



COMPETITION COMMISSION OF INDIA

Case No. 41 of 2019

In Re:

**GAIL (India) Limited
GAIL Bhawan, 16 Bhikaji Cama Place
RK Puram
New Delhi - 110066**

Informant

And

**PMP Infratech Private Ltd.
A-104, Ganesh Meridian
Opp. Kargil Petrol Pump
Near Gujrat High Court
SG Highway Sola Ahmedabad - 380060**

Opposite Party No. 1

**Rati Engineering
Address: 110, Block-C
Swagat Rainforest-2 Village-Kudasan
Koba Highway Gandhinagar-382421**

Opposite Party No. 2

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

Appearances:

For the Informant

Mr. Tishampati Sen and Ms. Uditia,
Advocates.

For the Opposite Party No. 1
and Mr. Mukesh Patel,
Director, Opposite Party No. 1

Mr. Rishad Ahmed Chowdhury and Mr.
Ankit Jain, Advocates.



For the Opposite Party No. 2 Ms. Anupam Sanghi, Advocate.
and Mr. Gautam Bhesania,
Partner, Opposite Party No. 2

Order under Section 27 of the Competition Act, 2002

1. The present Information has been filed by GAIL (India) Limited ('the Informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against PMP Infratech Pvt. Ltd. ('Opposite Party No. 1'/'OP-1') and Rati Engineering ('Opposite Party No. 2'/'OP-2') ('the OP's'), alleging, *inter alia* contravention of the provisions of Section 3 of the Act.
2. Facts as stated in the Information may be briefly noted.
3. The Informant is stated to be the largest state-owned natural gas processing and distribution company. It is engaged in the business of exploration and production of natural gas, liquid hydrocarbon, liquefied petroleum gas transmission, petrochemical, city gas distribution, electricity generation, *etc.* OP-1, a private limited company based in Ahmedabad, Gujarat, is engaged in the business of pre-engineering building services, road construction and bridge construction services. OP-2 is a partnership firm with its registered office at Gandhinagar, Gujarat, and is engaged in the business of engineering, architectural and surveying services.
4. As per the Information, the Informant floated tenders and invited bids from time to time for contract hiring of services, restoration of well site locations in a GAIL operated block, namely CB-ONN-2010/11 in Ahmedabad and Anand, and also for disposal of drilling wastes from the various well sites. Accordingly, the Informant started the process of awarding tenders based on a competitive bidding process in FY 2015–16 and since then has floated 4



such tenders: (i) 8000008330 in FY 2015–16; (ii) 8000010093 in FY 2016–17 ('T-1'); (iii) 8000011934 in FY 2017–18 ('T-2'); and (iv) 8000013410 in FY 2018–19 ('Tenders').

5. The Informant has alleged that the circumstances in relation to T-1 and T-2 raise concerns of some collusion between the OP-1 and OP-2. In T-1, wherein the pre-condition for successful allotment was that the bidder must have successfully completed at least one order of transportation and disposal of drilling waste of value of at least Rs. 3.94 crore in the previous seven years, OP-2 participated in the tender process despite it having completed projects in the past of value of Rs. 0.59 crore only.
6. The Informant has further stated that during the routine investigation conducted by the internal vigilance team of the Informant, it was noticed that in T-2, the IP address used by OP-1 (which was L-1) and OP-2 (which was L-2) was the same. As such, it appears that both bids were submitted by using either the same device or the same network connection. The IP address from which the bids were submitted is located in Ahmedabad, whereas the registered office of OP-2 is located in Gandhinagar. Additionally, the bids submitted by OP-1 and OP-2 have always been submitted with a gap of one day only.
7. The Commission considered the Information and *vide* its order dated 07.01.2020, *prima facie* opined that a case of contravention of the provisions of Section 3(1) of the Act read with Section 3(3) thereof is made out and a thorough and detailed investigation is required to ascertain the alleged bid rigging and the *modus operandi* resorted to by various bidders, as the allegations *prima facie* revealed bid rigging in the tenders floated by the Informant. Accordingly, the Commission directed the Director General (DG) to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act.



