Public Version

COMPETITION COMMISSION OF INDIA

***Suo Moto* Case No. 08 of 2020**

***In Re*: Cartelisation amongst HP India and its resellers in the sale and supply of Supplies Products in India**

Against:

HP India Sales Private Limited
Tower D, Third Floor, Building No. 2, Cyber Green,
DLF Phase – III,
Gurugram, Haryana. **Opposite Party No. 1**

DD Enterprises
A-99, Jhandewalan Flatted
Factory Complex, Rani Jhansi Road,
New Delhi – 110055. **Opposite Party No. 2**

Ascent Information Systems (P) Ltd.
C-27, Jhandewalan, Flatted
Factory Complex, Rani Jhansi Road,
New Delhi – 110055. **Opposite Party No. 3**

Kaypee Enterprises
D-19, Jhandewalan, Flatted Factory Complex,
Rani Jhansi Road, New Delhi – 110055. **Opposite Party No. 4**

Britex Enterprises
D-19, Jhandewalan, Flatted
Factory Complex, Rani Jhansi Road,
New Delhi – 110055. **Opposite Party No. 5**

Alankar Distributors
301, Hanuman, Shiv Mandir Complex, Behind
Palika Place Annexe, Near R.K Ashram Marg
Metro Station, New Delhi – 110001. **Opposite Party No. 6**

Vijay Stationary Mart
301, Hanuman, Shiv Mandir Complex, Behind Palika Place Annexe, Near R.K Ashram Marg Metro Station, New Delhi – 110001. **Opposite Party No. 7**

G R enterprises
4A, Vikrant Enclave, Maya Puri,
Mayapuri S.O., South west Delhi,
Delhi – 110064. **Opposite Party No. 8**

Perfect Innovative Computers (P) Ltd.
G-8/31, Indira Deep Building,
Wazirpur, Commerical Complex,
New Delhi – 110052. **Opposite Party No. 9**

Khandelwal Traders
WZ-1626, Near Delhi Cantt.
Railway Station Nangal Raya
New Delhi – 110046. **Opposite Party No. 10**

A Square Technologies
WZ-1626, Near Delhi Cantt.
Railway Station Nangal Raya
New Delhi – 110046. **Opposite Party No. 11**

Innovative Solutions
WZ-1626, Near Delhi Cantt.
Railway Station Nangal Raya
New Delhi – 110046. **Opposite Party No. 12**

Pioneer Technologies

202, Patel House, B-11,
Ranjeet Nagar Commercial Complex,
New Delhi – 110008. **Opposite Party No. 13**

Delphi Infosolutions P Ltd.

M D- 41 Eldeco Mansionz,
Sohna Road, Sector – 48,
Village- Fajilpur Jharsa,
Islampur(97), Gurgaon,
Haryana – 122018. **Opposite Party No. 14**

Shakti Marketing Associates

D-6, 6130/6, Vasant Kunj,
New Delhi – 110070. **Opposite Party No. 15**

International Computer Resources

C-61, Defence Colony,
New Delhi – 110024. **Opposite Party No. 16**

Arms Peripherals

361, Agarwal Chamber Chamber – III, 26, Veer Savarkar Block, Shakarpur, Vikas Marg,
Delhi – 110092. **Opposite Party No. 17**

<u>CORAM</u>

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

Appearances during the hearings:

For OP-1 and its 15 individuals	*Mr. Karan S. Chandhiok, Advocate* *Ms. Modulika Bose, Advocate* *Mr. Uday Bali, Advocate* *Mr. Shourya Mitra, Advocate* *Ms. Riddhika Dumane, Advocate* *Mr. Rajeev Nair, General Counsel, HP India* *Ms. Niyati Ojha, Legal Counsel, HP India*
Mr. Gagandeep Singh, individual of OP-1	*Mr. Ritesh Kumar, Advocate* *Mr. Dhirender Singh Bisht, Advocate* *Mr. Gagandeep Singh, in-person*
Mr. Rahul Jindal, individual of OP-1	*Mr. Ashish Mohan, Senior Advocate* *Ms. Sagrika Tanwar, Advocate*
Mr. Manoj Grover, individual of OP-1	*Mr. Manoj Grover, in-person*
For OP-2 to OP-13	*Mr. Vaibhav Gaggar, Senior Advocate* *Mr. G R Bhatia, Advocate* *Mr. Abhishek Nair, Advocate* *Mr. Arjun Nihal Singh, Advocate* *Mr. Manav Gupta, Advocate* *Mr. Akash Kumar, Advocate* *Ms. Saniya Khanna, Advocate*
For OP-14 and its individual	*Mr. Arjun Krishnan, Advocate* *Mr. Ankur Singh, Advocate* *Mr. Abhijeet Singh, Advocate* *Mr Ajay Chawla, Director of OP-14*
For OP-15	*Mr. Akshay Sharma, Advocate* *Mr. D.S. Rajpoot, Proprietor of OP-15*
For OP-16 and its individuals	*Mr. Kaushal Kumar Singh, Advocate* *Ms. Kokila Kumar, Advocate* *Mr. Vidur Mohan, Advocate* *Ms. Prachi Batra, Advocate*

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For OP-17	*Ms. Anubha Bhardwaj, Advocate* *Ms. Muskan Narang, Advocate*

Order under Section 27 of the Competition Act, 2002

1. The present case pertains to alleged cartelisation amongst HP India Sales Private Limited ('**HP India**'/'**OP-1**') and its resellers *viz.* DD Enterprises ('**OP-2**'), Ascent Information Systems (P) Ltd. ('**OP-3**'/'**Ascent**'), Kaypee Enterprises ('**OP-4**'/ '**Kaypee**'), Britex Enterprises ('**OP-5**'), Alankar Distributors ('**OP-6**'), Vijay Stationary Mart ('**OP-7**'/ '**VSM**'), G R Enterprises('**OP-8**'), Perfect Innovative Computers (P) Ltd. ('**OP-9**'/ '**Perfect Innovative**'), Khandelwal Traders('**OP-10**'), A Square Technologies ('**OP-11**'), Innovative Solutions ('**OP-12**'), Pioneer Technologies ('**OP-13**'), Delphi Infosolutions (P) Ltd ('**OP-14**'/ '**Delphi**'), Shakti Marketing Associates ('**OP-15**'/ '**Shakti Marketing**'), International Computer Resources ('**OP-16**'/ '**ICR**') and Arms Peripherals ('**OP-17**') in the sale and supply of HP India Supplies Products, comprising of ink and toner cartridges and other consumables such as graphic and digital manufacturing supplies that are used with print hardware products ('**HP Supplies Products**'), to the commercial and consumer customers in India. OP-2 to OP-17 are referred to as reseller OP(s) for ease of reference.

2. This case is one among the two cases which originated on the basis of an application received by the Commission under the provisions of Section 46 of the Competition Act, 2002 (the '**Act**') read with the erstwhile Competition Commission of India (Lesser Penalty) Regulations, 2009 ('**LPR, 2009**'), from HP India. Based upon the same, the Commission, forming an opinion that a *prima facie* case of contravention of the provisions of Section 3 of the Act is made out, passed an order on 17.11.2020 under Section 26 (1) of the Act and directed the Director General ('**DG**') to cause an investigation into the matter with respect to all tenders floated on the Government

e Marketplace (‘**GeM**’) platform by the procurers in Delhi for HP Supplies Products, the value of which exceeds INR ₹20 lakhs. During the pendency of investigation before the DG, Mr. Manoj Grover, a former official of HP India had also approached the Commission by filing an application under the provisions of Section 46 of the Act read with erstwhile LPR 2009.

3. The DG, after detailed investigation, had submitted its report in confidential and non-confidential version, on 06.03.2023 along with the case records.

4. The Commission considered the same in its ordinary meeting held on 15.11.2023 and *inter alia*, noted that the individuals identified by the DG were not segregated, as to who all were being made liable under erstwhile Section 48(1) of the Act and who all fell under erstwhile Section 48(2) of the Act. Accordingly, the Commission referred the matter back to the DG in terms of Section 26(3A) of the Act for submitting a supplementary investigation report.

