



COMPETITION COMMISSION OF INDIA

Case No. 09 of 2021

In Re:

Informant (Confidential)

Informant

And

1. WESMIN (India)

Through: Mr. Anupam Poddar
T4, Pankaj Central Market, I.P. Extension
New Delhi-110 092.

Opposite Party No. 1

2. Heaven Engineers and Contractors Pvt. Ltd.

Through: Its Directors
128, Pocket-14, Sector-20, Rohini
New Delhi-110 086.

Opposite Party No. 2

3. Water India

Through: Its Proprietor Mr. Meenu Poddar,
W/o Mr. Anupam Poddar
66, Vardan Apartments, 64, I.P. Extension
New Delhi-110 092.

Opposite Party No. 3

4. Disha Engineers

Through: Its Proprietor Ms. Poonam Luthra
H-203, Plot No. 5, Airlines Apartments
Sector-23, Dwarka, New Delhi-110 027.

Opposite Party No. 4

5. JLDV Industries

Through: Its Proprietor Mr. Jitender Sharma
2nd, A23/5, Amar Vihar, Gali No. 5
Karawal Nagar, North East
New Delhi-110 094.

Opposite Party No. 5

6. Delhi Jal Board

Through: Chief Executive Officer
Varunalaya, Ph-II, Jhandewalan
Karol Bagh, New Delhi-110 005.

Opposite Party No. 6

7. Chief Water Analyst (W&S)-I, Delhi Jal Board

Through: ZRO (NZ)-II
Mukherjee Nagar, OHT, New Delhi-110 009.

Opposite Party No. 7



CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by the Informant (claiming confidentiality over identity) under Section 19 (1) (a) of the Competition Act, 2002 (the 'Act'), against WESMIN (India) (OP-1); Heaven Engineers and Contractors Pvt. Ltd. (OP-2); Water India (OP-3); Disha Engineers (OP-4); JLDV Industries (OP-5); Delhi Jal Board (OP-6) and Chief Water Analyst (W&S) –I (OP-7) *inter alia* alleging contravention of the provisions of Sections 3 of the Act.
2. The Informant has alleged cartelisation by the OPs (OP-1 to OP-5) in the tenders floated by Delhi Jal Board (OP-6)/ Chief Water Analyst (W&S)-I (OP-7) bearing Nos. PRESS N.I.T No. 3 (2020-21) and PRESS N.I.T No. 8 (2020-21) as online item rate tender for procurement of Filter Media Sand (FMS) for Chandrawal Water Works No. 1 and No. 2.
3. The Informant has stated that in case of Tender No. PRESS N.I.T No. 3, a total of five bidders applied for the tender; whereas, in case of Tender No. PRESS N.I.T No. 8, a total of six bidders applied for the tenders and alleged that OP-1 was successful in getting the award of tenders at an inflated price in both the above-mentioned tenders.
4. The Informant has further stated that OP-1 had entered into an agreement of dealership with OP-2, OP-3 and OP-4, thereby authorizing the said OPs for sales



and installation of OP-1's make Filter Media Sand and Gravels and related accessories for underdrainage system.

5. The Informant alleged that the Proprietor of OP-3 is wife of OP-1 and is also an authorised dealer of OP-1 for sales and installation of its Filter Media Sand and Gravels. The Informant has further alleged that OP-4 and OP-5 have no previous work experience in the line of work offered by the impugned tenders in question and thus, participated in the said tender as a proxy bidder on behalf of OP-1 and that OPs, except OP-5, had submitted similar documents in the impugned tenders.
6. The Informant alleged that OP-1 to OP-5 had quoted inflated rates for the supply of Filter Media Sand (FMS) which stands out to be in the range of Rs.17,278/- to Rs.23,597/- per cubic metre; whereas the market rate is Rs.4000/- per cubic metre and when combined with labour charges and proper washing, the additional cost is Rs.1500/- per cubic metre.
7. Based on the above, the Informant has prayed the Commission to inquire into the conduct of OPs for contravening the provisions of Section 3 of the Act. Further, the Informant has also prayed the Commission to restrain OP-1 from carrying out the works awarded in the impugned tenders until the disposal of the matter as an interim relief.
8. The Commission considered the Information in its ordinary meeting held on 25.05.2021 and decided to pass an appropriate order in due course.
9. Having considered the Information and material available on record, it is noted that the allegations against the OPs relate to contravention of the provisions of Section 3(3)(a) and Section 3(3)(d) read with Section 3(1) of the Act. The Informant has alleged that the OP Nos. 1 to 5 have rigged the tenders {bearing Nos. PRESS N.I.T No. 3 (2020-21) and PRESS N.I.T No. 8 (2020-21)} floated by Delhi Jal Board *i.e.*, OP-6/ OP-7.
10. The Commission notes that the Delhi Jal Board floated online item rate tenders for procurement of FMS pertaining to Chandrawal Water Works No. 1 & No. 2



and the Informant is primarily aggrieved of the fact that the OP-1 to OP-5 have formed a cartel to rig these tenders. A scrutiny of the material placed on record by the Informant shows that the allegation of bid rigging was based on existing dealership agreements between OP-1 (OEM) and other OPs (*i.e.*, OP-2 and OP-3), who are stated to be OP-1's authorised dealers. Also, the Informant has alleged that OP-4 and OP-5 did not have the requisite technical experience to participate in the impugned tenders. Therefore, the Informant has deduced that they have participated in the respective tenders only as a proxy of OP-1 to rig the tender process and inflate the prices of FMS. With regard to OP-6 and OP-7, the Informant has alleged that they have not properly scrutinised the tender process, thereby helping OP-1 to win the impugned tenders.