Investigation by the DG

8. To examine the allegations, the DG issued notices to the OPs and third parties to collect relevant information/data. The DG further gathered information from telecom service providers and e-mail service providers for the relevant period in respect of the key management persons/officers/officials of the OPs and third parties.
9. A brief summary of the issues identified by the DG for investigation and his findings thereon is noted below:

Issue (a)

Whether the OPs indulged in collusive bidding/bid rigging in the tenders floated by GAIL (India) Limited for hiring of services, restoration of well site locations in GAIL operated block, namely CB-ONN-2010/11 in Ahmedabad and Anand and also for disposal of drilling wastes from the various well sites in contravention of the provisions of Section 3 (3)(d) read with Section 3(1) of the Act.

Findings:

The DG investigated and noted that the practice of bid submission and exchange of confidential and commercially sensitive information amongst the OPs was prevalent during the year 2017–18. The DG noted that OP-2 had submitted a bid against ‘T-2’ tender at the behest of OP-1, and during the techno-commercial assessment of their bid by GAIL, when queries were raised on OP-2 bid for clarification/confirmation on specified issues/points, OP-2 was apparently in no position to answer those queries. Further, the DG also pointed out that OP-1 and OP-2 submitted their bids for tender ‘T-2’ from the same Internet Protocol address, with a gap of one day.



Based on the electronic/documentary evidence, replies as well as statements of the key persons of the OPs, the DG found that OP-1 and OP-2 joined hands and colluded in submitting the bid against GAIL E-tender No. 8000011934/ T-2 (released on 29.09.2017), violating the provisions of Section 3(3)(d) read with Section 3(1) of the Act. The DG identified the period of the contravention of the provisions of Section 3 of the Act in the present case as 2017–18.

Issue (b)

In case the answer to Issue No 1 is in the affirmative, what was the role of persons/officers, who were in charge of and responsible for the conduct of the business of the OPs and/or other parties at the time of the said contravention, with whose consent or connivance the contravention was committed in terms of Section 48 of the Act?

Findings:

As the DG found that OP-1 and OP-2 violated the provisions of Section 3(3)(d) read with Section 3(1) of the Act, it identified persons who were responsible for the conduct of business of a company/association and were liable for contravention of the provisions of the Act.

10. As regards the allegations pertaining to tender ‘T-1’, the DG refrained from drawing any conclusion holding that the assessment/examination of the fulfilment of pre-conditions for eligibility of the tenders, is the prerogative of the tendering authority.
11. The Commission, after considering the investigation report of the DG in its ordinary meeting held on 18.05.2021, *vide* its order of even date decided to forward an electronic copy thereof to the Informant, OP-1 and OP-2, for filing their respective objections/suggestions thereto, if any. The Commission also directed to forward an electronic copy of the investigation report to the



persons identified by the DG for the purposes of Section 48 of the Act with directions to file their respective objections/suggestions, if any.

12. The Informant, OP-1, OP-2 and their respective individuals submitted their objections/suggestions on DG report.

Objections/suggestions of the Informant

13. The Informant agreed with the assessment undertaken by the DG and, as such, supported the findings recorded by the DG in the Investigation Report.

Objections/suggestions of OP-1 and its individual

14. OP-1 submitted that the DG Report is based entirely on conjectures and surmises. The DG has failed to appropriately consider the relevant facts which led to the findings being erroneous besides, being factually and legally unsustainable.
15. OP-1 stated that the information exchanged *vide* e-mail dated 25.10.2017 with OP-2 was 'public information' and the same was neither commercially nor price sensitive. As such, such exchange could not have any anti-competitive effect on the market or on the competitive bidding process.
16. It was further submitted that the clarifications sought by the tendering authority/(GAIL) pertained purely to certain tax related information, and additionally, required submission of certain documents by OP-2. The said query from GAIL can, by no stretch of the imagination be said to have constituted information that was commercially or price sensitive in nature. It was also pointed out that, at the time the e-mails from GAIL were apparently forwarded by OP-2 to OP-1, both financial and technical bids for tender (T-2) had admittedly been submitted by all parties, including OP-1. As such, there was no possibility of amending the respective bids by the parties.



