



COMPETITION COMMISSION OF INDIA

Case No. 45 of 2019

In Re:

Plasser India Pvt. Ltd.
13th Milestone, Mathura Road
Gurukul Indraprastha Estate
P.O. Amar Nagar
Faridabad-121003
Haryana

Informant

Against

Harbour Sales Pvt. Ltd.
201, 2 Community Centre
Naraina (near PVR)
New Delhi- 110028

Opposite Party No. 1

Alpha National Trading Co.
28C, Satish Mukherjee Road
Kolkata- 700026

Opposite Party No. 2

**CRCC High- Tech Equipment
Corporation Ltd.**
No. 384, Yangfangwang
Guandu District, Kunming
Yunnan
P.R. China- 650215

Opposite Party No. 3

**Hubei Srida, Heavy-Duty Engineering
Machinery Co. Ltd.**
Huopai Industrial Park, Xiangyang District
Xiangyang, Hubei
P.R. China- 441116

Opposite Party No. 4

Ministry of Railways, Union of India
Rail Bhavan, Raisina Road
New Delhi- 110001

Opposite Party No. 5



Oriental Hengtai (Taian) Machinery and Electronic Technology Co. Ltd.
802, Unit 2, Apartment Building
Huatai Fortune Plaza, Tai'an City
Shandong Province
P.R. China- 271403

Opposite Party No. 6

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by Plasser India Pvt. Ltd. ('the Informant') under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') against Harbour Sales Pvt. Ltd. ('Opposite Party No. 1' / 'OP-1'), Alpha National Trading Co. ('Opposite Party No. 2' / 'OP-2'), CRCC High-Tech Equipment Corporation Limited ('Opposite Party No. 3' / 'OP-3'), Hubei Srida, Heavy-Duty Engineering Machinery Co. Ltd. ('Opposite Party No. 4' / 'OP-4'), Ministry of Railways, Union of India ('Opposite Party No. 5' / 'OP-5') and Oriental Hengtai (Taian) Machinery and Electronic Technology Co. Ltd. ('Opposite Party No. 6' / 'OP-6') (collectively referred to as 'the OPs') alleging *inter alia* contravention of the provisions of Section 3 of the Act.
2. The Informant is stated to be a company engaged in manufacture of high performance and highly sophisticated machines for track maintenance, track laying and track renewal. OP-1 is a private limited company incorporated in India and OP-2 is a partnership firm established in India. OP-3, OP-4 and OP-6 are Chinese companies engaged in developing railway track maintenance machinery. OP-5 is the Indian Railways, a Department of the Government of India.



3. The Informant states that OP-5 periodically invites tenders for the supply of track maintenance machinery. In this connection, it is averred that OP-5 invited electronic bids for supply of Dynamic Track Stabilizing Machine *vide* Tender No. 'TM 1709' which *inter alia* required that '*Manufacturer or their agents may note that an agent can represent or quote on behalf of only one firm in a tender*' [Clause 1.4.1 of 'Instructions to Tenderers']. Further, Check List-II of tender document also reiterates the same by stating that '*Manufacturer or their sole selling agents may note that an agent can represent only one firm in a tender and any manufacturer cannot submit more than one offer against a tender through different sole selling agents, or one directly and others through sole selling agents. In such a situation all the offers will be rejected.*'
4. The Informant states that it has participated in the various tenders floated by OP-5, including the tender 'TM 1709'. However, it has been alleged that OP-1 has consistently acted as an agent for OP-3 and similarly, OP-2 has acted as an agent for both OP-4 and OP-6. The Informant has detailed in a tabular format the details of various tenders indicating the names of the agents who represented their respective participating bidders:

Tender No.	Some of the Participant Bidders	Sole Agents of the Participating Bidders
TM-1709	Informant	None
	OP-3	OP-1
	OP-6	OP-2
TM-1802	Informant	None
	OP-3	OP-1
	OP-4	OP-2
TM-1809	Informant	None
	OP-3	OP-1
	OP-4	OP-2

From the above, the Informant alleged that OP-1 has consistently acted as an agent for OP-3 whereas OP-2 acted as an agent for OP-4 and OP-6.