11. To substantiate the allegations, the Informant has submitted copies of impugned tender offers bearing Nos. PRESS N.I.T No. 3 (2020-21) and PRESS N.I.T No. 8 (2020-21), copy of technical and financial bid summary, copy of dealership agreement dated 01.04.2020 between OP-1 and OP-2, copy of dealership agreement dated 01.01.2019 between OP-1 and OP-3, copy of the authorization letter dated 22.11.2019, copies of approval certificates dated 19.08.2019 and 20.08.2019 and copy of quotation of rate for supply of Filter Media Sand.
12. From the financial evaluation summary of tender No. PRESS N.I.T No. 8, as submitted by the Informant, the Commission notes that the OPs have quoted different rates in the tender. The relevant excerpts of the said financial evaluation summary are reproduced below:

Financial Evaluation Bid – Tender No. PRESS N.I.T No. 8 (2020-21)

S. No.	Bid No.	Bidder Name	Value	Rank
1.	1091584	Heaven Engineers and Contractors Pvt. Ltd (OP-2)	3,87,74,820.00	L3
2.	1091942	WESMIN INDIA (OP-1)	2,97,18,813.60	L1
3.	1092268	DISHA ENGINEERS (OP-4)	3,72,33,700.00	L2
4.	1092269	JLDV Industries (OP-5)	4,05,86,840.00	L4



13. The Commission notes that the further allegation of the Informant is that the market price of FMS is around Rs.5,500/- per cubic metre whereas the OPs (OP-1 to OP-5) have quoted inflated rates in the range of Rs.17,278/- to Rs.23,597/- per cubic metre for the supply of FMS in the impugned tenders. With regard to the allegation of inflated prices, the Commission observes that the Informant has placed on record a quotation given by S R Water Works for the rate of Rs 4000/- per cubic meter of FMS and Rs. 3500/- per cubic meter of gravel inclusive of GST, thereby, alleging that these OPs have quoted inflated prices for FMS in the impugned tenders. In this regard, the Commission notes that market prices of any product may not be judged by a single quotation as prices may vary depending upon several factors including the quality and quantity of FMS. Further, the Commission feels that the procurer *i.e.*, OP-6 and OP-7 are in a better position to determine the market price of the tendered product taking into consideration all the factors such as quality, quantity, availability, transportation, labour and public interest. Be that as it may, for the present purposes, it is necessary to show that there was a concerted or collusive conduct on the part of the bidders while submitting the bids.
14. The Commission notes that both the tender documents floated by DJB had clearly mentioned that the said tender invited online item rates for supply of FMS from both manufacturers of FMS and authorised dealers of FMS. Thus, according to the requirements mentioned in the said impugned tenders, there is no bar on authorized dealers to take part in the above-mentioned tenders. Accordingly, the Commission observes that there is no restriction on the authorised dealers to take part in the said tenders, along with the manufacturer and in this backdrop, no inference regarding collusion can be deduced therefrom solely on this count.
15. The Commission further notes that the evidence which has been furnished by the Informant only shows that the bidder OPs may be related parties (*i.e.* the Proprietor of OP-3 is wife of OP-1 and existing dealership agreements between OP-1 and OP-2/ OP-3) who participated in the impugned tender process. With regard to the same, it is observed that mere commonality of ownership of participating firms or business relationships, in itself, are not sufficient to record any *prima facie* conclusion about bid rigging in the absence of any other material



or circumstantial evidences indicating collusion or concerted action amongst such bidders while participating in tenders.

16. Furthermore, the Commission notes that the Informant has alleged that OP-4 and OP-5 have participated in the respective tenders as a proxy for OP-1 without any work experience. In this regard, the Commission notes that there is nothing on record to substantiate this assertion.
17. It is further observed that as per the past decisional practice of the Commission, such allegations and instances have been found to be insufficient to even *prima facie* establish contravention of the provisions of Section 3 of the Act. The Commission in, *In Re: Ved Prakash Tripathi v Director General Armed Forces Medical Services & Ors.* (Case No. 10 of 2020), had held that: “...mere commonality of directors or ownership of participating firms, in itself, is not sufficient to record any *prima facie* conclusion about bid rigging in the absence of any material indicating collusion amongst such bidders while participating in the impugned tender.... Similarly, the circumstance that OP-9 and OP-10 are located in the same area, in itself is of no consequence in the absence of other material establishing concerted behaviour.” Further, in *In Re: Reprographics India v. Hitachi Systems Micro Clinic Pvt. Ltd. & Ors.* (Case No. 41 of 2018), the Commission held that: “...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...”
18. In view of above, the Commission is of the view that there is no sufficient material on record to substantiate the allegations and to show *prima facie* contravention of the provisions of Section 3 of the Act. Resultantly, no case is made out against any of the Opposite Parties for contravention of the provisions of Section 3 of the Act and the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



19. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 21/06/2021

New Delhi: