DG has submitted that there is a high demand for the production of A-Twill bags but the production of these bags has been reduced. That according to the DG, the prices have increased constantly in the case of A-twill bags at one hand and the production has decreased on the other hand, though sufficient production capacity is available. IJMA submitted that the DG has provided incorrect facts to arrive at wrong



conclusions. It submitted that during the period under reference, sugar mills had stopped buying A-Twill bags in the required quantity in spite of 100% reservation. That if there was a demand for such bags for the jute industry like in the past, A-Twill bags would have been manufactured depending upon the offtake.

81. It was further submitted that at times the Jute Commissioner issues orders to the jute mills stating that they will have to first execute the pending supply orders for B-Twill bags and only then the remaining capacity should be utilized for supply of other commitments such as A-Twill bags, after obtaining permission of the Office of the Jute Commissioner. Furthermore, when the Jute Commissioner issues such orders, the jute mills are forced to manufacture only 665 gm B-Twill bags for packaging of food grains and supply to various States/ FCI. It was further stated that there may have been occasions in the past during the reference period when jute mills were forced to stop production of A-Twill bags and as a result the production of A-Twill bags fell short. Accordingly, it was argued that this cannot be used to infer that the jute mills are limiting their production.
82. It also stated that if the sugar mills face shortage of A-Twill bags they have the recourse to approach the Jute Commissioner to direct the jute mills to produce A-Twill bags. It also stated that the answering opposite party is not aware of any such communication that may have been made by either any sugar mill or ISMA and NFCSF.
83. It was pointed out that in order to pack sugar in HDPE/ PP bags produced by AIFTMA members, the sugar industry always takes the plea of non-availability of jute bags. In this connection, it was mentioned that the Office of the Jute Commissioner has given written confirmations regarding availability of jute packaging material for the sugar industry to ISMA.



84. IJMA submitted that the Jute Commissioner of the Ministry of Textiles convened the meeting in the office at Kolkata on 07.01.2011 regarding the implementation of the JPM Act in respect of the sugar sector where the Commissioner stated in the meeting that the sugar industry has been using a large quantity of synthetic bags for packaging of sugar in violation of the mandatory reservation orders under the JPM Act. IJMA submitted that the minutes of the two meetings held on 27.11.2008 and 07.01.2011 corresponding to the period under reference only go on to prove that the jute industry had tried its utmost to take care of the concerns of the sugar industry and in no other forum had the sugar industry raised the issue of higher price of A-Twill jute bags. Lastly, IJMA submitted that the issues raised before the Commission are by way of an afterthought and totally not corresponding with the facts on record. Responses were also filed to the written submissions of ISMA. Besides, the answering opposite party filed its response to NFCSF's written submission raising challenges *inter alia* ranging from joint filing of the information with the upstream supplier (the informant No. 3); suppression of the order of the Hon'ble Supreme Court of India upholding the validity of the JPM Act and suppression by NFCSF of the fact of reliance upon DPB of GTA by it in the States of U.P and Tamil Nadu until the same was brought to the notice of the Commission by IJMA *etc.*

*Replies/ objections/ submissions of the opposite party No. 2*

85. GTA submitted that the contention of the DG that the JPM Act has created a monopolistic situation in favour of jute industry and trade is totally misconceived. It was submitted that the JPM Act is a legislation aimed at according an extended trading dimension to jute goods and that it cannot be an instrument for extra-benefit for traders of jute goods. GTA as an organisation has nothing to do with the JPM Act.
86. It was stated that if the DG was convinced that MoT made it mandatory for packing 100% of sugar produced in the country in jute bags then the DG should have taken up the issue of anti-competitive practices with MoT



because GTA is not a party in framing of the JPM Act and does not have any connection or representative in MoT. Hence, it was submitted that GTA cannot be ascribed with the allegation that it has been a party in anti-competitive practices. The economic effects of the JPM Act, if those are considered by the DG as harmful to fair competition, have to be pointed out to MoT. GTA further submitted that MoT has been relieved of the charges whereas the allegations stem from the JPM Act.

87. It was submitted that the subject matter of the JPM Act is concerned with packaging of identified materials by mandatory use of jute bags whereas GTA is an association of traders which is neither interested in packaging industry nor involved in manufacturing industry producing jute goods. That it deals purely with welfare of its members in their trading activities. It is neither affiliated nor attached or functionally is in arrangement with any other organization. It was further stated that MoT has no connection with any trade body because its operations fall in constitutional domain. Therefore, there cannot be any collusion between MoT and GTA.
88. It was also submitted that the JPM Act is a legislation enacted by MoT and GTA is a conscientious evaluator as an organization of the development arising out of the JPM Act. GTA stated that the physical benefits of the JPM Act, if there be such at all, has been transitionally availed by IJMA and they will be in the best position to explain the influence of the JPM Act on jute industry and that GTA comes nowhere in the picture.
89. GTA further submitted that the element of discrimination of sugar industry is a total misconception without any support of logic. It stated that the very object of the JPM Act is to give jute the coveted stature of global dimension with multiple aims ingrained in it like upliftment as a cash crop, strengthening of manufactory base, development of demand *etc.* It was further submitted that the JPM Act was framed for a group of agricultural and agro-industrial products in which sugar was included but it has a quantity



wise smaller role in terms of mandatory packaging. GTA, therefore, contended that the allegation of abuse of the dominant position by GTA is not tenable as it has got nothing to do with the considerations of MoT about identified agro-products being stated by the JPM Act for packaging in jute bags only.

90. GTA submitted that without going into the facts, the DG has involved GTA as a party reaping the benefit of monopolization of sugar bags packaging. It pointed out contradictions in the DG's report. The points were:

- (i) Supply of jute bags to such industries is executed by the jute mills.
- (ii) Jute mills fix the prices for such bags in an open-market atmosphere.
- (iii) These price negotiations are conducted by jute mills or some trader-suppliers in their individual capacity.
- (iv) Price is fixed across-the-table by competitive bidding of tenders.
- (v) MoT by enacting the JPM Act has made it mandatory for packing 100% sugar in jute bags.

91. It was stated that the decision of MoT cannot be undone by GTA. If there be any indirect reflection of the JPM Act on any element of the entire system then the affected parties have to take it up with MoT.

92. GTA denied the allegations in the report of the DG that members of IJMA and GTA are deciding prices after formal discussion and meeting through a committee of OP-2/GTA, approving the decision and charging unreasonable high prices and frequently changing it. GTA contended that there is no scope of communication between IJMA and GTA and the report of the DG has also pointed out an impossibility of performance as a possible one. It submitted



that IJMA and GTA are two distinct bodies having separate and identified areas of their operations and there is no overlapping functional space for the two organizations to meet or interact. GTA never decides price and there can never be such a situation that members of IJMA and GTA are fixing prices after discussion and meeting which is being formalized through a committee of GTA.

93. It was further submitted that the representatives of GTA have deposed explicitly how DPB is made and brought into public and that there cannot be any concoction or discussion with the members of IJMA. In such a situation, the very integrity of DPB would run endangered. It was argued that it would never be possible and the allegation in the report of the Director General is filled with utterly wrong notion.
94. Furthermore, GTA does not take part physically in the trade and there is no scope for GTA to enjoy a position of strength as an enterprise in a particular market. GTA is not a manufacturer of jute goods neither it got any trading activity of its own. It also contended that just by virtue of the fact that an organization is issuing an informal and tentative guide on any subject for benefits of its members does not make it liable for anti-competitive activities as alleged in the report.
95. GTA has denied the allegation of the DG that it was instrumental in fixing prices for restricting competition of substitutes and cartelization with IJMA. It was submitted that the price of A-Twill Bags is determined by open market operation and the prices reach finality between the buyer and the seller across the table. Whether the DPB will be utilized as a guide by somebody is entirely the decision of the user and GTA has got nothing to do with it. It was stated that A-Twill bags are single item forming a part of many different qualities/constructions of jute products whose prices are published in DPB as a daily feature. Hence, there is no reason and justification to assume that prices of A-Twills only are subject to manipulation with the help of DPB.