5. In pursuance of the aforesaid directions of the Commission, the DG carried out the supplementary investigation and submitted a supplementary (consolidated) investigation report (‘**Investigation Report**’), in confidential and non-confidential versions, along with case records, on 21.02.2024.

6. During investigation, the DG found evidence of collusion among the OPs in respect of various GeM tenders of Government departments including 29 tenders meeting the twin criterion of value more than INR 20 Lakhs floated on GeM for Delhi region. During investigation, the DG confronted the key officials with tender documents, emails, video clippings of meeting(s) organised by HP India, WhatsApp chats from two WhatsApp groups namely: “*Delhi Gem Group Chat”* formed by a reseller and *Gem Tender Group* formed by one of the HP India officials for coordination/ discussion on bids/ GeM tenders of various Government departments and recorded their respective statements. Based on evidence collected during investigation in the form of statements, emails, WhatsApp communication and video clippings of a

meeting held on 14.05.2019, which shows that HP officials and its Tier-2 resellers were operating in a collusive arrangement and shows the practice of bid rigging including cover bidding, price fixation, and customer allocation, during 2017-2020, in contravention of Section 3(3)(d) read with Section 3(1) of the Act. The DG also identified 26 individuals *i.e.* 19 individuals of HP India, 2 individuals of Ascent, 1 individual of Perfect Innovative, 2 individuals of Delphi and 2 individuals of ICR in terms of the provisions of Section 48 of the Act.

7. The details of the above mentioned 29 tenders are as under:

S. NO.	Tender No.	Department	Tender Value	Participants & L-1
1	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Ascent Information
				Kaypee Enterprises
				Pioneer Enterprises
2	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Ascent Information
				Kaypee Enterprises
				Pioneer Enterprises
3	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Ascent Information
				Kaypee Enterprises
				Pioneer Enterprises
4	[redacted]	[redacted]	[redacted]	DD Enterprises
				Ascent Information
				GR Enterprises
				Vijay Stationary Mart
				Prateek computers
				Alankar Distributors
				Kaypee Enterprises(L-1)
5	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
6	[redacted]	[redacted]	[redacted]	Perfect Innovative (L-1)

				Alankar Distributors
				Kaypee Enterprises
				GR Enterprises
				Shakti Marketing Associates
7	[redacted]	[redacted]	[redacted]	Perfect Innovative (L-1)
				Alankar Distributors
				GR Enterprises
				Kaypee Enterprises
				Shakti Marketing Associates
				Vijay Stationary Mart
8	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Ascent Information
				Kaypee Enterprises
9	[redacted]	[redacted]	[redacted]	Perfect Innovative
				Alankar Distributor (L-1)
				Kaypee Enterprises
10	[redacted]	[redacted]	[redacted]	Perfect Innovative
				Alankar Distributor (L-1)
				Vijay Stationary Mart
11	[redacted]	[redacted]	[redacted]	Perfect Innovative (L-1)
				Vijay Stationary Mart
12	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Ascent Information
				Kaypee Enterprises
				Pioneer Enterprises
13	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Ascent Information
				Kaypee Enterprises
				Pioneer Enterprises

				Alankar Distributors
14	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
15	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1) GR Enterprises Kaypee Enterprises Ascent Information Shakti Marketing Associates
16	[redacted]	[redacted]	[redacted]	Delphi (L1) Shakti Marketing Associates A Square Technologies
17	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1) Ascent Information Kaypee Enterprises Alankar Distributors
18	[redacted]	[redacted]	[redacted]	A Square Technologies Alankar Distributor (L-1) Arms Peripherals
19	[redacted]	[redacted]	[redacted]	A Square Technologies Alankar Distributor (L-1) Arms Peripherals
20	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1) Ascent Information Kaypee Enterprises GR Enterprises
21	[redacted]	[redacted]	[redacted]	A Square Technologies Pioneer Enterprises
22	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1) Ascent Information Kaypee Enterprises
23	[redacted]	[redacted]	[redacted]	DD Enterprises Ascent Information Perfect Innovative

				Kaypee Enterprises(L-1)
24	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Kaypee Enterprises
				Pioneer Enterprises
25	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Ascent Information
				Kaypee Enterprises
26	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Kaypee Enterprises
27	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Ascent Information
				Kaypee Enterprises
28	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Ascent Information
				Kaypee Enterprises
				GR Enterprises
29	[redacted]	[redacted]	[redacted]	DD Enterprises (L-1)
				Ascent Information
				Kaypee Enterprises
				GR Enterprises

8. The Commission considered the Investigation Report and *vide* order dated 03.05.2024, directed the Secretary to forward a copy of the non-confidential version (‘**NCV**’) of the Investigation Report to the 17 OPs and their 26 individuals who had been identified by the DG in terms of the provisions of Section 48 of the Act, through the companies’ counsel, giving the OPs and the individuals an opportunity to file their respective objections/ suggestions, if any, to the Investigation Report.

9. The Commission also directed the OPs to file their duly audited financial statements including balance sheets and profit and loss accounts for the Financial Years (‘**FYs**’) 2016-17 to 2022-23 along with details of turnover/ revenue generated from sale of HP Supplies Products (‘**relevant turnover**’) by way of certificate from Statutory Auditor, or in his absence, from a Chartered Accountant, along with requisite affidavit, in terms of Competition Commission of India (Determination of

Turnover or Income) Regulations, 2024 ('**Turnover Regulations**') and the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 ('**Penalty Guidelines**'). The OPs were also directed to serve a copy of the order along with a copy of the Investigation Report to their respective individuals who were identified by the DG to have acted on their behalf for the purposes of Section 48 of the Act under intimation to the Commission, and these individuals were required to file their income details including Income Tax Returns ('**ITRs**') for the FYs 2016-17 to 2022-23, in terms of Turnover Regulations and Penalty Guidelines.

10. Thereafter, the parties filed various applications *inter alia* pertaining to formation of confidentiality ring, extension of time for filing financial information and objection/ suggestions to the Investigation Report, extension of time for serving the order dated 03.05.2024 upon the individuals *etc.*, which were duly considered and disposed of by the Commission from time to time.

11. On request of the parties, the Commission formed a confidentiality ring in the matter and allowed the parties access to the confidential version of the Investigation Report, *vide* order dated 25.09.2024 subject to filing of undertakings and in terms of Regulation 36 of the Competition Commission of India (General) Regulations, 2024 ('**General Regulations, 2024**'). All the OPs and their respective individuals (except Mr. Manoj Grover and [redacted] of HP India) formed part of the confidentiality ring. The OPs and their respective individuals (except [redacted] of HP India) filed their respective objections and/or suggestions to the Investigation Report.

12. The Commission, heard the arguments of the OPs and their respective individuals on 19.11.2025, 26.11.2025 and 11.12.2025, including submissions on penalty and mitigating factors, and allowed the parties to file post hearing submissions.

Submissions of the Parties

HP India and its fifteen individuals

13. HP India filed its objections/suggestions dated 11.04.2025 on 15.04.2025 in confidential and non-confidential version. Pursuant to oral hearing, HP India and its individuals filed their post hearing submissions on 23.12.2025, in confidential and non-confidential version.

14. By way of oral arguments and written submissions, HP India, *inter alia*, submitted as under:

[redacted]

14.2. The Indian market for print consumables is replete with counterfeit products offering low printing quality or even damaging the printer due to leakages. [redacted]. In pre-GeM era, the procurements were made by Government entities under rate-contract mechanism, whereunder certain resellers had developed legacy commercial relationships with Government customers and such accounts were termed as their MVC accounts.

14.3. In 2017, the frame work of GeM was introduced, to facilitate competitive bidding. When Government buyers shifted to GeM tenders, Tier-2 resellers began losing their MVC account business to new competitors. Transparency introduced by the GeM framework, allowed these incumbent resellers to track other competing resellers who had previously not serviced the

Government customer accounts but were now competing for the GeM tenders issued by them. This shift adversely impacted the commercial interests of these incumbent resellers.

