



COMPETITION COMMISSION OF INDIA

Case No. 27 of 2019

In Re:

**M/s Manjeet Plastic Industries
Through Manjeet Kapoor
30/56, West Punjabi Bagh
New Delhi - 110026**

Informant

And

**Charanpaaduka Industries Private Limited
Through its Managing Director
11/371, 1st Floor, Sundervihar
Outer Ring Road, Delhi 110083**

Opposite Party No. 1

**XO Footwear Private Limited
Through its Managing Director
A-122, Mangolpuri,
Industrial Area Phase- II
Delhi 110034**

Opposite Party No. 2

**Infinity Footwear Private Limited
Through its Managing Director
313/36-B Main Road,
Chara Mandi, Inderlok,
New Delhi – 110015**

Opposite Party No. 3

**Vinishma Technology
Through its Managing Director
M-22/22, Old-22
Kh. No. 26 1st Floor, Block B Mohan Park,
Model Town, Phase – 3, Delhi – 110009**

Opposite Party No. 4

**Sumaja Electro Infra,
Through its Managing Director
H. No. 14, G.F.,
Blk-B-5 Model Town,
Delhi- 110009**

Opposite Party No. 5

**M B Rubber Private Limited
Through its Managing Director
195, Gagan Vihar, Delhi- 110051**

Opposite Party No. 6



H B Rubber Private Limited
Through its Managing Director
195, Gagan Vihar, Delhi- 110051

Opposite Party No. 7

B.N.G. Fashion Gear Private Limited
Through its Managing Director,
319-320, Sector 17,
Footwear Park, HSIIDC
Bahadurgarh, Haryana- 124507

Opposite Party No. 8

Liberty Shoes
Through its Managing Director,
Libertypuram, 13th Milestone Gt. Karnal Road,
Kutail PO Bastara
Karnal, Haryana- 132114

Opposite Party No. 9

Lawreshwar Polymers
Through its Managing Director,
A-243(A) Road No. 6,
V.K.I. Area, Jaipur,
Rajasthan- 302013

Opposite Party No. 10

Tamil Nadu Textbook and Educational Services Corporation
Through Chairman
68, E.V.K. Sampath Maaligai,
D.P.I Campus. College Road,
Chennai, Tamil Nadu- 600006

Opposite Party No. 11

CORAM

Mr Ashok Kumar Gupta
Chairperson

Ms Sangeeta Verma
Member

Mr Bhagwant Singh Bishnoi
Member

Presence:
For the Informant

Mr. Robin David, Advocate
Ms. Purnima Malik, Advocate
Mr. Febin, Advocate
Mr. Shashank Dixit, Advocate



Mr. Nitin Kapoor, Authorised signatory of M/s
Manjeet Plastic Industries

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

1. The present information has been filed by M/s Manjeet Plastic Industries through its sole proprietor Mr. Manjeet Kapoor (hereinafter, '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, '**Act**') alleging contravention of relevant provisions of Sections 3(3), 3(4) and 4(2) of the Act by Charanpaaduka Industries Private Limited (hereinafter, '**CIPL/OP-1**'), XO Footwear Private Limited (hereinafter, '**XO/OP-2**'), Infinity Footwear Private Limited (hereinafter, '**IFPL/OP-3**'), Vinishma Technology (hereinafter, '**VT/OP-4**'), Sumaja Electro Infra (hereinafter, '**Sumaja/OP-5**'), M B Rubber Private Limited (hereinafter, '**MBRPL/OP-6**'), H B Rubber Private Limited (hereinafter, '**HBRPL/OP-7**'), B.N.G. Fashion Gear Private Limited (hereinafter, '**BNG/OP-8**'), Liberty Shoes (hereinafter, '**Liberty/OP-9**'), Lawreshwar Polymers (hereinafter, '**LP/OP-10**') by cartelising for collusive bidding and/or bid rigging in collusion with the procurer Tamil Nadu Textbook and Educational Services Corporation (hereinafter, '**Corporation/OP-11**' and OP-1 to 10 are collectively referred to as the '**Opposite Parties**')

Background of the Parties

2. As stated, the Informant is a duly registered sole proprietorship firm under the Micro, Small and Medium Enterprises Development Act, 2006 ('MSME') engaged, *inter alia*, in the manufacturing of footwear of different sizes and specifications since 1980 and claims to have an experience in bulk manufacturing and supply of footwear including school shoes (closed and sandals) for public authorities and private clients. The Informant supplied school footwear to the Government of Tamil Nadu for three consecutive years for work orders of 20 lakh pairs in 2016-17, 29 lakhs pairs in 2017-18 and 30 lakh pairs in 2018-19.