96. It has denied the allegation of the DG that OP-1 (IJMA) and OP-2 (GTA) are fixing the price of jute bags used for sugar packaging and stated that it was totally fallacious. It was yet again reiterated that the price of sugar bags are determined under market conditions. Moreover, where tenders have been floated, it automatically ushers in competitive bidding and GTA has no role in fixing price of sugar bags. That the transactions are finalized after due negotiations between the buyer and the seller at a mutually-agreed price and terms in which neither GTA nor any other of its members has any role to play. Accordingly, GTA submitted that there is no question of any restriction of competition at any level.
97. GTA further stated that it is not a party or an instrument or a functionary or in any way connected with the enactment of the JPM Act. Therefore, it was submitted that the allegation that OP-3 (*i.e.* MoT) is restricting packaging materials market to sugar industry has nothing to do with GTA and the allegation is to be replied by OP-3.
98. GTA has also denied that there is any tradition of collusion that exists between OP-1 and the OP-2. To substantiate, it has stated that there are examples where jute mills have written categorically to GTA that rates quoted by GTA happen to be lower than that prevailing in the market. The same matter was placed by the Chairman, IJMA whereby they objected vehemently about the low price being quoted in DPB. It was submitted that the construction and publication of DPB is an exclusive affair of GTA and, GTA being an independent body has got sovereignty in its operations. So it was impossible that indicative prices placed in the DPB for guiding the members could be termed as collusion.
99. GTA has categorically emphasized that the sale of A-Twill bags are conducted in open market and it is not a determined price like that of B-Twill. The open market has its natural trend at price optimization as



inflationary factors do count in an open market. Hence, a notion of statistics of sales corroborating collusion is too difficult a theorem to be proved. Therefore, it submitted that the DG's report has put the cart before the horse.

100. GTA also stated that it cannot affect the market by limiting technical development as alleged. That it is neither a manufacturing firm nor a trading firm and nor an organization having any commercial pursuit whatsoever. Furthermore, technical development is something which is brought about by one sort or other of value engineering and these operations can be taken on by a manufacturing firm or, in a run-away case by a trading firm.
101. It was submitted that the question of challenging the modality or asking the element of transparency in compilation of DBP does not arise since it is not a public document. It is a paper on probabilistic assessment of anticipated price of a particular day for certain constructions of jute goods for information of the members of the association.
102. It has stated that GTA is not under any rigour to consider what should be the transaction price. It provides an anticipated assessment of price for education of its members and the price follows the market trend as far as practicable. That DPB is not the price-list of a jute mill, neither it is concerned about the production parameters. Further, the production parameters, though not ignored, do not fall within the ambit of consideration for the ways and factors to be considered while computing DPB.
103. GTA submitted that the whole confusion about involving DPB has arisen because the DG accorded the same status to the price fixed by the Jute Commissioner (JC) for B- Twill bags of 665 gms and the prices anticipated in DPB. That it lacks the base of comparison, remain unrealistic and a sheer non-feasibility. It was further submitted that there cannot be any comparison between the statutory mandate and market reactivity of price *i.e.* the one which is fixed by JC and the price tried to be approximated through DPB.



GTA also stated that at the same time, the non-substitutability between A-Twill and B-Twill bags of 665 gms cannot be negated. It was also stressed that the price of A-Twill is fixed by market-forces and price of B-Twill bags of 665 gms is computed with pre-monitored cost-elements. So, there cannot be any comparable approach between A-Twill prices and B-Twill bags (665gms) prices for a particular period as B-Twill (665gms) prices is a regimented one while A-Twill price is pro-trade carrying all the characters of the commercial atmosphere/environment of the time and is a product of economic forces.

104. It was submitted that the DG's report which points to the absence of correlation as the influence of DPB on price is misleading. A-Twill price is fixed between the buyer and the seller of which one is a jute mill. It was further submitted that a jute mill has to confront hundred-odd factors in course of production which keep on spelling on its final price and raw jute is merely one part of it. That any question regarding lack of correlation between raw jute price and A-Twill prices of the same period, should be put to the manufacturers.

105. With regard to the subject of wide variance between increase in Minimum Support Price (MSP) and increase in price of jute bags, GTA submitted that the rise in price of jute bags includes not only MSP but also various cost-elements. It was stated that raw jute is not procured on MSP but on prevailing price of the market which cannot be lower than MSP. The procurement price of raw jute has always remained above MSP, the statutory minimum that must be paid as the procurement price. Therefore, raw jute is procured as per economic interaction of the forces in the market with the legal discipline being stipulated for a minimum price that must be paid. GTA submitted that, hence, raw jute price should, in normal course of events, remain significantly above the MSP. Price of a jute-product expresses a composite financial value of all the cost-elements, direct and indirect, structural and infrastructural, taken together and includes, at the same time, the forces beyond the



commonalty of production-technology which keep on evolving in a social environment. Summing up, GTA contended that at the end of the day, price of jute bags is an outcome of values ingraining summation effect and there can be hardly any direct correlation between MSP and final price of the output.

106. GTA has denied having taken part in any attempt at price cartelization. It has also questioned how a minority percentage of 46% as stated in the DG's report can cast cartelizing influence. That even if some mills are practicing cartel among themselves, the DG cannot make GTA a party to the cartel just because it publishes DPB.

107. It was submitted that the dominant position indicated by the DG was in the area of sugar packaging in A-Twill Bags and GTA is neither a manufacturer of A- Twill Bags nor it has got anything to do with the buying and selling of the same. It is a membership-based organization and provides specific services to its members in pursuance of the objects of the organization. That it can never create a dominant position nor can exploit it. It added that its jute mills members do not stand significant as sellers of A-Twill Bags to create an outright dominant position. GTA further stated that dominant position can only be ascribed to an organization which is involved in buying and/ or selling activities and who will, in the best of instances, be manufacturer-cum-seller. That the allegation contained in the DG's report was of questionable credibility as the same enmeshes the sequence of buying of sugar bags between a sugar mills (buyer) and jute mills (seller) by introducing GTA as a party and stating that DPB is responsible for stoking up price.

108. GTA has refuted the report of DG that ISMA and NFCSF have on its rolls a good part of sugar mills as affiliates by stating that not all of them have so. It was further stated that practically half of the sugar mills in the country are not covered by the two organizations. Therefore, both in the case of buyers and in the case of sellers, dominant position cannot be created and there will be



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bargaining across the table through tenders and fair price will prevail. GTA has pointed out in its submissions that the DG has given information which contradicts its own observations.

109. It was submitted that the DG's report stating that price of sugar bags and government procured food bags have a ratio of 1.5:1 is completely irrelevant and infructuous as far as GTA is concerned. Price of sugar bags are determined through competitive open market operations whereas government-procured food bags are sold at a price which is determined and decided by the Jute Commissioner. Firstly, A-Twill bags cannot be substituted by B-Twill bags and secondly, the pricing processes for the two different types of constructions happen to be totally separate. Therefore, it was contended that the procurement price ratio cannot lead to any cost-benefit consideration for both the jute bags through comparison.
110. It was contended that the DG made an observation of doubtful calculus *i.e.* the statement expressing the price of A-Twill bags being 50% higher than that of the procurement price of B-Twill bags of 665 gms. To elaborate further on the subject, GTA submitted a variance analysis of month wise prices of few specified construction of jute goods with B-Twill (665 gms) DG S&D prices as the base price. GTA stated that this variance analysis reveals that the variance of the construction traded in open competitive market are insignificant between themselves as well as between the prices of the same construction of two consecutive months. That it tells that this variance has nothing to prove and merely present a cosmetic array of statistical exercise. GTA explained further with a table that the variance stated in the report is not only incredible but defies all logic for assessment of prices. That A-Twill bags prices remain within minute percentile-deviations from the price of the standard (*i.e.* DG S&D price of B-Twill- 665 gms) and variance will prove that there are good number of cases where the prices of A-Twill bags have gone lower than that of B-twill bags prices. GTA contended that it cannot be discerned through normal reasoning power



wherefrom the hike of A-Twill prices to the extent of 50% over that of B-Twill-665 gm DGS&D prices can be arrived at. GTA has questioned the DG about the source of the statistics wherefrom the 50% hike of price per gm of A-Twill has been derived. A-Twill prices are determined through competitive bidding and any arbitrary hike by a bidder will make him go out of fray. Similarly, even in the case of direct transaction such a hike will not be tolerated by a buyer. Buying-selling of A-Twill bags takes place in a totally competitive atmosphere.

111. GTA submitted that the DG's opinion 'that there is no co-relation between the prices of A-Twill and B-Twill bags when the basic material and production cost remains the same' lacks reason and prudence in it. It explained that B-Twill bags of 665 gm prices are imposed by statutory authority and there is no element of competition that may operate here. Moreover, A-Twill bags have certain requirement to make the bag characteristics and qualified to the ISI standard. These requirements comprised of dimension, corrected mass, ends and picks, average breaking load of sacking and seam along with safety stitch and hemming at the mouth. All these are finesse of production and create a differential of cost right at the point of manufactory. GTA stated that the DG has not taken into consideration the characteristic product-orientation of A-Twill bags and hence, the mistake.