14.4. Manufacturer's Authorisation Form ('**MAF**') is a document required by Institutional/Government entities from the prospective bidders as part of tender conditions. MAF is issued by Original Equipment Manufacturer ('**OEM**') primarily to prevent supply of counterfeit products by the winning bidder and preserving warranty condition on the products delivered under a given tender/order.

14.5. To minimize the loss, certain resellers approached HP India to help facilitate an arrangement that would enhance their chances of securing Government supply contracts against other competing HP India resellers. These requests included: (a) restricting participation of resellers from other territories in local tenders; (b) seeking support in dividing the accounts/relevant tenders amongst themselves; (c) restricting the number of MAFs issued to other resellers or to issue MAFs to some designated resellers only; (d) addressing instances through corrective action where resellers identified bid prices offered by other resellers which were below the GeM Price or rate contract prices, and (e) facilitating 'cover' bids.

14.6. The Tier-2 resellers also had a common understanding to maintain price hygiene. Resellers would monitor the markets and ensure that price hygiene is maintained for the Supplies Products. Where it was found that supplies were made at lower than agreed upon prices, requests would be made to the concerned resellers to correct prices. The Investigation Report also had similar findings.

14.7. The DG, noted the statement of [redacted] of HP India that "*HP was forced by Tier 2 Resellers to issue MAF to selected Tier-2 resellers having legacy of MVC agreements in a bid on GeM*." "*...on demand of HP Tier-2 resellers, HP officials continued the concept of MVC Accounts on GeM bid even after inception of bids on GeM*.". This indicates that HP India was commercially forced into a position where it had to support the collusive arrangement adopted by the Tier-2 resellers. [redacted] of HP India has stated that "*In the meeting while we were discussing other issues faced by partners, we have discussed issues related to MVC accounts, discounts on GeM as few old partners were threatening to move the business from HP Originals to counterfeits due to their long association with customers.*" HP India faced the challenge of maintaining its business relationship with Tier-2 resellers and preserving its distributor network. The statements of other HP India officials *viz.* [redacted] also support the assertion that Tier-2 resellers approached HP India to restrict the participation of new competing resellers by manipulating MAF issuance process to preserve the MVC allocation even after introduction of GeM. The rationale was that if a reseller had invested time and effort in encouraging a customer to buy HP India Supplies Products, then such reseller should be the one servicing the customer.

14.8. The disclosures made by HP India regarding the *modus operandi* of cartel arrangement to continue the MVC arrangement is corroborated by the statements of the reseller OPs *viz.* (a) Mr. Kuldeep Singh Nagpal, sole proprietor of DD Enterprises and Director of Ascent, (b) Mr. Paramjit Singh, proprietor of Kaypee Enterprises, (c) Mr. Ajay Khandelwal, Director of Perfect Innovative, (d) Mr. Gurpreet Singh Hans, Proprietor of G R Enterprises (e) Mr. Tarun Gupta, Director of Alankar Distributors, (f) Mr. Puneet Singhal, Proprietor of Pioneer Enterprises and (g) Mr Aman Arora, Proprietor of A Square Technologies, who stated that there was an understanding between HP India officials and resellers that suppliers who had MVC account should continue to supply to the concerned departments even after introduction of GeM.

14.9. There used to be regular differences of opinion amongst the resellers, for which meetings held among the Tier-2 resellers were facilitated by HP officials. Instance of one such meeting dated 14.05.2019, has been placed on record by HP India [redacted]. The transcript of the meeting dated 14.05.2019 as well as the statement of Mr. Sukanta Mukhopadhyay of HP India that *"HP officials were mediating in all the issues raised by HP resellers regarding GeM tendering disputes, particularly MVC accounts as well advice on whether to bid or not to bid in specific GeM bid*s." corroborates the same.

14.10. HP India played a limited role in the said cartel, which is corroborated by the statement of the reseller OPs *viz.* (a) Mr. Kuldeep Singh Nagpal, sole proprietor of DD Enterprises and Director of Ascent, (b) Mr. Paramjit Singh, proprietor of Kaypee Enterprises, (c) Mr. Tarun Gupta, Director of Alankar Distributors, and (d) Mr. Aman Arora, Proprietor of A Square, who stated that the role of HP India was basically to streamline the whole process and to avoid any confusion among the resellers regarding their accounts, to coordinate bidding in GeM tenders by forming understanding among resellers so that the erstwhile accounts/departments where a reseller was supplying toner cartridges continues to supply the same after introduction of GeM, to avoid any dispute and calling meetings of all resellers in their office.

14.11. MAF's were restricted at the behest of Tier-2 resellers. HP India was constrained to restrict the issuance of MAFs to resellers to enable them to liquidate their stocks to support the selected resellers who had legacy MVC Contracts. From time to time, resellers would request HP India to restrict the number of MAFs to be issued or to issue MAFs to some designated resellers only.

14.12. The DG had found that MAFs from HP India officials were requested, through emails or WhatsApp messages, by Tier-2 resellers in favour of other resellers or their affiliates to place cover bids/support bids. [redacted] wherein it was stated that in order to create the illusion of competition, the incumbent reseller who had previously serviced the tendering entity, would request HP India for arranging supporting' or 'cover' bids. This also ensured that customer did not cancel the tender for failing to meet minimum participation requirement. In some cases, resellers themselves used affiliates or sister concerns to create the appearance of competition on bids and facilitate the collusive scheme while requesting HP India's employees not to issue MAFs to other resellers for a specific tender. Such disclosures regarding usage of sister concerns/affiliates by Tier-2 resellers for submitting support/cover bids have been corroborated by the statements of OP resellers *viz.* (a) Mr. Kuldeep Singh Nagpal, sole proprietor of DD Enterprises and Director of Ascent, and (b) Mr. Paramjit Singh, proprietor of Kaypee Enterprises.

14.13. HP India agrees with the finding contained in the Investigation Report on the collusive arrangements that existed between HP India's Tier-2 resellers, facilitated by HP India employees, but it humbly objects to HP India's role being characterized as a 'kingpin' of the entire collusive arrangement. HP India does not directly participate in GeM tenders for HP Supplies Products and only Tier-2 resellers bid in GeM tenders. Due to constant downward pressure on pricing because of new resellers, Tier-2 resellers threatened a shift to low-cost counterfeit products to compete on price. To overcome these challenges, HP India facilitated the understanding that the resellers reached amongst themselves. This is also corroborated from the statement of the reseller OPs. HP India was commercially forced into a position where it had to support the collusive arrangement adopted by the Tier-2 resellers.

14.14. *Limited effect on overall competition*: It is stated that the disclosed arrangement only impacted the *intra-brand* competition for HP India Supplies Products and had no impact on competition prevailing in the market *vis-à-vis* other resellers of HP compatible print consumables. Further, the MVC program as well as HP India's continued support of its incumbent authorised resellers was premised on HP India's intent to counter the proliferation of counterfeit products in the market.

14.15. Considering the risk of penalties and the overall reputational loss in the market for the 'HP' brand which could adversely affect it in relation to its other product categories, HP India did not have sufficient, standalone economic incentive to design and initiate the collusive conduct examined in the present case. It is also stated that with the introduction of GeM, multiple

HP India resellers participating in GeM tenders would increase the chances of HP India's Supplies Products winning the tenders resulting in increased sales for HP India Supplies Products. Therefore, in absence of requests made by resellers, HP India did not have a direct financial incentive to manipulate GeM tenders to restrict participation to certain specified resellers. [redacted].

14.16. HP India did not initiate the collusive conduct and had merely responded to commercial difficulties faced by its resellers.

[redacted]

14.19. HP India's conduct with its resellers is the first instance of where the company has contravened the provisions of the Act. HP India's status as a first-time offender under the Act, should be duly considered as a mitigating factor.