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3. Charanpaaduka is a company, having its registered office in Delhi and was incorporated in 2001. Mr. Rajesh Gupta, Ms. Anju Gupta and Vaibhav Gupta are the directors of the company.
4. XO is a shoe manufacturing company, having its registered office in Delhi, was incorporated in 2006. Mr. Parikshit Gupta, Ms. Asha Gupta, Mr. Rakesh Kumar Gupta, Mr. Mohit Gupta and Mr. Nalin Gupta are the directors of the company.
5. Infinity is a wholesaler of footwear. It is stated to be a sister concern of XO and have the same “*beneficial owner*”.
6. VT, having its registered office in Delhi, was incorporated in 1995. Mr. Manish Aggarwal and Mr. Rajendra Kumar Agarwal are the directors of VT. Sumaja, having its registered office in Delhi, apparently undertakes projects related to electrification and civil construction work for government entities and also trades in stationery items. Sumaja was incorporated in 2005. As per the Informant, Mr. Manish Aggarwal, the director of VT, was also the director of Sumaja till 2015. Since 2016 and 2017, Brijesh Pandey Kumar and Arvind Bhargav respectively are its directors. It is further stated that the operations of both VT and Sumaja are run by one individual namely Mr. Sudhir Aggarwal and have their registered offices in the area of Model Town, Delhi.
7. MBRPL was incorporated in 1988. Mr. Rakesh Jain, Mr. Vipin Mehta and Mr. Pramod Jain are the directors of MBRPL. Whereas HBRPL is stated to be a sister concern of MBRPL. Mr. Nikhil Jain and Ritesh Jain are the directors of HBRPL. It is claimed that both MBRPL and HBRPL, besides being a sister concern, have a common registered office and the same “*beneficial owner*”.
8. BNG, having its registered office in Bahadurgarh, Haryana, is a supplier of men and women footwear. It was incorporated in 2010 and Mr. Manoj Gupta is its director.
9. Liberty, having its registered office in Karnal, Haryana, was incorporated in 1986. It is informed that Mr. Adesh Kumar Gupta, Mr. Munish Kakra, Mr. Raghubar Dayal, Mr.



Lovelena Mody, Mr. Ramesh Chandra Palhan, Mr. Pushpinder Singh Grewal and Mr. Ashok Kumar are the directors of the company.

10. Lawreshwar, having its registered office in Jaipur, Rajasthan, was incorporated in 1994. It is engaged in manufacturing and supplying of men and women footwear. Mr. Naresh Kumar Agarwal, Mr. Ramesh Chand Agarwal, Mr. Radhey Shyam Gemini, Mr. Raj Kumar Agarwal, Mr. Sunil Agarwal, Ms. Preeti Goyal, Mr. Rakesh Kumar Soni, Mr. Sanjay Kumar Agarwal and Ms. Geetika Bisht are the directors of the company.
11. As further stated, the Corporation is primarily into publishing, printing, selling, supplying of text and other books, exercise and copy books and the literature on all subjects in all language for all Educational Institutions in the State of Tamil Nadu.

Facts and Allegations as stated in the Information

12. In order to implement the announcements of the Chief Minister of the State of Tamil Nadu pertaining to the scheme of supply of cost-free School bags to school children studying in Government / Aided Schools in the State of Tamil Nadu for the year 2019-20, the Corporation published a Tender *vide* Tender Ref. RC No. 558/PUR-II/2019 on 05.03.2019, for inviting bids from the manufacturers of School Bags (**'Tender'**), in accordance with the procedures laid down in the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tender Rules, 2000. Through the Tender, the Corporation proposed to procure 71.87 lakhs of School Bags by entering into Rate Contract as per specifications laid down in the Tender. The Contract Period was for one year from the date of agreement. The date and time of opening of Technical bids was 11.04.2019.
13. On 09.04.2019 and 26.04.2019, the Corporation, allegedly in the utmost arbitrary and unjustified manner issued separate corrigenda thereby amending the initial tender condition, *inter alia*, by allowing the applicants to the Tender to participate through a consortium containing a maximum of 3 entities. The said corrigendum amended the initial Clause 4.4.1 of the Tender which stated "*Minimum Eligibility Requirements- The*



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Tenderer shall be a manufacturer of School Bags at least for a period of last 3 financial years and he shall possess valid registration for the manufacture of School Bag issued by the Competent Authority.” While issuing the amendment through the corrigendum, the Corporation stated that “the Tenderer shall be a manufacturer/Consortium of manufacturer(s)/Consortium of manufacturer(s) and dealers (subject to maximum of three) of School Bags. The manufacturer/manufacturers shall be a manufacturer of School Bags for a period of atleast last 3 financial years and shall possess valid registration for manufacture of School Bags issued by the competent authority. The dealer in the Consortium should have a valid legal contractual agreement with manufacturer/manufacturers with validity for atleast one year beyond the tender opening date.”