112. GTA denied that OP-1 and OP-2 are responsible for mandatory monopoly of jute bags by restricting entry of HDPE bags at half the price stating that under no circumstances GTA can be called into any involvement in the subject. It submitted that the DG's report has not explained how monopoly has been effected by GTA and how HDPE bags have been restricted to enter the market of packaging of sugar bags. It has noted that JPM Act has been diluted over time to allow HDPE bags as packaging material for various commodities. Hence, the discretion lies with MoT and GTA is nowhere in the picture. It submitted that A-Twill bags and HDPE bags are not substitutes



but two kinds of packaging materials of which there is no restriction in the market. It also stated that if JPM Act has helped jute bags for packaging sugar then the question of restriction of entry in the market will have to be posed to MoT.

113. GTA submitted that the DG's report stating that sugar industry is becoming cost-heavy due to the functions of OP-1 and OP-2 is baseless allegation. It contended that any economic analysis will suffice to say that total cost is composed of a large number of cost elements of which the increase in cost due to packaging in A- Twill bags would form a negligible percentage only. That in the event that the HDPE bags are cheaper than jute bags the subject has to be taken up with the appropriate authorities and GTA has nothing to do with it.
114. GTA challenged the DG's report on pricing pattern that the prices of the transactions of a particular day have been quite close to that of GTAs price and that it acts as an element of price monopoly inflicted on the firms purchasing A- Twill bags. It was contended that DPB contains previous day's price and hence such prices cannot influence the transactions taken place on the earlier day. It was stated that the DG has targeted DPB as the instrument for disabling competition. It was submitted that DPB, in fact, invites competition and calls fair pricing into play. GTA has requested the DG to substantiate with document and corroborative mathematics that the allegation in the report is veritable true.
115. With regard to the DG's allegation of inherent contradiction to the composition of DPBs, GTA submitted that DPB indicates closing price of the previous day and it can be assumed as a logical prediction for the trend of prices of the ensuing day. Moreover, the individual office bearer entrusted to give the price for DPB supplies the rates which happen to be his honest estimates of prices as perceived by him. That the question as to how he arrived at the construction is left to the members.



116. It was contested that the allegation that OP-1 (IJMA) and OP-2 (GTA) are raising the prices through a collusion stating that it is a totally wrong notion. GTA submitted that it is no way involved in price making because final rates of jute bags are decided on negotiation between sugar mills and jute mills and this is clearly a firm-to-firm decision process. It was further submitted that the allegation of dominance by IJMA members fails as the non-IJMA producers composed 54% of production-share therefore, the plea of the report that IJMA is taking help of the DPB for cartelization is totally worthless and non-defendable as in that case, the non-IJMA members could have quoted a lower price or by mathematical reason the members of OP-1 would not have been able to impose willful prices and take the market at ransom by instancing DPB.
117. GTA has refuted the DG's opinion that modality of preparing the DPB lacks documentary evidence, transparency of modality and changes not being incorporated and DPB being composed by interested parties. It was submitted that the DPB is an in-house document of GTA and as it does not stipulate any mandatory public utility and every member of GTA knows how the DPB is composed. It stated that documentary evidences have been provided to the Commission, hence the allegation towards non-transparency or death of evidence does not stand valid. It was further stated that even though DPB is not a legislative document with compulsion for performance according to its text the report cannot question whether the framers of DPB are interested parties or not. Moreover, the verdict of the majority is the prevailing rule as far as point of order with regard to a particular rate is concerned- that is the inherent system of democracy in DPB.
118. GTA submitted that the findings of the DG that DPB containing price of the future months is clear indication of DPB not representing last days transaction or market trend but an indication of future prices for doing jute business and thus restricting competition is a misconception. That this



allegation is based on erroneous conception of jute trading. The DG has not noted that jute goods have got a ready market as well as a forward market. GTA stated that this forward trading in jute goods used to be conducted through the East India Jute & Hessian Exchange Ltd. (EIJHE) by registration of forward contract (transferable specific delivery contract) till December 2011 after which no further permission was granted to EIJHE. The EIJHE bring out quotations where forward prices used to be quoted for the TSD contracts to be transacted and as a trade-body with development pursuits. That GTA used to publish the quotations of the forward month to update its members of the trend of rates in forward trading. Once permission was withdrawn from EIJHE, there have not been any quotations for forward months being published in DPB.

119. It was submitted that the issue of the note at the end of DPB which states ‘closing quotations of the previous day’ as pointed by the DG in its report was already dealt with by the MRTP Commission in connection with RTP No. 84 of 1984, *Director General (I& R) v. GTA* and that there is a specific court verdict which also contains guidelines for DPB. It was stated that after prolonged and detailed hearing conducted with both the parties, the Hon’ble MRTP Commission passed certain orders to induct such expressions as would expostulate the inherent character and purpose of DPB to make it completely liberated from being exposed to any tentative allegation of influencing the market through any price effect by virtue of the publication of DPB. That the directives as ordained by the Hon’ble MRTP Commission are being rigorously effected as essential attributes to DPB since the date of that order and there has not been any deviation in any respect whatsoever. Hence, it remains a candid revelation that DPB as a document has already been scanned, analyzed and assessed as to its motive, purpose, approach and influence on the trade by the appropriate author having jurisdiction for such evaluation at the time of the suit being instituted. Furthermore, when it is stated that DPB is a publication having the guided orientation from the authorities, there is no gain saying in the statement.



120. GTA has questioned the DG's findings and asked how the price cartel has been apprehended just by the publication of an in-house document known as DPB. That the origin, growth and continuance of the cartel, as alleged by the DG, have to be justified not by thumping sacred wood but through logic, reason, facts and figures. Response was also filed to the submissions made by ISMA.

Replies/ objections/ submissions of the opposite party No. 3

121. In view of the conclusions of the DG recording that neither MoT nor the Jute Commissioner was found to be involved in any way with respect to the price fixation of A-Twill bags used by the sugar industry, no comments were offered by the opposite party No.3.

Analysis

122. On a careful perusal of the information, the reports of the DG and the replies/ objections/ submissions filed by the parties and other materials available on record, the following issues arise for consideration and determination in the matter:

**(i) Whether the opposite parties have contravened the provisions of section 3 of the Act?**

**(ii) Whether the opposite parties have contravened the provisions of section 4 of the Act?**

**Determination of Issue No. (i) : Whether the opposite parties have contravened the provisions of section 3 of the Act?**

123. The Commission notes that it was alleged by the informants that because of statutory provisions for compulsory use of jute bags in packaging of sugar



and food grains, the members of OP-1 and OP-2 are raising the prices of jute bags in tandem, unreasonably, over the years, imposing unfair and excessive price and limiting the technical development of market which is anti-competitive as per the provisions of the Act. The informants also alleged that OP-3 (Ministry of Textiles) through its orders/policy decisions is restricting the packaging materials market for sugar industry only to the jute industry which is unfair.

124. Pursuant to the Commission's order dated 02.08.2011 passed under section 26(1) of the Act the DG caused an investigation to be made into the matter and submitted the reports before the Commission.
125. In order to analyze the allegation of controlling and determining the prices of A-Twill Jute bags through publication of DPB by GTA, which was followed by the members of GTA and IJMA, the DG carried out the investigation to collect evidences, relevant data and statistics from the various relevant sources and persons. The data/evidences were compared and analyzed with respect to their behavioral motives and economic interpretation.
126. On analysis of the acts and conduct of the opposite parties with respect to the alleged violation of section 3(3)(a) of the Act based on their behavior and economic analysis, the DG found that GTA and IJMA as associations and their members had violated the provisions of section 3(3)(a) of the Act. The DG has also concluded that the production and supply of A-Twill jute bags in the market have been restricted and controlled in a concerted manner through understanding by IJMA and GTA and their members in violation of the provisions of section 3(3)(b) of the Act. The investigation did not find the Ministry of Textiles, Government of India OP-3 or the Jute Commissioner, MoT, GoI, to be involved in any way, with respect to the price fixation for A-Twill bags used by the sugar industry.



127. The Commission further notes that the conclusion of DG regarding determination of price of A-Twill jute bags through tacit understanding between IJMA and GTA was based on following analysis:

- (i) An analysis of the submissions of the GTA with respect to the process of publication of GTA DPB showed that there were inherent contradictions in their contentions. At one place the GTA DPB was stated to be the price for the previous day transactions and on the other hand it was considered to be indicative price for forecasting trend for the ensuing day and also for future months.
- (ii) The collection of the informations through various panel members was not transparent but opaque. The members who were determining and deciding the price by meeting jointly actively indulged in the jute business and their business interest were clearly involved in this process. No satisfactory reply was provided by any of the members to justify the requirement of DPB, when the prices were known in the market.
- (iii) The whole exercise of fixing and publishing the prices of jute bags was done arbitrarily, according to the information of members, having no scientific method. No documents were kept or provided as an evidence to show that the actual price information from the market was collected by the panel members and it was further moderated by the sub-committee of DPB members. Therefore, no transparency was found in the publication of GTA DPB. This fact clearly established that neither the price mentioned in DPB was based on neither last day's transaction nor the market trend, but maneuvered to set benchmark price for trading of jute bags. This also restricted the competition in the market for future business transactions, as the prices were already mentioned. The prices mentioned had no co-relation with the demand and supply or even with the raw material



prices or other related products, but fixed arbitrarily by the members of the GTA.