14.20. HP Inc. has a longstanding record of being recognized as one of the 'World's Most Ethical Companies'. HP's primary compliance policy- 'Integrity at HP' and HP's 'Partner Code of Conduct' require the employees and the channel partners to comply with applicable competition laws. The employees are encouraged to bring forward concerns and consult integrity teams. In line with is global policy, HP India has a robust competition compliance program in place and regularly conducts such programs for its employees.

14.21. The Commission, in its decisional practice, has considered institution of active steps to end anti-competitive behaviour as a mitigating factor and noted that the objectives of the Act would be met if the opposite parties cease and desist from the anti-competitive conduct, in which case imposition of penalty would not be warranted. Relevance has been placed on the Commission's decisional practice in *Mr. Suprabhat Roy, Proprietor, M/s Suman Distributors v. Bengal Chemists and Druggists Association and Others*, wherein the Commission took note of the fact that the Bengal Chemists and Druggists Association ('**BCDA**') had taken various steps to end the practice of requiring a no-objection certificate for being appointed as a stockist prior to commencing supply of drugs/medicines to such stockists. Recognising that BCDA had taken active steps to end the practice of requiring a no-objection certificate, the Commission observed that such steps constituted a mitigating factor and did not impose any penalty on BCDA.

14.22. In the event that the Commission considers it necessary to impose any penalty and/or remedies, it should consider relevant turnover instead of global turnover of HP India and amended Section 27 of the Act should not be applied retrospectively as these provisions are penal in nature. Hence, it requested that penalty, if any to be imposed, must be calculated only on the relevant turnover and not on global turnover introduced by the amended Act.

14.23. In *Excel Crop Care Limited v. Competition Commission of India and Another*, Civil Appeal No. 2480 of 2014 (‘**Excel Crop**’), the Hon’ble Supreme Court has enlisted factors the Commission must consider when setting penalties, including, nature, gravity, and extent of the violation, role and duration of participation, nature of involvement of the entity, loss/damage suffered as a result of contravention, market conditions, product characteristics, market share, entry barriers, company’s bona fides, profit derived from the violation.

[redacted]

[redacted]

[redacted]

[redacted]

<u>Submissions of [redacted] of HP India</u>

15. [redacted] of HP India filed objections/suggestions dated 17.04.2025 on 21.04.2025, in confidential and non-confidential version. [redacted] adopts the arguments of HP India. He submitted as under:

15.1. [redacted] joined HP Inc. in the United States as a Manager for Strategy in 2006 and worked in various other roles up to January, 2017. In January, 2017, [redacted] was appointed as the Chief Operating Officer for HP India. In May, 2017, [redacted] also took on the responsibilities of the Managing Director ('**MD**') of HP India and stayed in that role till August, 2019, but he was not formally appointed as the Managing Director under the Companies Act, 2013.

15.2. It is stated that the DG found [redacted] to be liable under Section 48(1) of the Act, solely premised on [redacted]'s statement and the fact that he was discharging the role of a Managing Director for HP India between 2017 to 2019. No other evidence has been cited in the Investigation Report. In his deposition he admitted receiving emails on some occasions, from the resellers requesting issue of MAF, which he used to forward to concerned HP India stakeholder.

15.3. At the outset, it is submitted that vicarious individual liability under Section 48(1) of the Act is attracted once the company for which such an individual is in-charge of or whose business the individual is responsible for, is held to have contravened the provisions of the Act. In the present case it is humbly submitted that the Commission is yet to find HP India in contravention of the Act. Therefore, any proceedings determining vicarious liability against an individual for the conduct of HP India is premature at this stage.

15.4. Without prejudice to above, it is submitted that Section 48(2) of the Act provides that the deemed and vicarious liability under Section 48(1) of the Act will not apply in a case where individual can establish that the contravention was committed without the individual's knowledge; or the individual had exercised due diligence to prevent the commission of such contravention. It is evident from his statement that [redacted] did not have the knowledge of the alleged violations and was not involved in any decisions related to appointment of Tier 1 and Tier 2 resellers, pricing or engagement on deals in Supplies Products. Rather, [redacted] exercised all due diligence to ensure that HP India remained a competition compliant company. [redacted] being part of the highest governing body of HP India, was part of laying the framework of governance and compliance and also advocated for all employees to be compliant with all applicable laws and regulations including the Act.

15.5. The role of [redacted] was strategic in nature and limited to high-level policy decisions. He even apologised for potential violations of competition law. It is requested to set aside the findings of the DG and exonerate him.

15.6. It is further submitted that in case penalty is imposed on [redacted] in SM 07 of 2020 on account of vicarious liability under Section 48(1) of the Act, he should not be penalized in SM 08 of 2020.

15.7. Without prejudice to the submissions made above, in the event that the Commission decides that [redacted] acted in contravention of Section 3 of the Act, and is therefore liable to be penalised under Section 48(1) of the Act, only the relevant income generated through employment during his tenure at HP India during 2017-2019 should be taken into consideration for determination of the penalty amount to be imposed on [redacted]. It is further submitted that factors such as no prior contravention of the Act by him, cooperation during investigation, no role to play in the cartel be taken as mitigating factors.

15.8. It is also submitted that [redacted].

15.9. It is requested to redact the details of income of [redacted] in the public version of the final order.

Submissions of other fourteen individuals viz. [redacted] of HP India

16. The 14 individuals of HP India *viz.* [redacted] filed objections/suggestions dated 15.04.2025 on 16.04.2025, in confidential and non-confidential version. They adopted the arguments of HP India including submissions regarding issue of counterfeit products, operations of supplies business, mitigating factors, no prior contravention, limited role of HP India, hundred percent reduction in penalty and consideration of relevant income derived from HP India for imposition of penalty. Their submissions in brief, are as under:

16.1. The aforementioned individuals filed their respective ITRs in pursuance with the directions of the Commission given *vide* order dated 03.05.2024. They also cooperated with the DG during the investigation. Therefore, they have cooperated throughout the inquiry process.

[redacted]

[redacted]

16.3. The duties and responsibilities associated with each role have been mapped against the charged individuals as under:

[redacted]

a. [redacted] was the Area Sales Manager from 2017 to April, 2018 and was responsible for managing the purchase of Tier 2 resellers from Tier 1 resellers of HP, overseeing target achievements, and arranging stocks from Tier 1 resellers. He reported to Mr. Manoj Grover and then [redacted] did not hold a GeM facing role, but he reaffirmed the existence of sister concerns between certain Tier-2 resellers and also corroborated the existence of WhatsApp groups between HP India and Tier-2 resellers.

b. [redacted] was the Partner Business Manager from April, 2018 to 2020 and was responsible for supporting Tier 2 resellers in arranging and helping with HP program for a healthy return on investment. He was also responsible for supporting Account Managers in sell-out for government business and was working with certain large enterprise accounts (Private Sector). He previously reported to [redacted] and then to [redacted]. In his statement before the DG, [redacted] submitted that to tackle the issue of counterfeits, procurers on GeM started requesting bid specific MAFs and hence MAFs were restricted to enable certain Tier 2 retailers to continue supplying to their MVC customers. He also confirmed that various Tier-2 resellers requested MAFs to be issued to their multiple sister concerns. [redacted] shed light on the discussion that took place amongst Tier-2 resellers and HP India employees at the Delhi office where Tier-2 resellers threatened to move their business to counterfeits if they could not retain their MVC accounts.

c. [redacted] was the Enterprise Account Manager for Delhi and Haryana from November, 2017 to November, 2019 and was responsible for understanding the requirements of end-consumers and issuing MAF to Tier 2 resellers who asked for the same in relation to certain Government departments like the [redacted]. He previously reported to [redacted] and then to [redacted]. In his statement, [redacted] provided information pertaining to MVC accounts and also corroborated the existence of sister concerns amongst Tier-2 resellers. He also affirmed the fact that there used to be meetings between HP India and Tier 2 resellers.