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17. In response to the finding of anti-competitive conduct by the DG on the basis of the bids of the OPs being submitted from the same IP address, OP-1 stated that, since OP-2 was facing some technical difficulties with its Java software, use of which was indispensable for the submission of bids by any bidder, Mr. Dhaval Patel of OP-2 requested and was allowed by his close friend, Mr. Yogesh Patel from OP-1 to submit OP-2's bid from OP-1's office. As a result, the bids of both OPs ended up being submitted from the same IP address.
18. OP-1 further submitted that the investigation conducted by the DG completely ignored two other entities, viz. M/s Rama Technology and M/s Mehul Construction in the bidding process for T2 and therefore, it is far-fetched to assert that there could be successful bid-rigging without the involvement of these two entities.
19. It was further submitted that the 'restoration work' which the tender in question (T2) pertains to, is even otherwise not the main business of the company and has contributed to less than 5% of the company's turnover in the last seven years and any monetary penalty would severely affect OP-1 and might require it to retrench staff and take other unfortunate, desperate measures to maintain its financial viability.
20. Mr. Mukesh Patel, Director OP-1 in his response submitted that he cannot be held liable under Section 48(1) of the Act as the DG has completely overlooked the fact that the information exchange between the OPs took place between Mr. Dhaval Patel of OP-2 and one of the employees of the OP-1 viz.; Mr. Yogesh Patel and he had no knowledge of sharing of e-mail. He further submitted that, at the relevant time, he was not aware of the Act and the regulatory regime enshrined therein.



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21. OP-1 also moved an application for leave to cross-examine Mr. Dhaval Patel, an employee of OP- 2, whose oral testimony was recorded on oath during investigation before the DG.

Objections/ uggestions of OP-2 and its individual

22. OP-2, in its submissions, at the outset, submitted that the DG's findings are unsubstantiated and lacking in empirical and/or economical evidence, plus factors that could possibly presume bid rigging of any of the tenders in question.
23. In respect of receiving tender information through email from OP-1, OP-2 stated that the fact that the mail trail exists cannot be denied. However, in terms of bid rigging and anti-competitive practices, it is insignificant that the e-mail containing the tender document was forwarded by the representative of the OP-1 to the representative of the OP-2. Even otherwise, the same is inconsequential and without any substance.
24. OP-2, with respect to the exchange of emails regarding technical queries stated that it requires objective consideration, as the DG has not even examined the nature of queries posted by the email through GAIL and has also not considered the details of the information sought through the email by GAIL. OP-2 further emphasised that a mere perusal of the queries indicate that they were hyper technical and bear no relevance to the tender nor are they determinative. Therefore, the mere sharing of queries between the parties cannot attribute any sort of an anti-competitive spirit, much less a contravention of the Act and formation of a cartel.
25. On the issue of common IP address, OP-2 submitted that the DG has not investigated the matter in this regard at all and has proceeded on the basis of predilections. The denial to accept the reason of the Java glitch as explained by OP -2 to the DG, was on a mistaken notion. At the same time, the fact that



the bids were submitted through the same IP is clearly inconsequential and cannot be evidence of anti-competitive practice.