(iv) Even in the case of the cooperative sugar mills, where the procurement of jute bags was made on the basis of tendering process, the GTA DPB price became a point of reference. From various submissions, it was evident that the price mentioned in GTA price bulletin was being followed and utilized by various entrepreneurs for their business transactions and it was recognized by everyone such as mill owners, traders, brokers, sugar cooperatives and sugar mills.

(v) During the course of investigation, it was found that IJMA and GTA had made correspondence with each other, which were the testimony of the concern shown over the price, especially with respect to the prices in the daily price bulletin of GTA. The IJMA as an association provide forum to its members for discussion of prices mentioned in DPB and involved in the process, expressing concern on such prices. Further, out of 34 members of IJMA, 30 members were having the membership of GTA in various capacities. From the correspondence made between them, it was revealed that the members of IJMA followed the prices of DPB of GTA for their business transactions. Their expressed concern over the reported price showed that DPB was considered to be “the document” for price of jute produces which set the price for transactions in the market. Therefore, the members of IJMA as well as IJMA as an association were found involved in the process of deciding and controlling the price, acting in concert having understanding towards such price fixation which was disclosed by the GTA DPB, thereby contravening the provisions of section 3(3)(a) of the Act.

(vi) Due to the publication of DPB, the price was known in the market and accordingly transaction took place on the given price and in the



whole process the competitive spirit of the market was disabled through this pre-determination of price, either being transacted price or benchmark price, as the case may be.

- (vii) The prices of A-Twill bags were compared with that of B-Twill bags and it was found that there was no co-relation between the two, when the basic material and production cost remained same. In fact, the price of A-Twill bags on per gram basis was found higher by approximately 50% compared to that of B-Twill Bags. The prices of A-Twill bags were also examined with respect to the prices of raw jutes and found that they are not in tandem, but having independent price movements. An analysis of price trend in GTA DPB also revealed that there was constant increase in the prices. All this led to the conclusion that the GTA DPB prices were fixed arbitrarily, by meeting of mind, through a concerted action, independent of market forces.
- (viii) In order to examine whether such prices had actually been followed by the OPs as alleged by the Informants, the pricing pattern of the actual transactions were analyzed. The daily prices mentioned in the GTA DPB as well as the actual transacted prices were examined by collecting the figures/data/evidences such as bills *etc.* from the various jute mills as well as from the informants. From the analysis of the said data, it was found that the actual transactions were taking place nearly to the GTA DPB price which was controlled manually by the GTA and its members. Such act was nothing but to decide and control the price in a concerted manner leaving no scope for fair competition in the relevant market as the transacted prices were revolving around the GTA DPB price.
- (ix) Such conduct of controlling and determining the price by the members of GTA, under the aegis of GTA and publishing prices in GTA DPB which was followed by the members of the GTA and



IJMA, was found to be violative of the provisions of section 3(3)(a) of the Act and, therefore, presumed to have appreciable adverse effect on competition. The nexus of IJMA as an organization was clearly established through various correspondence recognizing the GTA DPB prices, its act of expressing concern over the unjustified prices quoted in GTA DPB and requesting to increase the prices. In fact the IJMA as an association had interacted directly with the GTA with respect to the DPB and also accepted the fact in the said correspondence that jute mills sold their products on the basis of GTA quotations. It was observed that out of 34 members of IJMA, 30 members were also having the membership of GTA in various capacities. Accordingly, the IJMA as an association, provided forum to its members for suggesting changes in the prices of GTA DPB, thereby influenced the same and acted as an interested party involved in the determination of price in a concerted manner, which was found to be violative of the provisions of section 3(3)(a) of the Act, having appreciable adverse effect on competition.

128. From the involvement of the GTA, its members and IJMA and its members in issuance of GTA DPB and also following the same, the DG concluded that their activities directly fell within the meaning of 'cartel' as envisaged in clause (c) of section 2 of the Act in as much as they were found to be controlling the price of A-Twill jute bags.
129. The DG also examined from the perspective of the supply and production of the relevant product with reference to other products. From the analysis of the documents, production statistics and submissions by the various parties, it was found that though there was a high demand, the production of A-Twill had reduced. The prices had increased constantly in the case of A-Twill bags at one hand and the production had decreased on the other hand, though sufficient production capacity was available. The jute manufacturers were not utilizing their capacity to the optimum as their capacity utilization for the



sacking was ranging from 60% to 70% though there was a soaring demand. The supply of A-Twill bags was much less than the requirements of the sugar industry. The production of B-Twill was also ranging between 7 to 8 lakh MT and it could not be said that the production of A-Twill was reduced due to the production of B-Twills. This clearly showed that the production and supply of the A-Twill jute bags had been restricted and controlled by the jute manufacturers deliberately to affect the price and fair competition in the market. The limiting and controlling production and supply in the market in a concerted manner through understanding by the members of IJMA and GTA was found to be in contravention of the provisions of section 3(3)(b) of the Act.

130. Before proceeding to evaluate the contentions of the opposite parties in the light of the evidence as recorded above, the Commission feels it appropriate to note, in brief, the findings given in the supplementary investigation report on the issues identified by the Commission in its order dated 18.09.2012.

Conduct of non IJMA members:

131. While examining the conduct of those jute mills which are non-members of IJMA it was found that out of 49 mills, only 13 were producing A-Twill bags on regular basis, 10 mills were stated to be closed and another 26 were either non-operational or not producing A-Twill bags. Out of 13 found to be producing A-Twill bags, notices were sent to six mills (with significant production) and responses were received from four mills. Among the four, two had replied that they subscribe to DPB published by GTA. Out of the four jute mills, three were members of GTA.
132. Based on the comparison of shares of production of A-Twill bags by IJMA members and non-IJMA members for the period 2008 to 2012, the DG arrived at the conclusion that IJMA members have a higher market share (64.03%, 55.07%, 56.73% and 81.47% respectively) than non-members (35.97%, 44.93%, 43.27%, 18.53% and 36.89% respectively) in the production of A-Twill bags.



133. From the transacted price of A-Twill bags provided by the non-IJMA members, it was found that the quoted price was hovering around the DPB quoted price. Hence, the DG concluded that non-IJMA members also quote prices in and around DPB quoted price as obviously it was a prudent business practice.

Role of IJMA and GTA members and their relationship:

134. As per the supplementary DG report, from the distribution of market share of A-Twill bags produced during 2008-09 to 2011-12, it is clear that IJMA members are the major producers, whereas the majority of GTA members are either agents/retailers/wholesalers or other private parties engaged in jute trading in some way or other. The DG also observed that decisions taken by GTA are impliedly applicable to members of IJMA due to commonality of their memberships in both the associations. The DG further observed that members of IJMA either directly or indirectly influence the decision of price fixation in DPB published by GTA although IJMA members are the market leaders in the jute industry, they have been found to follow the prices mentioned in DPB on various occasions.

Instances of discussion on price:

135. The DG, after making reference to the main report, highlighted the correspondence between IJMA, GTA and individual jute manufacturers regarding the prices quoted in DPB.

136. Based on the above mentioned correspondence, the DG drew the inference that both GTA and IJMA have been utilizing their respective associations to correspond between themselves regarding price fixation in the DPB. The DG also observed that the price of A Twill bags published in DPB is not transparent but arbitrary and not related with raw material price but still followed by members of both associations.



Co-relation between cost and price of A Twill bags:

137. The DG's finding that prices of A Twill bags are not moving in relation to cost of raw material and other input costs but are arbitrarily fixed, is based on empirical examination conducted on data relating to price of A Twill bags, price of B Twill bags and price of raw jute.
138. According to the DG, the production cost of both quality of bags is the same with slight differentiation in weaving process. The raw jute (TD-5) is used as a raw material for production of both types of bags. The other processes remain the same and there is also no specific differentiation with respect to the machinery type, labour and other overhead cost. The only difference between the two varieties is with respect to construction and usages, yet there is huge difference in selling price.
139. The price of B-Twill bags is determined by the Jute Commissioner in consultation with the Tariff Commission on periodical basis and revised having a standard formula which takes care of changes in price of raw material, manufacturing, labour cost and other cost and also a fair profit margin. No such prices are fixed by any Government agency for A Twill bags. The DG then compares the monthly prices between the two types for the period July-08 to June-11, based on the GTA's DPB for A Twill and prices as provided by Jute Commissioner for B Twill bags. This examination reveals that the selling price of A Twill bags is higher hovering about 40%-50% throughout the period. This exercise reveals that there exists no co-relation between the differences in the prices in percentage or absolute terms. While the prices of B Twill are scientifically determined, A Twill prices are not in tandem with B Twill and hence the DG infers that prices of A Twill are not moving in relation to raw material or other costs and a fair margin but are



determined by GTA on arbitrary price fixation in consultation with all its members.