d. [redacted] was the Enterprise Sales Specialist who was engaged in business development activities from 2014 to April, 2018. He was responsible for authorizing MAFs, handling Tier-2 resellers, managing end-user Government customers, *etc*. He reported to Mr. Manoj Grover and subsequently to [redacted]. During his deposition, [redacted] stated that he was in the Delhi HP India office only till May, 2018. However, he confirmed that post GeM, HP India used to be pressurised by Tier-2 resellers to allow them to continue supplying to their respective MVC customer and for HP India to not issue MAF to other Tier-2 resellers.

e. [redacted] was the Partner Business Manager for Tier-1 (Sales) from May, 2019 till present day. His role was limited to the supplies made to Tier 1 resellers. His role did not entail day-to-day interactions with the Tier-2 resellers. Any conversations with the Tier-2 resellers were limited to the product/part availability and credit lines between Tier 1 and Tier 2 resellers. [redacted] stated in his deposition that his role at HP India was limited to the business dealings with Tier 1 partners of HP India and he did not have any interaction with Tier 2 or Tier 3 resellers. He further stated to have attended the meeting held between Tier 2 resellers and HP India at the Delhi office of HP India but did not have knowledge of the context that was being discussed.

f. [redacted] was the Area Sales Manager (for Government Business) in relation to print supplies (ink and toner) from May, 2019 to October, 2021 in Delhi. His role was to manage [redacted] along with the other public sector units and to educate the Tier 2 partners/end customers about HP original products. In his statement, [redacted] affirmed the fact that Tier 2 resellers wished to continue the MVC arrangement on account of having served a particular customer for a prolonged period. He disclosed that Tier -2 resellers would seek 'support' bids from other Tier 2 resellers in order to win a tender. [redacted] admitted that he was part of a meeting between HP India and Tier 2 resellers but only for the initial 10-20 minutes.

16.3.2. [redacted] was the Regional Sales Manager, Supplies for North (Delhi and Haryana) from May, 2019 to 2020. He was responsible for Stock Keeping Unit ('**SKU**') forecasting, driving revenue and sales and addressing the concerns of the customers. He reported to the concerned Zonal Manager. [redacted] stated that he joined the Supplies team in Delhi only in May, 2019. He further confirmed that Tier 2 resellers (in particular DD Enterprises) used to request MAFs on behalf of multiple entities. He also admitted to have attended the meeting between Tier 2 resellers and HP India at the Delhi office.

16.3.3. [redacted] was the Lead Manager for Government and Public Sector accounts from November 2019 until October, 2021. He was responsible for interacting with the sales team regarding the GeM catalogues, sharing the buying trend of Government customers and engaging in discussions regarding potential opportunities with the sales team. He had no direct interaction with customers including Tier-2 customers. [redacted] clarified that his duties during the relevant period did not involve issuance of MAF or interaction with Tier 2 resellers However, he stated that after the introduction of GeM, Tier 2 resellers insisted on retaining their MVC accounts. [redacted] also shed light on the meeting held at HP India's office where HP India employees facilitated a discussion between Tier-2 resellers to arrive at a common understanding amongst them regarding retention of MVC accounts.

16.3.4. Zonal Sales Managers are responsible for driving sales of HP India Products across all customer segments (government and private). The Zonal Manager would report to the Country Head/National Sales Manager. The two Individuals performing the role of Zonal Managers, who have been identified as liable under Section 48(3) of the Act are:

(a). [redacted] was the Zonal Sales Manager for North (Uttar Pradesh, United Kingdom, Punjab, Himachal Pradesh, Jammu & Kashmir, Delhi and Haryana) from May 2017 till April 2019. His role was to drive sales through business with Tier-2 resellers.

(b) [redacted] was the Zonal Manager (North) from May, 2019 to May, 2022. He was responsible for managing and development of distribution, enterprise and government verticals of supplies across all states of Delhi, Haryana, Rajasthan, Uttar Pradesh, Uttarakhand, Chandigarh, Punjab, Himachal Pradesh and Jammu & Kashmir. For the government vertical, he had a team of Regional Managers, Area Managers and contractual workers reporting to him. While [redacted] clarified in his statement that he rarely used to have any communication relating to the bidding process on GeM, he corroborated the fact that Tier-2 resellers would want the pre-existing MVC arrangements to continue. He also disclosed the practice of 'cover' and 'support' bids by Tier 2 resellers. He further corroborated the existence of WhatsApp groups between HP India and various Tier-2 resellers. Further, [redacted] confirmed being part of the meeting held between HP India and various Tier-2 resellers but since his duties were not GeM facing, he was unable to understand a large part of the conversation that took place in the meeting.

16.3.5. [redacted] was the Country Head – Category and Sales between May, 2019 to October, 2021. He was responsible for the overall Supplies Products business across India, which included driving overall revenue, business growth, maintaining inventory and grievance redressal. The Country Head would report to the Senior Director Printing Systems who would in turn report to the Managing Director. In his statement, apart from *modus operandi* of the alleged cartel, [redacted] explained that on GeM, MAF was provided to those Tier 2 resellers who were linked to the particular MVC account. He further shed light on the practice of Tier 2 resellers of placing cover bids to ensure minimum participation requirement was met.

16.3.6. [redacted] was the Country Manager for 'MVC' sales from 2019 to 2020. His role was managing the end customers with whom there was a tripartite MVC arrangement. [redacted] deposed in his statement that he did not have a direct role in the bidding process, but he disclosed that Tier-2 resellers would compel HP India to restrict MAFs, allowing them to continue supplying to those accounts with preexisting MVC agreements. He further corroborated the existence of sister concerns of Tier-2 resellers and also highlighted the existence of WhatsApp groups between HP India and various Tier 2 resellers. Additionally, [redacted] provided details regarding the meeting held between HP India and the Tier-2 resellers at the HP India's Delhi office.

16.3.7. [redacted] joined HP India supplies team in 2015 as the MVC Operations Manager and reported to [redacted] was responsible for business data analysis, supporting MVC agreement creation, providing back-end support to the sale teams on MVC agreement and operational issues, and did not have a GeM facing role. However, in his statement before the DG, he disclosed the existence of sister concerns of various Tier-2 resellers and also shed light on the issue of Tier-2 resellers raising concerns over retention of MVC accounts which they had been servicing for a prolonged period of time.

16.3.8. From 2016 to 2020, [redacted] was the Category Head, Ink and reported to the Category Head, Supplies at that time. He was responsible for introduction of new products, supply chain, marketing strategy and coordination with global and region hub for ink supplies. He was not involved in the management of operational aspects of sales to Tier 1 or Tier 2 resellers. During his statement before the DG, [redacted] clarified that he was not part of the HP India Sales Team and therefore had no knowledge on the operations of GeM bidding. Further, he confirmed attending a meeting held between Tier-2 resellers and HP India at the Delhi office of HP India. However, since [redacted] duties at HP India were not GeM facing, he did not have knowledge of the context that was being discussed.

16.3.9. [redacted] was the Toner Product Manager from June, 2018 to 2021 and was responsible for overseeing new product launches and innovation. His interaction with Tier-2 resellers was limited to discussing emerging market dynamics and excluded discussions on pricing or discount. He also reported to the Category Head, Supplies at that time. In his statement, [redacted] corroborated the existence of sister concerns between Tier-2 resellers. He also admitted to having attended the meeting between employees of HP India and various Tier 2 resellers and also discovered during the meeting that Tier 2 resellers had concerns relating to their continuation of MVC accounts on GeM.

16.4. The aforesaid officials did not initiate the arrangement and merely responded to the commercial difficulties faced by the resellers. At the behest of Tier-2 resellers, the individuals felt pressured to: (a) restrict the issuance of MAFs to Tier-2 resellers who were previously servicing the tendering authority under the MVC arrangement; (b) issue MAFs at the request of the incumbent Tier-2 resellers in favour of their affiliates/sister concerns facilitating the practice of using cover bids to manipulate tendering processes; and (c) inadvertently, facilitate interactions among Tier-2 resellers in the process of mediating tendering disputes among resellers.