14. The Informant has alleged that the concession of allowing the consortium to participate was not a part of the Tender’s initial terms and conditions and were included through a corrigendum. The Informant mentioned that the said process of inclusion was an attempt to frustrate the purpose of the competitive tender by colluding or attempting to limit the competition. Moreover, the Corporation, as per Clause 4.8.1 of the Tender, could only issue the amendment upto 48 hours before, two days prior to, the last date of submission of the Tender, which was 11.04.2019. Thus, apparently, the process of the entire tender was abused in a deliberate manner to affect competition as after floating of the Tender, the bidders were permitted to apply for the tender in the form of Consortium *vide* Corrigendum dated 26.04.2019. This *per se* creates a strong possibility for manipulation of the entire process in favour of select parties. As a result of this, the tender conditions were relaxed in favour of Consortium(s), primarily two companies, namely, VT and Sumaja. These entities were not the manufacturers of school bags and did not meet the criteria for participating in the Tender earlier but were able to participate in the Tender on the strength of such amendment. Such actions defeated the fair play in the process of Tender and creates a facade of competition. This further compromised the quality of the product as the tenderers who lacked expertise and resources got to participate by forming a consortium.



15. The Informant stated that the samples submitted by the Opposite Parties revealed the anti-competitive practice undertaken by them during the process of Tender. It is stated that the Tender's Clause No. 4.15.2(l) stated that '*3 Samples of School Bag in each size i.e., Small, Medium & Large (Samples with any marks/printings will not be accepted)*' In the same vein, it is alleged that when the samples submitted by all the respective bidders were opened for examination, a common pattern was noticed whereby nine companies had submitted samples with same or similar markings bearing pictures of Late Ms. S. Jayalalitha as well as the current Chief Minister of the State of Tamil Nadu. The same was a clear violation of clause no. 4.15.2(l) of the Tender. Therefore, it was likely that pursuant to a mutual understanding with some officials in the process of Tender, such goods were deliberately 'marked' in order to obtain favour or the bags were manufactured at the same location. According to the Informant, both instances demonstrated collusion.
16. Subsequently, the Corporation sent letters to all the bidders to submit 03 new samples without any printing/Govt. logo/CM's photo/Company name/Brand name/any other marking and printing on or before 16.07.2019 for further evaluation which was totally in violation of tender conditions. In compliance of the same, the Informant, apparently being one of the bidders, also resubmitted 03 new samples each on 08.07.2019.
17. The Informant stated that according to the past practice, the price quote of the Opposite Parties would be the same or had a "*de minimis*" difference, and the price was likely to be approximately 25% higher than the price quoted by the Informant in its Tender without there being any basis of differential production costs.
18. For the purposes of the present information, the Informant defined the Relevant Market as '*Manufacturing and supply of school bags in pursuance of the tender vide Tender Ref. RC No. 558/PUR-II/2019, published on 05.03.2019 for manufacturing of school bags for school children in Tamil Nadu*'.



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19. The Informant sent a written representation dated 09.07.2019 to the Managing Director of the Corporation informing him of existence of Cartel between the Opposite Parties pertaining to the Tender but was of no avail.
20. Based on the foregoing paragraphs, the Informant alleged that many of the companies have the “*beneficial owners*” and are micro cartels in themselves and the “*de minimis*” price difference is not the product of co-incidence when the cost structure should be different given the different locations of production, varying economies of scale and other factors of production. The concession of allowing consortiums to participate benefited companies like VT and Sumaja. Thus, the facts and circumstances are allegedly indicative of an implicit agreement/arrangement between the Opposite Parties through the veil of Corporation in the Tender and are detrimental to the process of fair play and competition in the Relevant Market and are thus, violative of the provisions of Sections 3(3), 3(4) and 4(2) of the Act.
21. The Informant prayed for a direction to the Corporation to ensure that no anticompetitive practices are being carried out in the Tender process and issue interim order under Section 33 of the Act to restrain the Opposite Parties (OP-1 to 10) from entering into agreements/activities till the adjudication of the matter.
22. On 05.09.2019, the Commission directed the Informant to appear for a preliminary conference on 26.09.2019.
23. The counsel for the Informant filed a letter dated 17.09.2019 seeking adjournment of the preliminary conference on the ground of her personal difficulty. The Commission allowed the request and adjourned the preliminary conference to 01.10.2019. However, *vide* email dated 25.09.2019, the counsel of the Informant requested that the preliminary conference be adjourned to any date after 14.10.2019 as the counsel was out of India on 01.10.2019. After considering the same, the Commission decided not to accede to the second request for adjournment of preliminary conference made by the counsel for the Informant and directed that preliminary conference be held on 01.10.2019.