140. The DG then examined the movements in price of raw jute (price per 100 kg) with price of A Twill bags (price per 100 bags) and the DG found no relationship between the two. In fact, it was observed that even during period of reduction in jute prices, an increase in price of A Twill bags was noticed. Similar trend was observed when price of raw jute and A Twill bags were compared on ton basis.
141. Thereafter the DG conducted a correlation analysis to test the strength of the relationship between the percentage growth in A Twill prices and percentage growth in price of raw jute over time between Apr-09 to Jun-11. Correlation coefficient turned out to be 0.59. From this, the DG inferred that there is low correlation between the two.
142. The DG also examined the degree of relationship between the month wise price of A Twill bags with B Twill bags for the period Jul-08 to June-11. A value of -0.27 was obtained and it was inferred that not only are two prices moving independent of each other but A Twill are moving higher even when B Twill prices are falling.
143. As none of the parties provided the costing figures for A Twill bags, the DG relied upon the costing figure of B Twill bag as provided by Jute Commissioner. The distribution of cost in the total fair price of B Twill bag was noted as follows: 87% as variable cost and the remaining as the fixed cost. For the variable cost, Tariff Commission has prescribed price variation formula on the basis of which costs are updated from time to time based on variation in different input prices.
144. From all the above mentioned points, especially the costing figure which mentions that 87% of the total cost is price of raw jute as all other costs are



more or less the same, the DG concluded that the price of A Twill bags are not moving in relation with raw material but are fixed arbitrarily.

Consumer harm:

145. The DG after making reference to the main investigation report, referred extensively to the submissions made by NFCSF and ISMA and concluded that price of jute bags is higher by Rs. 20/- over the cost of 50 kg PP/ HDPE bags. This incidence of higher cost was noted to be felt by the end- consumer of the sugar. Further, the incidence on sugar manufacturers on costing was noted as 40 paisa per kg which is ultimately to be borne by the end-consumers of sugar.
146. Furthermore, the DG found that the impact of cost of A-Twill jute bags towards sales of sugar in percentage term is between 2% to 3% whereas impact of cost of HDPE/ PP bags towards sales of sugar in percentage term is about 1% or less.

Nature of prices published in DPB:

147. The DG made detailed reference to the main investigating report and noted that the price mentioned in some of the actual transactions are either higher or lower than the DPB price but the GTA DPB of next day has not been revised on the basis of that price. Therefore, the DG concluded that the price of GTA DPB cannot be stated to be the last transacted price or near to the price of transaction in the market as claimed by the GTA members on various occasions. Hence, the DG observed that the movement of GTA DPB price is not governed by the market price, but controlled manually by the GTA and its members in a concerted manner, by meeting and applying their minds, publishing and disseminating to the interested parties.

Underutilization of capacity:



148. First, the DG analysed the jute industry scenario based on information available with the Jute Commissioner. From the analysis, it is clear that installed capacity increased between 2007-08 to 2011-12 from 13.71 lakh MT to 17.07 lakh MT. However, capacity utilisation did not match the said increase. While the production of B Twill bags increased from 5.75 lakh MT to 8.7 lakh MT during 2006-07 to 2010-11, production of A Twill bags declined from 1.94 lakh MT to 0.99 lakh MT at the same time. During this period, demand for A Twill bags from sugar industry fell marginally from 2.70 lakh MT to 2.56 lakh MT and the extent of shortage with respect to A Twill bags was around 55% in 2010-11.
149. The DG then analysed the capacity utilization by individual registered jute mills. Only 3 or 4 mills were found to be operating at full capacity. No other mill was found to be operating at full capacity. Most of the mills did not provide the capacity utilization figures and no cogent reason was provided by manufacturers for capacity underutilization with respect to A Twill bags. Hence, the DG construed that the reason for underutilization is to limit and control the production and supply in the market in a concerted manner by the members of IJMA and GTA.

Role of Ministry of Textiles:

150. As per the DG, the role of Ministry of Textiles (MoT) is confined to the implementation of the JPM Act.
151. The DG's analysis points out that as per the submissions made by MoT no study or research has been conducted or sponsored by the Government to determine the social benefit achieved by jute growers or jute bag manufacturers following the JPM Act.
152. Further, it has been pointed out that the JPM Act does not provide any clause for compulsory use of jute products and hence there is no defect in the JPM Act, but due to discretionary exercise of power by the Central Government



under the JPM Act, jute manufacturers are getting leverage and advantage over other packaging materials such as PP/ HDPE.

153. As far as the economic analysis with respect to ascertaining the impact of restrictive clause mandating use of jute bags for sugar is concerned, A Twill bag contributes about 2% to 3% of the cost of sugar whereas HDPE/ PP bag contributes to about 1% or less to the cost of sugar.

Demand and profitability position

154. The DG noted that GTA DPB selling price/ quote price per gram of A Twill bags was higher (ranging from 40% to 50%) than per gram price of B Twill bags throughout the reference period.
155. As far as the issue of product mix is concerned, it is stated that A Twill and B Twill belong to the family of “sacking” amongst various other jute products. While the price of B Twill bags are fixed by Jute Commissioner following a cost plus pricing formula, the prices of other varieties like Hessian, CBC, A Twill *etc.*, are determined by jute manufacturers/ sellers on the basis of rate quoted in GTA DPB which is fixed arbitrarily in non-transparent and unrealistic way.
156. Jute manufacturers have to mandatorily produce B Twill bags as per the requirement of the Government procurement agencies according to demand placed by Jute Commissioner. Hence, the position of ideal product mix does not arise as jute manufacturers are bound to produce the B Twill bags in the first instance. After producing the required B Twill bags they can utilize their capacity producing A Twill bags.
157. As far as A Twill bags are concerned, its demand has been higher than whatever has been produced. This is the reason of keeping the prices high arbitrarily and restricting the production of A Twill bags to command higher prices and also higher profitability.



158. The Commission has perused the reports of the DG and the replies/objections filed thereto by the parties.
159. The Commission notes that during investigation notices were issued *inter alia* to the informants (ISMA, NFCSF, AIFTMA) and the opposite parties (IJMA, GTA, Ministry of Textile-Government of India) to elicit information. Besides, representatives of IJMA and GTA were summoned to appear in person for examining them on oath. In particular, the Chairman of daily price bulletin sub-committee of GTA was examined on oath. Other members of daily price bulletin sub-committee of GTA were also asked to submit the mechanism for fixing the prices on daily basis. The Director General- ISMA, Managing Director-NFCFS and Convener of AIFTMA were summoned and their statements were recorded on oath. The Ministry of Textiles, Government of India was requested to submit relevant information and documents. The Jute Commissioner, Ministry of Textiles was also requested to submit data regarding jute industry being the nodal agency for jute related matters.
160. Based on the replies and submissions, the analysis regarding price fixation, demand & supply and production was conducted in detail.
161. The Commission notes that the DG tabulated the information/ data of sales and purchases provided by ISMA, NFCSF and the members of IJMA and GTA regarding actual transactions. It was noted therefrom that the price of actual transactions were taking place close to the GTA DPB price. It was also noted that various jute mills have categorically stated in their correspondence with GTA that they follow the GTA DBP prices and have expressed their concern about the reported prices. It was rightly deduced by the DG from the above that had there been no such price indications in the form of DPB, the competition would have been fair, market driven, where the consumer, which is sugar industry in the instant case, would have had more space to negotiate.



In this regard, it was also noted by the DG that due to JPM Act, the sugar manufacturers have to necessarily pack their products in A-Twill jute bags. The bags cannot be imported also because the JPM Act and further statutory orders stipulate that the bags should be manufactured in India and that too from the raw jute produced in India.

162. It is further noted that the price mentioned in some of the actual transactions were either higher or lower than the DPB price but the GTA DPB of next day was not revised on the basis of that price. Therefore, the DG concluded that price of GTA DPB could not be stated to be the last transacted price or near to the price of transaction in the market as claimed by the GTA members on various occasions. Hence, the movement of GTA DPB price was found not to be governed by the market price, but controlled manually by the GTA and its members in a concerted manner, by meeting and applying their minds, publishing and disseminating to the interested parties.