16.5. The individuals did not intend to violate provisions of the Act and they ceased the conduct when they were informed of its illegality. It can be seen from the statement of Mr. Tarun Gupta, Director of Alankar Distributors who stated that "*Of late, the bids submitted are competitive and HP has no role.*"

16.6. The individuals participating in the conduct did not act with the intent of violating the provisions of the Act; and once HP India apprised individuals of the illegality of the collusion facilitated by them, the Individuals ceased the contravening conduct with immediate effect. This also reflects in the statements made by [redacted], before the DG.

16.7. Considering the peculiar circumstances in the instant matter, penalty may not be imposed upon the individuals. Reliance is placed on Suo Moto Case No. 05 of 2017 titled *In Re: Cartelisation in Industrial and Automotive Bearings* and Reference Case No. 03 of 2016 *Chief Materials Manager, South Eastern Railway v. Hindustan Composites Limited and Others,* wherein the Commission did not impose any penalty on the opposite parties after observing that, among other things, the opposite parties cooperated in the investigations. In the instant matter, without prejudice to the individual's status as leniency applicant, the Commission may exercise its discretion to not impose penalties over individuals considering the disclosures, admissions and overall cooperation provided during the course of the investigation, especially during their respective depositions.

16.8. As per Penalty Guidelines, income from property and capital gains should also be excluded. Only the relevant income generated during their tenure with HP India should be considered for ascertainment of penalty amount.

16.9. In view of the foregoing, the aforesaid individuals requested to set aside the findings of the DG of finding them liable under Section 48(3) of the Act, and [redacted].

[redacted]

Submissions of [redacted] of HP India

17. [redacted] of HP India, through his counsel, filed the objections/suggestions to the Investigation Report on 15.04.2025, in confidential and non-confidential version. The post hearing submissions were filed on 23.12.2025. By way of oral and written submissions, it is averred that:

17.1. [redacted] joined HP India in 2008. Before 2014, he was the regional sales manager. In November, 2014, he was promoted to Zonal Sales Manager for North. He was responsible for driving sale through business with tier 2 resellers and promote HP India's products. He was part of the Supplies Sales vertical only till April, 2019. Post April, 2019, [redacted] was promoted to the position of Category Manager in the supplies section. He resigned in April, 2020.

17.2. It is stated that the supplies market was flooded with counterfeit ink and toner cartridges. Tier-2 resellers consistently pressured HP India's employees, including [redacted], to shift to such counterfeit products to retain business. Initially, on GeM, any reseller whether registered with HP India or not could participate in bids, which led to several customer complaints regarding counterfeit supplies. To address this, GeM made compulsory submission of MAF from the OEM with the bid. Consequently, HP India restricted issuance of MAFs only to Tier-2 resellers who had MVC accounts with the concerned end-customers.

17.3. Before GeM, MVCs were put in place to enable consumers to buy from HP India through resellers. In 2017, GeM was introduced and MVC contracts declined.

17.4. [redacted] admitted to be a non-active participant of the WhatsApp group *DD_HP_Sales* and *GeM Group*; Participation in WhatsApp groups cannot, by itself, imply involvement in the alleged conduct. It is further stated that he was one of the participants of the meeting held on 14.05.2019 but in the capacity of Category Manager on the directions of National Sales Manager. He stated to have not restricted MAF to the best of his knowledge during his tenure at HP India.

17.5. He admitted to having knowledge that some Tier-2 resellers had multiple entities and different HP partner IDs and these multiple entities helped in respect of cover bid/support bid in GeM bids.

17.6. He also admitted that Ajay Khandelwal of Perfect Innovative Computers Pvt. Ltd. (OP 9) emailed [redacted] and [redacted] of HP India with himself and [redacted] marked in cc in the said [redacted].

17.7. The other submissions pertaining to mitigating factors including first time offender, limited role, extent of participation and duration of involvement in contravening conduct, [redacted] to be considered for imposition of penalty are similar and not reiterated for the sake of brevity.

<u>Submissions of [redacted] of HP India</u>

18. [redacted] of HP India, through his counsel, filed the objections/suggestions to the Investigation Report in confidential and non-confidential version. The post hearing submissions were filed on 19.12.2025. By way of oral and written submissions, it is averred that:

18.1. [redacted] has worked in HP India Delhi office (the subject matter of investigation) only for about a year *i.e.*, from May, 2018 to April, 2019. The period mentioned by the DG (2017-2020) for contravention of Section 48 of the Act is factually incorrect. Also, having worked with Delhi office of HP India till 30.04.2019 due to his transfer to Mumbai, he was not part of the meeting held on 14.05.2019 at the HP India office in Delhi.

18.2. Admitted his participation in the Delhi GeM WhatsApp group but added that the WhatsApp groups were already existing and he was in no way managing them.

18.3. [redacted] stated in his deposition, regarding his role and responsibilities, that "*Post GeM: During my tenure in Delhi, I was managing GeM and Most Valuable Customer (MVC) from Government Customer for HP Toner and Cartridges (this does not include Samsung Toner Cartridges). My role included identifying/ recommending to appoint of new Tier 2 resellers for GeM business, meeting Government customers, tracking business from departments, offices and user level purchase. I was also responsible for issuing Manufacturing Authorization Form (MAF) to Tier 2 resellers on their request. I used to also maintain a GeM Business tracker, which used to consist order-wise, customer-wise, reseller-wise, SKU-wise, Price-wise data. The same used to be published to the higher management including Zonal Manager, Government Head, Country Head and to the Area Sales Manager, Distribution for a better planning of business growth.*" Accordingly, the messages posted by [redacted] in the WhatsApp group were only in furtherance of his assigned responsibilities.

18.4. [redacted] issued MAF to all those who indicated willingness to participate in any GeM tender/bid. The WhatsApp chat mentioned in the Investigation Report between [redacted] and [redacted] of HP India, wherein its being discussed that HP India wanted A Square Technologies (OP 11) to win a particular tender but it was won by DD Enterprises (OP 2) shows that MAF was issued to all willing participants and no restriction was placed on any reseller. Moreover, he stated to have never entertained the request from resellers to not issue MAFs to other resellers for specific tenders. The DG failed to consider the statement of [redacted] that the MAF was issued to all resellers who had requested for the same.

18.5. In an email exchange between [redacted] and Perfect Innovative, the DG concluded that the exchanges were pertaining to restriction of other resellers to apply but there was no restriction and the mails were sent to everyone who applied. The concerned tender being referred to, was given to someone else, not Perfect Innovative.

18.6. HP India was also involved in cartelization by continuing the practice of MVCs but [redacted] had no role or control over continuation of the MVC program of HP India.

18.7. His remuneration including incentive from HP India during his course of employment was not dependent on the quantum of the discount, which could have been offered by the resellers and as such he cannot be said be working or acting for any personal gain.

18.8. Section 48(3) of the Act requires the DG to demonstrate the active involvement, or that the alleged conduct occurred with the consent or in connivance of individual charged. However, there is no evidence to demonstrate existence of any consent, or connivance, or neglect on part of [redacted].

18.9. It is requested to consider mitigating circumstances that [redacted] fully co-operated with the DG and had voluntarily provided all the WhatsApp chats as available on his mobile device. Further, throughout his employment, he never held any position of influence at HP India, and was only acting upon the instructions of his seniors, and have not acted for any personal gain.

Submissions of Mr. Manoj Grover of HP India

19. Mr. Manoj Grover of HP India filed post hearing submissions on 26.11.2025. By way of oral and written submissions it is averred that:

19.1. Mr. Manoj Grover was employed with HP India from January, 2004 to April, 2020. He was moved out of the zonal manager role *w.e.f.* October, 2016 and was given the role of 'Country Retail and Distribution Manager'. In this role, he was responsible for only retail and distribution business, where material was sold through various retail outlets to customers at Maximum Retail Price or discretionary discount by retailer. GeM came much later and he as an employee had absolutely no responsibility and control of any kind whatsoever to manage or influence this business.