26. OP-2 further denied that the bid for the T-2 tender was submitted by OP-2 at the behest of OP-1 as there is no substantive benefit accrued to OP-1 by submission of bid by OP-2 as there were other bidders in the tendering process as well.
27. OP-2 has also submitted that, in the absence of cogent evidence to establish an 'agreement', there cannot be a presumption against OP-1 and/or OP-2. Even assuming, without admitting that the facts found by the DG amount to a concerted agreement that can be taken as valid indirect evidence without plus factors or structural/other links to support/corroborate the incriminating evidence, it is not clear whether the DG found tacit or explicit collusion and consequently, whether the standard of proof required for establishing cartelization was met.
28. Lastly, OP-2 submitted that it is a small partnership firm and is not in the business due to a dispute between partners.
29. Mr. Gautam K Bhesania, Partner of OP-2 submitted that there was no incentive for the OPs to collude. Further, OP-1 does not seem to be advantaged by the alleged collusion. On the contrary, the alleged collusion would have a negative impact on OP-2. He further stated that the DG ought to have considered the date of incorporation, the structure and nature of work performed by OP-1 and OP-2 respectively to ascertain, in its true spirit, the nature of competition that the OPs could have afforded to each other. Further, he also submitted that he was not in India when the tendering process for T-2 was underway, and he had completely relied upon the project manager, who was otherwise in charge of the tender filing process.



30. In addition, OP-2 also sought cross-examination of the Informant in the instant matter.

Analysis

31. The Commission has perused the Information, Investigation Report and the objections/suggestions thereto filed by the parties as well as written and oral submissions filed/submitted by the parties.

32. At the outset, the Commission notes that the issue arising in the present case falls into a very narrow compass and is essentially centred around the alleged bid rigging by OPs in respect of tender (T-2) floated by GAIL on 29.09.2017 for the restoration of drilling well sites.

33. Based on detailed investigation and electronic/documentary evidence gathered, the DG concluded that OPs have colluded in submitting the bids against the aforesaid tenders violating the provisions of Section 3(1) read with Section 3(3)(d) thereof.

34. Before examining the alleged conduct within the statutory framework, it is appropriate to outline the regulatory framework as enshrined in the Act relating to the prohibition of anti-competitive agreements.

35. In this regard, to begin with, it is apposite to note that the definition of 'agreement' as given in Section 2(b) of the Act requires, *inter alia*, any arrangement or understanding or action in concert, whether or not formal or in writing or intended to be enforceable by legal proceedings. The definition, being inclusive and not exhaustive, is a wide one. An understanding may be tacit, and the definition under Section 2(b) of the Act covers even those situations where parties act on the basis of a nod or a wink. The Commission notes that the Act envisages civil liability. Thus, the standard of proof required to prove an understanding or an agreement would be on the basis of 'preponderance of probabilities' and not 'beyond reasonable doubt'. As there



is rarely any direct evidence of action in concert and in such situations, the Commission has to determine whether those involved in such dealings had some form of understanding and were acting in cooperation or coordination or concert with each other. In light of the definition of the term ‘agreement’, the Commission has to assess the evidence on the basis of benchmark of preponderance of probabilities.

36. Further, in terms of the provisions contained in Section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Section 3(2) of the Act declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. Further, by virtue of the presumption contained in sub-section (3), any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which- (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; or (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.
37. As per the explanation appended to sub-section (3) of Section 3 of the Act, “bid rigging” means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of



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goods or provision of services which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

38. In case of agreements as listed in Section 3(3)(a) to (d) of the Act, once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition; the onus to rebut the presumption would lie upon the parties.
39. Applying the aforesaid tests to the fact situation of the present case, it is beyond any pale of doubt that OPs had reached an understanding by and between them whereby and whereunder they decided to coordinate their conduct in submitting their respective bids, as detailed in the succeeding paragraphs.
40. From the investigation report and the replies of OP thereon, and after examining the submissions made by the parties and other material available on record, the Commission notes that the e-mail dumps collected by the DG revealed that the OPs were in regular touch with each other during the relevant period, when the Tender No. 8000011934, dated 29.09.2017 ('T-2') was issued by GAIL. On 29.09.2017, GAIL forwarded the information regarding floating of the tender to its prospective bidders, including OP-1, for wider publicity. The said email, in turn, was forwarded by OP-1 to Shri Dhaval Patel of OP-2 on 25.10.2017. Both the OPs participated in the said tender by submitting their respective bids. OP-1 submitted the bid on 26.10.20217 and OP-2 submitted the bid on 27.10.2017 from the same IP address (and the same office premises) of OP-1.
41. It is further observed from the records that, during the techno-commercial assessment of bids by GAIL, queries were raised to OP-2 on its bid for clarification/confirmation on specified issues/points *vide* an e-mail dated 04.12.2017. These queries pertained to technical and commercial aspects.