163. In view of the above, it was aptly concluded by the DG that such act is nothing but to decide and control the price, other than the market force, through a tacit agreement. Based on the investigation and analysis, the DG noted that members of GTA under the aegis of GTA, publish daily price bulletin, which is being followed by the members of IJMA also, as suggested through the transacted price, which is in accordance with the GTA DPB. Accordingly, it was noted by the DG that this action in concert by the members of GTA under the aegis of GTA to determine and control the price by publication of GTA DPB was in contravention of the provision of section 3(3)(a) read with section 3(1) of the Act.

164. The conclusion drawn by the DG is further strengthened from the exchange of correspondence between GTA and IJMA which showed that IJMA as an association had interacted with GTA with respect to the daily price bulletin and also accepted the fact that jute mills sell their products on the basis of GTA quotations and they have requested to increase the price in GTA



bulletin for the benefit of their members, thereby instigating them to increase the price further more. This showed that the forum of IJMA was used for expressing the collective concern of the members of IJMA to put pressure to increase the price.

165. The correspondence exchanged between IJMA and GTA is indicative of the nexus of the members of IJMA and the IJMA as an organization, who not only recognize and follow the GTA DPB but express their concern over the price mechanism and asked to change such prices, revising upward, for the benefit of the trades and manufacturers thereby involved in the matter of deciding and controlling the prices of the relevant product. This clearly brings out the fact that IJMA and its member follow the GTA prices, contrary to their submissions that the prices are not governed by GTA DPB but independent of it.
166. Although, the opposite parties have denied any concerted action between them to determine the price of jute bags they have not been able to adduce anything from which any contrary finding can be reached.
167. After considering the evidence available on record and arguments taken by the parties, the Commission finds itself in agreement with the conclusions reached by the DG regarding the existence of a tacit agreement by way of action in concert by the members of GTA under the aegis of GTA to determine and control the price by publication of GTA, DPB. Further, as the transacted prices are followed by the members of GTA and IJMA, the same is in contravention of the provision of section 3(1) read with section 3(3)(a) of the Act.
168. Coming to the economic evidence and its analysis by the DG, it may be pointed out that the DG analyzed the figures relating to demand and supply position in relation to the total installed capacity. Based on such analysis, it was concluded by the DG though there is a high demand, the production of A-Twill has reduced, thereby meaning that full capacity utilization was not



done by the jute industry. This was found to be an attempt to restrict the supply of the A-Twill bags in the market. Further, the DG noted that the prices have increased constantly in the case of A-Twill bags at one hand and the production has decreased on the other hand, though sufficient production capacity was available. This was found to be reflective of the fact that the production and supply of the A-Twill jute bags had been restricted and controlled by the members of IJMA and GTA, being the jute bag producers and the suppliers. This arrangement or action in concert by the members of IJMA and GTA was thus found violative of the provisions of section 3(3) (b) read with section 3(1) of the Act. After analysing the evidence produced by the DG and detailed in the preceding paragraphs, the Commission is in agreement with this finding based on the analysis of the data as done by the DG.

169. It may also be pointed out that the DG also conducted a comparative analysis of price movement of A-Twill jute bags with B-Twill jute bags. This latter category of jute bags *viz.* B-Twill jute bags is used by the Government for packaging of food grains. The price of B-Twill bags are determined by the Jute Commissioner in consultation with the Tariff Commission on periodical basis and revised, having a standard formula which takes into account the movement in the price of raw material, manufacturing and labour cost and other cost and also a fair profit margin. It is further noted that no such prices are fixed by any Government agency for A-Twill bags. The raw jute (TD-5) is used as a raw material for production for both types of bags. It was noted by the DG that the other process remains the same and there is no specific differentiation with respect to the machinery type, labour and other or head cost.

170. Based on the analysis, it was concluded that throughout, the per gram price of A-Twill bags were higher ranging from 40% to 50% over B-Twill bags especially in the circumstance when B-Twill bags were priced by the Jute Commissioner taking into account the costs and fair profit margin. The



material cost and overhead cost of both types of bags were almost same. Thus, the profit margins for per gram sacking of A-Twills commanded was much higher than B-Twill bags. No co-relation between the differences in their prices in percentage terms or absolute terms was found. The prices of B-Twill are scientifically/ logically determined and the fact that A-Twill prices are not in tandem with B-Twills reflected that the prices of A-Twill bags were not moving in relation to the raw material, other costs and a fair margin, but were determined by the GTA based on arbitrary price fixation in consultation with all its members.

171. It can be seen from the investigation reports that the DG also conducted an analysis of price of A-Twill jute bags in comparison with price of raw jute. The analysis showed that no co-relation was established between the raw material and the final quoted price of A-Twill bags, which was stated to be the transacted price and was not reflective of the correct market price. The Commission has also noticed the findings of the DG of the issues identified by the Commission for further investigation. As noted earlier, the Commission is satisfied that the DG has adequately addressed the issues. The opposite parties have not been able to controvert the findings in any manner.

172. The plea of IJMA to contend that the correspondence relied upon by the DG to reach a finding of an 'agreement' between IJMA and GTA has nothing to do with IJMA as an association as the same are letters from individual member companies to GTA, is misconceived. It may be observed that the evidence in such cases will normally be only fragmentary and sparse, so that it is often necessary to reconstitute certain details by deduction. In most cases, the existence of an anti-competitive practice or agreement has to be inferred from a number of coincidences and indicia which, taken together, may, in the absence of any other plausible explanation, constitute evidence of the existence of an agreement. Besides, it may be noted that apart from such letters, the DG has also collated the correspondence exchanged between IJMA and GTA. In this regard the Commission also concurs with the



contention advanced on behalf of informant No.1 that the act of price fixation of jute products which served as point of reference by jute mills clearly falls foul of section 3 of the Act amounting to a '*practice carried on or decision taken by any association of enterprises*'.

173. Further, the argument that after an 'agreement' is found amongst market participants in the same business, an investigation has to follow to establish factors that cause an appreciable adverse effect on competition in India under section 3 read with section 19(3) of the Act, is equally fallacious. A bare reading of the statutory scheme would indicate that under section 3(3) of the Act, the presumption of appreciable adverse effect on competition has to follow once an agreement falling under clauses (a) to (d) of section 3(3) of the Act is found to exist. The opposite parties instead of rebutting the said presumption have tried to shift the statutory scheme which is wholly untenable.
174. The Commission also finds no merit in the submission of the opposite parties to challenge the findings of the DG to the effect that there was no correlation between the price of A-Twill bags with that of B-Twill bags on the ground that the price of B-Twill jute bags considered is not the price of 1020 gm B-Twill but 665 gm B-Twill bags and thereby taking a wrong product's price instead of GTA's price of 1020 gm B-Twill jute bags, inflated figures have been arrived at.
175. The Commission notes that in order to ascertain the price movement of A Twill jute bags with respect to the GTA DPB, the prices of jute bags for packing of sugar (A-Twill) was compared by the DG with the prices of jute bags for food grain (B-Twill). The prices and per gram price for the both the types have been tabulated by the DG in the Table reproduced below: –



**Table**  
**Year-wise (Jute Year) price of jute bags for packing of sugar and foodgrains**

Month	A-Twill (1190 gm) Sugar (Rs per 100 bags)	B-Twill (1020 gm) Foodgrains (Rs per 100 bags)	A-Twill (1190 gm) Sugar (Per gram price in paise)	B-Twill (1020 gm) Foodgrains (Per gram price in paise)	Difference of A-Twill price over B-Twill price/gm	Difference in % of A-Twill price over B-Twill price/gm
Jul-08	3450	2084.31	2.90	2.04	0.86	42%
Aug-08	3750	2107.85	3.15	2.07	1.08	52%
Sep-08	3900	2129.40	3.28	2.09	1.19	57%
Oct-08	3850	2150.88	3.24	2.11	1.13	53%
Nov-08	4000	2172.29	3.36	2.13	1.23	58%
Dec-08	4050	2134.38	3.40	2.09	1.31	63%
Jan-09	4200	2235.53	3.53	2.19	1.34	61%
Feb-09	4050	2304.16	3.40	2.26	1.14	51%
Mar-09	4250	2396.46	3.57	2.35	1.22	52%
Apr-09	4600	2512.04	3.87	2.46	1.40	57%
May-09	4700	2601.21	3.95	2.55	1.40	55%
Jun-09	4950	2710.27	4.16	2.66	1.50	57%
Jul-09	4800	2853.58	4.03	2.80	1.24	44%
Aug-09	4700	2963.51	3.95	2.91	1.04	36%
Sep-09	5100	2933.58	4.29	2.88	1.41	49%
Oct-09	5100	2822.79	4.29	2.77	1.52	55%
Nov-09	5400	2690.59	4.54	2.64	1.90	72%
Dec-09	5450	2718.45	4.58	2.67	1.91	72%
Jan-10	5450	2864.49	4.58	2.81	1.77	63%
Feb-10	5900	2956.19	4.96	2.90	2.06	71%
Mar-10	5400	3352.26	4.54	3.29	1.25	38%
Apr-10	5500	3257.97	4.62	3.19	1.43	45%
May-10	5800	3352.27	4.87	3.29	1.59	48%