19.2. He never consented to the acts of cartelization committed by HP India. It is submitted that he has filed a Suit bearing no CS (OS) 192 of 2020 and a Writ Petition bearing no. WP 7051 of 2021 before the Hon'ble High Court of Delhi, wherein all facts and circumstances in which the Mr. Manoj Grover was forced by HP India's management to act against his will have been pleaded.

[redacted] [redacted]

[redacted] [redacted]

[redacted]

[redacted] [redacted]

<u>Submissions of OP-2 to OP-13: DD Enterprises (OP-2), Ascent Information (OP-3) and its individuals Mr. Gurpreet Singh Nagpal and Mr. Kuldeep Singh Nagpal, Kaypee Enterprises (OP-4), Britex Enterprises (OP-5), Alankar Distributors (OP-6), Vijay Stationery Mart (OP-7), GR Enterprises (OP-8), Perfect Innovative Computers (OP-9) and its individual Mr. Ajay Khandelwal, Khandelwal Traders (OP-10), A Square Technologies (OP-11), Innovative solutions (OP-12), and Pioneer Technologies (OP-13)</u>

20. Through common counsel, OP-2 to OP-13 filed their respective objections/suggestions to the Investigation Report on 29.01.2025. After conclusion of oral arguments, OP-2 to OP-5, OP-8 to OP-10 and OP-13 filed their post hearing written submissions on 08.12.2025; and OP-6, OP-7, OP-11 and OP-12 filed theirs on 10.12.2025. By way of written and oral submissions, the common and party-specific submissions made by OP-2 to OP-13 and the respective individuals, are as under:

20.1. The first Lesser Penalty applicant has stated that HP India and its resellers had direct communications to fix prices, allocate markets and rig tenders to protect and further the commercial interests of resellers, which is in contrast with the disclosures by the second Lesser penalty applicant as well as the findings of the DG. It is submitted in the second lesser penalty application disclosures that '[redacted]

[redacted]' The DG have found HP India to be the kingpin of the cartel arrangement and the ultimate beneficiary of the whole arrangement. Also, the leniency disclosures do not reveal the aspect of target pressure imposed upon the resellers by HP India and that to fulfill those targets, a coordination among the resellers was necessary. For instance, if any reseller is given a target of INR 1 crore in the first quarter and that reseller was able to meet the target during that quarter, then in such a case, HP India used to increase the said target for that reseller in the next quarter and thus, resellers were getting steep target pressure from HP. In case a particular reseller was unable to meet the said target, coercive action by HP India was taken against that reseller causing monetary loss to that particular reseller. Hence, the first lesser penalty applicant should not be given benefit of reduction in penalty.

20.2. OP-2 to OP-13 admit to have contravened the provisions of the Act. The findings against OP-2 to OP-13 in the Investigation Report are not disputed but it is reiterated that such bidding was done at the behest of HP India and HP India was the primary beneficiary of such activity. However, it is stated that there is stark contradiction in the Investigation Report as at one place the DG concludes that HP India is the *king pin* and *ultimate beneficiary* of the collusive arrangement whereas at another place it identifies each of the resellers as a 'major' participant in the cartel arrangement without particularly designating one of them as a 'major' participant.

20.3. The DG has correctly observed that HP India itself controls/ manipulates the bids by its resellers for its own ultimate benefit and the resellers have no say in the entire bidding process. HP is in the driving seat to control the entire business of Government supplies by its resellers and therefore the culpability of HP India in the cartel arrangement is on the highest pedestal. The aforesaid OPs did not dispute the findings of the DG but averred that they had no say in the entire bidding process except to accept the directions of HP India.

20.4. HP India also forced its resellers not to engage in cross-territory sales and to participate only in tenders issued in the territory they operate in, maintain price-hygiene and to follow terms and conditions dictated by the officials of HP India. The failure to comply with the dictate used to be met with coercive strict action from HP India.

20.5. OP-2 to OP-13 are small entities which never intended to violate the provisions of the Act and were unaware that the entire strategy adopted by HP India was in violation of the Act. HP being an MNC ought not to have indulged in such anti-competitive conduct.

20.6. The submissions to the Investigation Report made by Delphi (OP-14) that HP India has devised anti-competitive methods to enhance its position in the market and that HP India has acted in its own selfish commercial interests while favouring only selected distributors also corroborates the submissions of OP-2 to OP-13.

20.7. That the DG, in line with the directions of the Commission contained in the *prima facie* order, examined all tenders floated on the GeM platform by the procurers in Delhi for HP India Supplies Products, the value of which exceeded INR 20 Lacs. However, the same is an incorrect criterion since as per leniency disclosures HP India was indulging in cartelization on a pan-India level and coerced dealers / distributors / resellers to indulge in substantially similar conduct at a pan-India level and not only in Delhi. Thus, the scope of investigation ought to have been pan-India.

20.8. During oral hearing as well as in the post hearing submissions, OP-2 to OP-13 opposed the argument of HP India that it acted as merely a facilitator/ mediator and that the cartel arrangement was limited to Delhi-NCR only. In support of this averment OP-2 to OP-13 shared tabulated WhatsApp Chats of HP India officials in the group '*Govt Supplies Team*' indicating close monitoring of bid prices, discount offered and coercion by HP India of removing partners deviating from its directives. It is further stated that owing to its role as kingpin of the cartel and of coercing the other participants such as resellers to become or remain in the cartel, HP India ought not to be given any concessional treatment. Reliance is placed on European Commission's Notice on Immunity from fines and reduction of fines in cartel cases (*2006/C 298/11*) and *FAQs by DOJ of the Antitrust Division Leniency Policy and Procedures* which clearly state that a ringleader / kingpin should not benefit from any concessional treatment.

20.9. Upon being made aware through the Investigation Report, OP-2 to OP-13 are seeking competition law advise on regular basis and have been part of competition law training session. They also have attended a Training session on 'Understanding and Complying with Indian Competition Law' conducted by a law firm on 10.01.2025.

20.10. OP-2 to OP-13 have requested the Commission not to impose any penalty upon them as the same may lead to closure of their business. Reliance is placed on orders passed by the Commission Ref. Case No. 03 of 2016 titled *In Re: Chief Materials Manager, South Eastern Railway v. Hindustan Composites Limited* & Ors, Case No. 65, 71, 72 of 2014 and 68 of 2015 titled *In Re: Alis Medical Agency*, *Suo Motu* Case No. 05 of 2017 titled *In Re: Cartelisation in Industrial and Automotive Bearings* where the Commission has reduced penalty or refrained from imposing any penalty on the enterprises who have admitted their conduct, ceased participation in the cartel and co-operated genuinely fully, continuously and expeditiously throughout the investigation with DG, without concealing information in any manner and only directed to cease and desist from anti-competitive conduct.

20.11. While determining quantum of penalty, the Commission may consider the status of parties being Micro Small and Medium Enterprises ('**MSME**') and refrain from imposition of any monetary penalty. Reliance is placed on order passed by the Commission in Ref. Case No. 03 of 2016 titled *In Re: Chief Materials Manager, South Eastern Railway v. Hindustan Composites Limited & Ors,* Ref. Case No.02/2016, titled *In Re: Rizwanul Haq & Mersen (India) Pvt. Ltd.*, and Ref Case no. 02/2018*, Eastern Railways, Kolkata v. M/s Chandra Brothers.* In this regard, OP-2 to OP-13 have provided copies of their respective MSME certificates along with their submissions.

20.12. OP-2 to OP-13 have requested the Commission to consider the mitigating factors enMr.ned in Regulation 3(2) of the Penalty Guidelines, while determining the penalty, if any, to be imposed *i.e.* limited duration of the contravention (June, 2018 to March, 2020), their minimal role in orchestrating the contravening conduct; them being first-time offenders; admission of contravention; extent of cooperation during the investigation; their status being an MSME; voluntary ceased participation and termination of the alleged cartel by them; implementation of competition compliance program by them.