Later, GAIL also issued a reminder to OP-2 on 09.12.2017 by e-mail. On receipt of the said reminder e-mail dated 09.12.2017, on the technical queries raised by GAIL on the technical bid submitted by OP-2 against the impugned tender (T-2), Shri Dhaval Patel of OP-2 forwarded the said e-mail raising queries to OP-1 *vide* an e-mail dated 10.12.2017. Thereafter, Shri Dhaval Patel of OP-2, *vide* e-mail dated 11.12.2017, requested GAIL for a one day extension to submit its reply on the queries raised. Finally, Shri Dhaval Patel *vide* his e-mail dated 12.12.2017, submitted the response to GAIL.

42. In this regard, it is instructing to note that Shri Yogesh Patel, Tender Executive of OP-1, while recording his statement on oath before the DG admitted to the fact that the queries raised by GAIL to OP-2 were sent by OP-2 to OP-1 'for appropriate response on behalf of Rati Engineering'. He confirmed in his response that Shri Dhaval Patel of OP-2 shared the confidential information relating to bid submitted by OP-2 to its competitor, *i.e.* OP-1 and further also admitted that he prepared the suitable reply and forwarded the same to OP-2 for submission to GAIL.
43. At this stage, it is apposite to note the allegation made by the Informant, that both the OPs submitted their bids for the impugned tender *i.e.* T-2 from a common Internet Protocol (IP No. 59.88.125.56) on two different dates, *i.e.*, 26.10.2017 and 27.10.2017, with a gap of one day. During investigation, Shri Mukesh Patel, Director of OP-1 when confronted with this, confirmed that the bids for the two firms/companies were indeed submitted from office premises of OP-1 located at Ahmedabad with one-day gap. He, however, cited technical glitch in submitting bid by OP-2 as an *alibi* to support his contention. The plea of *alibi* has been noted, only to be rejected as nothing has been adduced to substantiate this plea. The Commission rather finds it egregious for competitors to use the same office premises and systems to submit the bids for which they are competing.



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44. From a bare reading of the provisions of Section 3(1) of the Act, it is evident that these provisions not only proscribe the agreements which cause Appreciable Adverse Effect On Competition (AAEC), but the same also forbid the agreements which are likely to cause AAEC. Furthermore, once an agreement of the types specified under Section 3(3) of the Act is found to be established, the same is presumed to have an AAEC within India.
45. In view of this statutory scheme, the plea of OP-1 that the DG completely ignored the other two entities *viz.* M/s Rama Technology and M/s Mehul Construction, in the bidding process for T-2, without whose involvement there could not have been any successful bid rigging, is misconceived. Moreover, it has come on record that in T-2 tender, bids of these two entities were not found to be technically acceptable. As such, nothing significant turns upon on this aspect.
46. Furthermore, the plea of OP-1 that the clarifications sought by the tendering authority/(GAIL), pertained purely to certain tax related information and additionally required submission of certain documents by OP-2, is also misdirected and stands falsified from the records. A bare perusal of the e-mail sent by GAIL to OP-2 dated 04.12.2017 clearly indicates that the queries pertained to technical and commercial matters which included, *inter alia*, financial statements as well as the financial capability of bidders in addition to the queries pertaining to GST. It is indeed surprising that such techno-commercial details sought by the procurer from the bidder OP-2 were, responded with the help of its competitor *i.e.* OP-1.
47. Before parting with this order, the Commission notes that OP-1 had moved an application dated 19.07.2021 seeking cross-examination of Shri Dhaval Patel of OP-2. In this regard, it is noted that, during the course of hearing, it was conveyed to the learned counsel appearing for OP-1 that the depositions of Shri Dhaval Patel of OP-2 shall not be relied upon by the Commission and as such the request became infructuous. Similarly, the learned counsel