<b>Jun-10</b>	5600	3472.10	4.71	3.40	1.30	38%
<b>Jul-10</b>	5650	3527.83	4.75	3.46	1.29	37%
<b>Aug-10</b>	5900	3537.40	4.96	3.47	1.49	43%
<b>Sep-10</b>	6000	3435.92	5.04	3.37	1.67	50%
<b>Oct-10</b>	6000	3408.12	5.04	3.34	1.70	51%
<b>Nov-10</b>	6300	3507.54	5.29	3.44	1.86	54%
<b>Dec-10</b>	6300	3679.78	5.29	3.61	1.69	47%
<b>Jan-11</b>	6450	3730.45	5.42	3.66	1.76	48%
<b>Feb-11</b>	6400	3779.13	5.38	3.71	1.67	45%
<b>Mar-11</b>	6100	3760.04	5.13	3.69	1.44	39%
<b>Apr-11</b>	6100	3724.13	5.13	3.65	1.47	40%
<b>May-11</b>	6100	3690.68	5.13	3.62	1.51	42%
<b>Jun-11</b>	6100	3695.27	5.13	3.62	1.50	41%
<b>Average</b>	<b>5204.17</b>	<b>2979.25</b>	<b>4.37</b>	<b>2.92</b>	<b>1.45</b>	<b>50.73%</b>

176. It may be observed from the above table that the price comparisons have been carried by the DG by taking comparable figures and the findings have been given on per gram basis. In such a scenario, the plea of the opposite parties is without any merit and deserves to be rejected

177. Similarly, the opposite parties cannot take any refuge under the orders passed by the MRTP Commission under the erstwhile MRTP Act in as much as consequent upon the repeal of the said Act, the new law occupies the field and as such the impugned conduct has to be examined in light of new law. It has been categorically recorded by the DG also that subject matter of involved in the present case was not matter of inquiry under the MRTP Act. The opposite parties instead of sustaining their arguments under the new law are harping upon the rulings delivered in a different context under a law which stands repealed. The plea has been noted only to be rejected.

178. In view of the above discussion, the Commission is of opinion that acts/ conduct of IJMA and GTA are found to be in contravention of the provisions



of section 3(1) read with section 3(3)(a)/ 3(3)(b) of the Act. Further, the impugned activities also fall with the meaning of ‘cartel’ in terms of section 2(c) of the Act in as much as they are found to be controlling the price of A-Twill jute bags.

**Determination of Issue No. (ii) : Whether the opposite parties have contravened the provisions of section 4 of the Act?**

179. So far as the violation of the provisions of section 4 of the Act was concerned [with reference to the allegation that the members of OP-1 and OP-2 have abused their dominant position collectively by violating the provisions of section 4(2)(a) of the Act], it was noted by the DG that no single enterprise of jute was in a position to dominate the market within the meaning of explanation to section 4 of the Act. Since no such position was found and there are no provisions for collective dominance, acts of the members of OP-1 and OP-2 jointly was found not to be hit by the provision of section 4(2)(a) of the Act.

180. The allegation of abuse of dominance directed towards MoT, GoI, with reference to the JPM Act was also examined by looking at the conduct and the functioning/ administration of the MoT with regard to the JPM Act in its position as ‘enterprise’ and its ‘dominance’ in the relevant market. It was noted by the DG that MoT was not involved in dealing in respect of purchase/ sales of jute bags (A-Twill) for the sugar industry, nor is a player within the relevant market. Therefore, the action of the MoT was not found to be as an act of ‘enterprise’ for the issue in question in as much as that none of the characteristics of being an enterprise within the meaning of the Act was found to be present. Further, the DG noted that the Ministry cannot be stated to be dominant in the relevant market as it is not a stakeholder. Hence, the question of abuse by it did not arise.

181. The Commission has carefully examined the conclusions of the DG on the issue of contravention of the provisions of section 4 of the Act.



182. So far as allegations relating to contravention of the provisions of section 4 of the Act are concerned, it may be pointed out that the Commission in its order passed under section 26(1) of the Act *prima facie* indicated contravention of the provisions of section 3(3)(a) read with section 3(1) of the Act by IJMA and GTA only. In any event, based on the DG report, it appears that no single enterprise of jute manufacturer is in the position to dominate the market within the meaning of explanation to section 4 of the Act. The dominance has to be seen and analyzed on the basis of the ability and strength of an enterprise *qua* its competitors to affect the competition in the relevant market. Since no such position is found and there is no provision for collective dominance and, therefore, the abusive act/ conduct of the members of IJMA and GTA jointly is not hit by the provisions of section 4(2)(a) of the Act.
183. The allegations relating to abuse of dominance directed against the Ministry of Textiles, Government of India was also not found to be established. It may be pointed out that the conduct/ functioning/ administration of the Ministry of Textile in discharge of its statutory duties under the JPM Act does not render the Ministry as 'enterprise' within the meaning of the term as given in section 2(h) of the Act. Further, the Ministry was not found involved dealing in respect of purchase/ sale of jute bags (A-Twill) for the sugar industry.
184. The Commission is in agreement with the findings of the DG on this count also as discharge of statutory functions by the Ministry of Textiles under the JPM Act, by any stretch of arguments, cannot be described as an exercise in abuse of dominance.
185. In view of the above, no case of the contravention of the provisions of section 4 of the Act is made out against any of the above opposite parties.



### **Conclusion**

186. Based on above discussion, the Commission is of opinion that impugned acts/ conduct of IJMA and GTA are found to be in contravention of the provisions of section 3(1) of the Act section read with 3(3)(a)/ 3(3)(b), as detailed above.
187. In view of the above, the Commission passes the following order.

### **ORDER**

188. In view of the findings recorded by the Commission, IJMA and GTA are directed to cease and desist from indulging in the acts/ conduct which have been found to be in contravention of the provisions of the Act.
189. Furthermore, in terms of 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 per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse.
190. Opposite parties have not pointed out any mitigating factor during the course of hearing and have only preferred to justify their conduct on various grounds. However, the Commission is not oblivious of the fact that the Government of India recognizing that the jute industry was going through a difficult phase and needed support. Considering the importance of jute to farmers and workers, it enacted the JPM Act which mandated compulsory packaging of certain commodities, including sugar, in jute bags. Considering the totality of facts and circumstances of the present case including the factor discussed above, the Commission decides to impose penalty on the IJMA and GTA @ 5% of the average turnover of the last three years. The total amount of penalty is worked out as follows:



(In Rs.)

S. No.	Name	Turnover for 2010-11	Turnover for 2011-12	Turnover for 2012-13	Average Turnover for three years	@ 5% of average turnover (Rounded off to Rupee)
1.	IJMA	14076474.41	12932632	19102504.00	15370536.8	768527
2.	GTA	830003.57	636853.66	643298.17	703385.1333	35169

191. IJMA and GTA are further directed to file undertakings in terms of the directions contained in para 188 within a period of 30 days from the date of receipt of this order.

192. The Commission further directs these opposite parties to deposit the penalty amount within 60 days of receipt of this order.

193. So far as the individual liability of the office-bearers of IJMA and GTA in terms of the provisions of section 48 of the Act is concerned, it may be noted that the Commission *vide* its order dated 20.06.2013 directed the DG to issue notices to the office-bearers of the Managing Committee/ Executive Committee of IJMA in terms of the provisions of section 48 of the Act after giving them an opportunity to explain their individual roles in the decision making in respect of practices/ circulars which were found by the DG to be anti-competitive. Further, *vide* order dated 23.10.2013, the Commission directed the DG to investigate the role of office-bearers of Managing Committee/ Executive Committee of GTA in decision making as well as in terms of the provisions of section 48 of the Act. Accordingly, the DG submitted a second supplementary investigation report on these aspects.