24. On 30.09.2019, the counsel for the Informant filed certain additional information alongwith documents under Regulation 12(2) of the Competition Commission of India (General) Regulations, 2009.
25. The counsel for the Informant appeared alongwith the authorised representative of the Informant on 01.10.2019. During the hearing, the counsel for the Informant relied upon the submissions filed by the Informant. He, *inter alia*, argued that the Opposite Parties, with the help of the Corporation, cartelised in the Tender and undue favour was given to the Opposite Parties by the Corporation by, *firstly*, amending the Tender conditions and allowing the submission of consortium bids which was contrary to the original Tender conditions and *secondly*, instead of rejecting the Technical bids of the Opposite Parties on ground of submission of samples containing markings, being contrary to Clause No. 4.15.2(1) of the Tender, it allowed resubmission of fresh samples from all the bidders including the Informant.
26. Further during the course of hearing, the Counsel for the Informant admitted that the Informant moved the Hon'ble High Court of Madras and had filed Writ Petition No. 23823/2019 on similar facts as is before the Commission and interim injunction was granted by the Hon'ble court on opening of financial bids by the Corporation, on 14.08.2019, which is still in operation.
27. Based on the submissions made, he argued that the present matter was a fit case for investigation under Section 3 (3) of the Act.
28. The Commission has carefully perused the material available on record and the submissions made by the Informant.
29. At the outset, the Commission notes that though it has been stated in the information that the case involves contravention of relevant provisions of Sections 3(3), 3(4) and 4(2) of the Act, however, the facts as stated and as admitted during the hearing is that the case pertains to alleged contravention of Section 3(3) of the Act.



30. It has been alleged that the amendment of Tender terms and conditions by the Corporation facilitated the cartel of bidders (OP-1 to OP-10). In respect of this, the Commission inquired from the counsel for the Informant whether the Corporation violated any procedure as laid down in the Tender in issuing the corrigenda to Tender terms and conditions. The counsel for the Informant replied in negative. Moreover, based on the facts and evidence before it, the Commission does not find any force in the contention of the Informant that the corrigendum dated 26.04.2019, allowing for the submission of consortium bids, indicated any collusion as it is quite evident that not only the condition with respect to permitting the participation of consortium was amended but several other conditions were also amended by the Corporation. Further, the Commission in its past orders has observed that the tendering authority or procurer has a choice to set the terms and conditions of the tender and the conduct of the procurer is not examined under Section 3(3) of the Act.
31. The Informant raised suspicion that there was a strong possibility of cartelisation amongst the bidders as at the time of opening of technical bids similar markings were found on the sample bags submitted by OP-1 to 10. On gathering of facts from the documents filed by the Informant which are mainly counter affidavits filed by the Corporation and some of the bidders, before the Hon'ble High Court of Madras, the Commission observes that it appears that during the pre-bid meeting the prospective bidders were shown the samples with the markings and the impression was attained that the samples had to be submitted with the markings. Consequently, the samples with markings were submitted which were then not accepted by the Corporation and all the bidders were asked to resubmit the samples including the Informant. The Commission notes the construction of Tender's Clause No. 4.15.2(l) which states that '*3 Samples of School Bag in each size i.e., Small, Medium & Large (Samples with any marks/printings will not be accepted)*' does not signify outright rejection of bids as suggested by the Informant. The Tender contains other terms and conditions which may entail rejection of bids. No evidence of price parallelism in submission of bids can be examined at this stage as the financial bids have not been opened by the Corporation as per the directions of the Hon'ble High Court.



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32. Therefore, the Commission notes that the allegations as raised by the Informant at this stage are based on mere suspicion or conjecture that such instances had led to collusive bidding. This is so as there is no evidence on financial bids available before the Commission and the final assessment of bids has not been done by the Corporation. Thus, the Commission is of the view that the case is clearly premature as the present facts and circumstances before it cannot become the basis of forming a *prima facie* opinion on cartelisation by the bidders.

33. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case and the information filed is closed forthwith under Section 26(2) of the Act.

34. The Secretary is directed to communicate the order to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 01/11/2019