5. The Informant has further averred that OP-1 has two directors and shareholders *i.e.* Mr. Angad Singh and Mr. Brij Bali Singh. The Informant has also stated that an order of the Income Tax Appellate Tribunal ('ITAT') dated 28.08.2019 in *M/s Alpha National Trading Co. v. Pr. Commissioner of Income Tax-10*, I.T.A. No. 1007/KoI/2018 indicated that there were financial dealings between Mr. Angad Singh and OP-2 that *prima facie* suggested that Mr. Angad Singh is himself one of the Partners in OP-2. Moreover, the Informant alleged that LinkedIn profile of Mr. Angad Singh mentions him as Chief Executive Officer of OP-2.
6. The Informant has also averred that pursuant to informal investigations carried by it, it was revealed that Ms. Sudha Singh (wife of Mr. Angad Singh) and Ms. Pushpa Singh (sister of Mr. Angad Singh and daughter of Mr. Brij Bali Singh) are also partners in OP-2. Further, it also transpired that OP-1 and OP-2 operate out of the same premises.
7. It is also stated that close business proximity of Mr. Angad Singh and Ms. Pushpa Singh is demonstrated from the fact that both individuals are Directors in 'And Hitech Industries Private Limited'. Therefore, the Informant has alleged that Mr. Angad Singh controls both the entities *i.e.* OP-1 and OP-2. In all the invitation for tenders, OP-1 and OP-2 participated in violation of the spirit of the tender conditions that disallowed multiple bids by the same agent.
8. The Informant has specifically pointed out that in at least three bids, OP-1 and OP-2 had acted as agents for Chinese bidders creating doubts on the propriety of the bids submitted by the Chinese bidders. Further, it is averred that OP-3, OP-4 and OP-6 should have been diligent in appointing OP-1 and OP-2 as their agents. Looking at the relationship between OP-1 and OP-2, it was alleged OP-3, OP-4 and OP-6 undertook potential risk of exchange of sensitive commercial information and thus tacitly agreed to the anti-competitive conduct.



9. The Informant has also pointed out that manufacture and supply of rail track maintenance systems is a monopsony market, as the only buyer/ procurer of such systems in India is OP-5. Thus, as per the Informant, the competitive conditions in such market are of particular significance. In this regard, the Informant has also referred to the decision of the Hon'ble Supreme Court of India in *Rajasthan Cylinders and Containers Ltd. v. Union of India* (Civil Appeal No. 3546/2014), wherein it was held that in such a market, there is a tendency of the monopsonist purchaser to award tenders to as many different bidders as possible. This is for the reason that in such a market, the buyer wants to ensure that there is always a significant number of suppliers available for the future. If bids are only awarded to one party consistently, this results in the other bidders shutting shop, given that there is no other buyer for the product/service.
10. The Informant has stated that *vide* letter dated 19.09.2019, the above-mentioned glaring impropriety was also brought to the notice of OP-5. However, OP-5 has neither responded to such information nor taken any action.
11. Thus, in light of the above facts, the Informant has alleged that OP-1, OP-2, OP-3, OP-4 and OP-6 have entered into an anti-competitive agreement in violation of the provisions of Section 3(3) of the Act.
12. Based on the above averments and allegations, the present Information has been filed by the Informant against the OPs alleging contravention of the provisions of Section 3 of the Act. The Informant has also prayed for interim relief in terms of the provisions contained in Section 33 of the Act to restrain OP-5 from declaring the results of pending bids where OP-1 and OP-2 have acted as agents for multiple bidders.
13. The Commission has considered the Information and the material available on record and notes that the Informant appears to be aggrieved by the fact that the in the tenders floated by OP-5; OP-1 and OP-2, despite having common



ownership, were appointed as agents by the bidders (OP-3, OP-4 and OP-6) in violation of the spirit of the tender conditions that disallowed multiple bids by the same agent.

14. At the outset, the Commission notes that breach of the tender condition, if any, does not amount to violation of the provisions of the Act. Further, the Commission observes that the Informant has not provided any evidence with regard to collusion between OP-3, OP-4 and OP-6. No data or details of the bids have been made available before the Commission. Thus, there is nothing on record that OP-3, OP-4 and OP-6 have colluded in furnishing bids in response to the tenders floated by OP-5. Hence, a mere possibility of a potential collusion amongst OP-3, OP-4 and OP-6 on the basis of an assertion of common ownership of the agents *i.e.* between OP-1 and OP-2, is not sufficient to persuade the Commission to record any finding.
15. Thus, in opinion of the Commission no anti-competitive conduct can be said to have arisen in the present case, warranting an investigation.
16. It will also be appropriate to extract the observation of this Commission from the decision in *In Re: Reprographics India v. Hitachi Systems Micro Clinic Pvt. Ltd.* (Case No. 41 of 2018), wherein it was held as follows:

“...merely having common business linkages between the OPs as projected by the Informant, cannot be the basis to suggest collusion in the bidding process. Moreover, there is no material on record to suggest that the OPs were engaged in Bid Rotation etc. Therefore, the allegation of supportive bid does not find favour with the Commission...”

17. In view of the above, the Commission is of the opinion that, in the absence of any material on record which can suggest collusion amongst the bidders, no



case of contravention of the provisions of Section 3(1) of the Act read with Section 3(3)(d) thereof is made out.

18. In view of the above, the Information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.
19. Lastly, it may be pointed out that the Commission considered this matter in its ordinary meeting held on 15.01.2020, whereupon it was decided to pass an appropriate order in due course. Subsequently, a request dated 21.01.2020 was made on behalf of the Informant seeking preliminary hearing in the matter. However, in the absence of any new or additional information, the Commission finds no merit in request.
20. The Secretary is directed to inform the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 05/02/2020