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appearing on behalf of OP-2 during the course of the hearing made a request to cross-examine the representative of the Informant in the matter. In this regard, it suffices to note from the investigation report that no representative of the Informant has deposed during investigation. As such, the plea to cross-examine any such purported representative of the Informant is thoroughly misconceived and is not maintainable.

ORDER

48. In view of the foregoing, the Commission is of the opinion that the that the OPs indulged in anti-competitive agreement/conduct and concerted practices leading to collusive bid rigging of 'T-2' tender during FY 2017-18 floated by GAIL, and thereby contravened the provisions of Section 3(3)(d) read with Section 3(1) of the Act.
49. For the foregoing reasons, the Commission also holds Mr. Mukesh Patel of OP-1 and Mr. Gautam K. Bhesania of OP-2 to be liable in terms of the provisions of Section 48(1) of the Act, as OP-1 and OP-2 were managed and controlled by them, respectively, during the relevant period. They have failed to show that the contravention was committed without their knowledge or that they had exercised all due diligence to prevent commission of such contravention.
50. Resultantly, the Commission, in terms of the provisions of Section 27 (a) of the Act, directs OPs and their respective officials, who have been held liable in terms of the provisions of Section 48 of the Act, to cease and desist in the future from indulging in practices which have been found in the present order to be in contravention of the provisions of Section 3(1) of the Act read with Section 3(3)(d), as detailed in this order.
51. As regards monetary penalty, the Commission notes that OP-2 is a small enterprise and is stated to be not in business due to the purported disputes between the partners. So far as OP-1 is concerned, it has pleaded that



‘restoration work’ that the impugned tender pertains to, does not constitute the main business of the company and as contributed to less than 5% of the company’s turnover in the last seven years. It has averred that any monetary penalty imposed may severely affect the company and may require it to retrench staff and take some other unfortunate and desperate measures to maintain its financial viability. It has also been pointed out that the company is engaged in the field of construction related activities which have been particularly hard hit by frequent lockdowns on account of the pandemic.

52. Having given thoughtful consideration to the issue of levying of monetary penalty and in particular the quantum thereof, the Commission is persuaded to take a lenient view by taking cognizance of the mitigation pleas advanced by the parties. Accordingly, the Commission is of the considered view that a behavioral correction of market participants through a cease and desist order would subserve the larger cause of market correction which the Commission is mandated to ensure and a symbolic monetary penalty would achieve the ends of justice in the facts and circumstances of the present case.

53. Accordingly, the Commission finds it appropriate to impose monetary penalties upon the Opposite Parties and their respective individuals for contravention of the provisions of Section 3(1) read with Section 3(3)(d) of the Act, as detailed in this order, in the following terms:

(In Rs.)

S. No.	Name of OPs	Penalty
PMP Infratech (OP-1)		
(i)	PMP Infratech Private Limited	25 Lakh
(ii)	Mukesh Patel, Director	1 Lakh



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Rati Engineering (OP-2)		
(i)	Rati Engineering	2.50 Lakh
(ii)	Gautam K. Bhesania, Partner	50 Thousand

54. The Commission directs the above OPs and their respective individuals to deposit the penalty amount within 60 days of receipt of this order.

55. The Secretary is directed to communicate to the parties, accordingly.

Sd/-

**Ashok Kumar Gupta
(Chairperson)**

Sd/-

**Sangeeta Verma
(Member)**

Sd/-

**Bhagwant Singh Bishnoi
(Member)**

New Delhi

Date: 11.10.2021