194. It may be noted that the DG, on examination of the constitutional documents of IJMA, reached a conclusion that all the members representing the Managing Committee are in-charge of IJMA as per the provisions contained in the Articles of Association. A list of such members which held the posts during the period 2007-2012 containing 36 names was noted in para 4.1 of the investigation report. Notices were issued to these 36 individuals seeking



replies. The individuals denied the charges and a majority of them even denied the fact that they were ‘office-bearer of IJMA’ or ‘office-bearer of Managing Committee of IJMA’. However, the DG, based on the powers of the Managing Committee as per the Articles of Association, concluded that the said individuals were in-charge of the affairs of IJMA. Further, the DG pruned the above list of 36 individuals to 29 individuals who were ultimately found in-charge of affairs of IJMA as per the table incorporated in para 4.17 of the present report. On a closure scrutiny of the report, it appears that 2 deletions were based on the death of the respective members whereas the remaining 5 deletions were in respect of members of the Managing Committee of IJMA who were described as ‘employee’ in the earlier list.

195. Similarly, in respect of GTA, the DG found the individuals (24 in all) mentioned in the 3 tables of para 5.11.7 of the investigation report to be the persons involved in the anti-competitive activities. Furthermore, the members listed in the first table were stated to be the key persons who are common to the Executive Committee of GTA as well as DPB Sub-Committee of GTA.
196. Resultantly, the DG recommended necessary action in accordance with section 48 of the Act read with regulation 48 of the Competition Commission of India (General) Regulation, 2009 against the committee members of IJMA, executive members of GTA together with the members of its price sub-committee based on the findings in the main investigation report.
197. On consideration of the investigation reports, the Commission *vide* its order dated 15.01.2014b ordered forwarding of copies thereof to the parties including the office-bearers of IJMA (29) and GTA (24) for filing their respective reply/ objections. The Commission also directed IJMA and GTA alongwith their office-bearers to file their profit and loss accounts/ balance sheets/ turnover of the last 3 financial years.



198. It may be noted that by virtue of the provisions contained in section 48(1) of the Act, where a person committing contravention of any of the provisions of the Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Further, by virtue of the proviso appended thereto, it is provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.
199. Furthermore, the provisions contained in section 48(2) provide that notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of the Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly. By virtue of Explanation to section 48 of the Act, the word "company" has been defined as a body corporate including a firm or other association of individuals.
200. As the Commission has already held that the impugned acts/conduct of IJMA and GTA are in contravention of the provisions of section 3(1) read with section 3(3)(a)/ 3(3)(b) of the Act, the liability of the persons in-charge of IJMA/ GTA flows vicariously from the provisions of section 48 of the Act. In the present case, save and except denying the allegations and taking diverse pleas such as being members of the committees for only few years, having retired from the associations, not having vested with any specific power or



duty and otherwise explaining the nature of discussions pertaining to the general/ labour issues faced by the jute industry *etc.*, nothing has been shown or brought on record either before the DG or the Commission by such persons to absolve themselves from the liability in terms of the provisions and mechanism contained in the said section. However, the Commission decides to impose penalty upon only such of the persons who were in-charge or responsible for the conduct of the Associations at the relevant time post-enforcement of the provisions of section 3 of the Act. Resultantly, considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty on such persons who were members of the Executive Committee of IJMA and the Executive Committee and the DPB Sub-Committee of GTA @ 5% of the average income of the last three financial years. The total amount of penalty is worked out as follows:

**IJMA**

(In Rs.)

S. No.	Name	Income for 2011-12	Income for 2012-13	Income for 2013-14	Average Income for three years	@ 5% of average Income (Rounded off to Rupee)
1.	Shri Sanjay Kajaria	1278560	1291501	1297570	1289210.33	64461
2.	Shri Manish Poddar	3009025	834789	966710	1603508.00	80175
3.	Shri Sanjay Hada	2456789	2342878	7556743	4118803.33	205940
4.	Shri Raghavendra Gupta	469232	240755	1289910	666632.33	33332
5.	Shri Ashutosh Bhagat	1566130	2313440	3058770	2312780.00	115639
6.	Shri Anudeep Bajoria	76319	141910	178980	132403.00	6620
7.	Shri G.D. Bangur	12038966	12421200	16001620	13487262.00	674363
8.	Shri A.K. Kankaria	1031350	1127920	1430800	1196690.00	59835
10.	Shri B.R. Nahar	9978530	13967420	18741890	14229280.00	711464
11.	Shri R.K. Poddar	816811	803289	835124 (2010-11)	818408.00	40920
12.	Shri Sanjay Kumar Mall	399691	401074	867580	556115.00	27806
13.	Shri A.K. Lohia	818977	1378416	2737990	1645127.67	82256



14.	Shri R.S. Poddar	2302701	2842354	1919367 (2010-11)	2354807.33	117740
15.	Shri Begraj Shyamsukha	2463083	3011826	2984920	2819943.00	140997
16.	Shri Harsh Nahata	450460	495940	585440	510613.33	25531
17.	Shri Sharad Jatia	900078	6239459	9691930	5610489.00	280524
18.	Shri Sunil Jhunjhunwala	532730	397031	1115192	681651.00	34083
19.	Shri D.C. Baheti	4205030	5818680	7153370	5725693.33	286285
20.	Shri S.K. Toshniwal	1107982	1264342	1479670	1283998.00	64200
21.	Shri D.C. Patni	1174788	1233806	1472840	1293811.33	64691
22.	Shri G.L. Chirania	571934	392080	405520	456511.33	22826
23.	Shri J.P. Sonthalia	6320132	7404916	5363750	6362932.67	318147
24.	Shri B.C. Jain	966719	982030	1054860	1001203.00	50060
25.	Shri S.K. Bhattacharya	297440	1465910	298440 (2010-11)	687263.33	34363

**GTA**

(In Rs.)

S. No.	Name	Income for 2011-12	Income for 2012-13	Income for 2013-14	Average Income for three years	@ 5% of average Income (Rounded off to Rupee)
1.	Shri Raj Kumar Agrawal	163161	222340	292810	226103.67	11305
2.	Shri Vijay Kanoria	406520	502000	443060	450526.67	22526
3.	Shri Arun Kumar Seth	1442340	1832890	2447060	1907430.00	95372
4.	Shri Amal Prashad Kshetry	129301	170260	158560	152707.00	7635
5.	Shri Deepak Dhanania	509049	461414	675220	548561.00	27428
6.	Shri Girdhar Gopal Beriwal	282384	276030	351770	303394.67	15170
7.	Shri Hanuman Prasad Gupta	450878	432330	487660	456956.00	22848
8.	Shri Amit Seth	673390	716820	683280	691163.33	34558
9.	Shri Manoj Kanoria	391067	204401	185000	260156.00	13008
10.	Shri Sushil K. Agarwal	167310	168170	185890	173790.00	8690
11.	Shri Yash V. Kumar	1294024	1681000	2436780	1803934.67	90197
12.	Shri A. Kailash Nath Sharma	199940	131326	128781.13	153349.04	7667



13.	Shri Subhash Chander Jain	131014	182959	218670	177547.67	8877
14.	Shri N.L. Bhansali	424382	506887	362762	431343.67	21567
15.	Shri Pawan Kumar Agarwal	219547	157040	64340	146975.67	7349
16.	Shri Nirmal Gupta	213380	192520	183380	196426.67	9821
17.	Shri Jintendra Pragji Thakker	298690	350140	240590	296473.33	14824
18.	Shri Narendra K. Thacker	449096	492364	244031	395163.67	19758
19.	Shri Shiv Prakash Farmania	185891	213532	182003 (2010-11)	193808.67	9690

201. Before parting with the order the Commission would like to observe that although no contravention of section 3 or 4 has been found against the Ministry of Textiles, Government of India, the policy of the Ministry and provisions of the JPM Act placing statutory requirement on the sugar mills to undertake sugar packaging using jute bags produced in India only, is undoubtedly against the principle of competitive neutrality as the entities manufacturing matching products are denied access to that segment of packaging products market which has been blocked by such statutory requirement. Furthermore, such a policy/provision not only restricts the choice of customers like sugar mills but it may also lead to escalation in cost which ultimately is borne by the end consumer, *i.e.*, common people. The Commission also notes that JPM Act was passed in the year 1987 in the interests of production of raw jute and jute packaging material, and of persons engaged in the production thereof. More than 25 years have passed since then and scenario in jute industry may have undergone a change which may have obliterated the need to extend the protection which was thought necessary at the time of passing the Act. The Commission expects the Ministry of Textiles, Government of India to reassess the whole situation in view of the current market situation and strive to remove the distortions which militate against the principle of competitive neutrality.

202. The Commission further directs these parties to deposit the penalty amount within 60 days of receipt of this order.



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

**(Ashok Chawla)**  
**Chairperson**

**(M. L. Tayal)**  
**Member**

**(S. L. Bunker)**  
**Member**

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

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

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

New Delhi  
Date: 31/10/2014