20.13. **DD Enterprises (OP-2)**: During investigation, Mr. Kuldeep Singh of OP-2 was confronted with 14 emails and 23 WhatsApp messages which indicated that there existed an arrangement between HP and its resellers wherein all resellers have designated accounts (tenders) which are being exclusively catered by that particular reseller only. Mr. Kuldeep Singh also admitted to the existence of WhatsApp groups for coordination. There has been no monetary gain for OP-2 as part of the cartel arrangement as it was operating on the mere margin of 2.5% as specified by [redacted] of HP India. With respect to duration, it is stated that Mr. Kuldeep Singh was confronted with evidence pertaining to the period from the June 2018 till March 2020.

20.14. **Ascent Information (OP-3):** During investigation, Mr. Kuldeep Singh and Mr. Gurpreet Singh were confronted with 14 emails and 23 WhatsApp messages. Both Mr. Kuldeep Singh and Mr. Gurpreet Singh admitted to the existence of WhatsApp groups which were used for coordination. The DG has not found any evidence to suggest that OP-3 played an instrumental/major role in orchestrating this cartel arrangement. It is also stated that there has been no monetary gain for OP-3 as it was operating on a mere margin of 2.5%. With respect to duration, it is stated that the DG confronted Mr. Gurpreet Singh with the evidence dated June, 2018 to March, 2020. It also submitted that the buying and selling prices of HP products were fixed by HP India.

20.15. **Kaypee Enterprises (OP-4)**: During investigation, Mr. Paramjit Singh of OP-4 was confronted with 7 emails, 42 WhatsApp messages and 47 tender documents. With respect to duration of involvement, it is stated that the DG confronted Kaypee Enterprise with evidence pertaining to the period from June, 2018 till March, 2020. The DG has also observed that OP-4 remained one of the major participants in the said cartel arrangement without any iota of evidence in the Investigation Report which suggests that either OP-4 was instrumental in orchestrating this cartel or played the role of the ring leader in the entire arrangement. It is submitted that OP-4 was not even aware that such practices were in violation of the Act and was only functioning on the dictates of HP India. As per the Chartered Accountant Certificate furnished by OP-4 on 26.07.2024, it has generated revenue of only [redacted] from the tenders valued above INR 20 Lakhs floated on the GeM portal. Thus, there has been no monetary gain for OP-4 as part of the cartel arrangement.

20.16. **Britex Enterprises (OP-5):** During investigation, Mr. Paramjit Singh of Britex Enterprises was confronted with 7 emails, 42 WhatsApp messages and 47 tender documents, The DG incorrectly noted OP-5 to be a ‘major participant’ in the cartel arrangement. It is further stated that there has been no monetary gain for OP-5 as part of the cartel arrangement. With respect to duration of involvement, it is stated that the DG confronted OP-5 with evidence pertaining to the period of July, 2018 till March, 2020.

20.17. **Alankar Distributers (OP-6)**: During investigation, Mr. Tarun Gupta was confronted with 6 emails, 14 WhatsApp messages and 30 tender documents. Further, Mr. Tarun Gupta also admitted to the existence of WhatsApp groups which were used for coordination amongst resellers. There is no iota of evidence to indicate that OP-6 was instrumental in orchestrating this cartel. It is also asserted that there has been no monetary gain to OP-6 as part of the cartel arrangement as it operated on a mere margin of 2.5% (as specified by [redacted] of HP India).

20.18. **Vijay Stationery Mart (VSM/OP-7):** During investigation Mr. Tarun Gupta was confronted with 6 emails, 14 WhatsApp messages and 30 tender documents, Mr. Tarun Gupta also admitted to the existence and usage of WhatsApp groups for coordination. It is also asserted that there has been no monetary gain to OP-7 as part of the cartel arrangement as it operated on a mere margin of 2.5%.

20.19. **G R Enterprises (OP-8):** During investigation, Mr. Gurpreet Singh Hans was confronted with 2 emails and 12 WhatsApp messages and 12 tender documents. Mr. Gurpreet Singh Hans also admitted to the existence of WhatsApp groups for coordination. The cartel period is stated to be June, 2018 to March, 2020. It is also stated that there has been no monetary gain to OP-8 as it was not allocated any of the tenders throughout the bidding process.

20.20. **Perfect Innovative (OP-9):** During investigation, Mr. Ajay Khandelwal was confronted with 6 emails, 14 WhatsApp messages and 21 tender documents. There is no evidence to suggest that OP 9 was instrumental in orchestrating this cartel rather, it was functioning on the dictates of HP India. The findings against OP-9 in the Investigation Report are not disputed but it is reiterated that such bidding was done at the behest of HP India, which was the primary beneficiary of such activity. There has been no gain for OP-9 as part of the cartel arrangement. It is stated that the DG confronted Mr. Ajay Khandelwal with evidence pertaining to the period from June, 2018 till March, 2020. Any penalty should be limited to this period only.

20.21. **Khandelwal Traders (OP-10):** During investigation, Mr. Ajay Khandelwal was confronted with 6 emails, 14 WhatsApp messages and 21 tender documents It is stated that the DG confronted Mr. Ajay Khandelwal with evidence pertaining to the period from June, 2018 till March, 2020. Any penalty should be limited to this period only.

20.22. **A Square Technologies (OP-11) and Innovative Solutions (OP-12):** During investigation, Mr. Aman Arora of OP-11 was confronted with 12 WhatsApp messages, 1 video clipping and 18 tender documents. Mr Aman Arora also admitted to the existence and use of WhatsApp groups for coordination. OP-11 stated to not have gained any monetary benefit out of the cartel arrangement and requested to limit penalty to the period June, 2018-March 2020.

20.23. **Pioneer Enterprises (OP-13)**: During investigation, Mr. Puneet Singhal was confronted with 2 emails, 11 WhatsApp messages and 18 tender documents. Furthermore, the DG has observed that Mr. Puneet Singhal admitted to the existence of WhatsApp groups which were used for coordination. It is further stated that there has been no monetary gain for Pioneer as part of the cartel arrangement. With respect to duration of involvement, it is stated that the DG confronted Mr. Singhal with evidence pertaining to the period from June, 2018 till March, 2020.

Submissions of Delphi (OP-14)

21. Delphi (OP-14) along with its individuals *viz.*[redacted], filed their common objections/suggestions to the Investigation Report on 31.07.2024. After conclusion of oral arguments, OP-14 filed its post hearing written submissions on 22.12.2025. By way of written and oral submissions, the submissions made by OP-14 and its individuals are as under:

21.1. At the outset, it is submitted that Section 3(3) of the Act applies to horizontal agreements and 3(4) of the Act applies to vertical agreements. DG findings themselves show that HP India is an OEM which sells its products through Tier 1 Authorised Distributors and Tier 2 resellers. OP-14, admittedly, is a Tier 2 reseller for HP, hence HP India, Tier 1 distributors, and Tier 2 resellers all operate at different levels of distribution chain in a vertical relationship, which does not fall within the ambit of Section 3(3) of the Act. Hence, the arrangement between HP India and OP-14 does not come under the ambit of Section 3(3) of the Act.

21.2. The Investigation Report has recorded a finding that a hub and spoke cartel was in operation on directions of HP India and its 19 officials along with 16 Tier-2 resellers. The amendment to Section 3(3) came only in 2023. It is substantive in nature and can only be applied prospectively, which means that it cannot be invoked in the present case where allegations pertain to a period prior to the year 2023. In such a situation, the present case cannot fall under Section 3(3) of the Act. Notably, the first Investigation Report dated 06.03.2023 itself predates the amendment. Also, the DG's investigation pertains to conduct up to June, 2020. It is settled law that an amendment affecting substantive rights operates prospectively unless expressly stated otherwise.

21.3. [redacted]. Section 3(3) of the

Act refers to coming together of enterprises which are independent in themselves and aim to adversely affect competition. Also, the element of *mens rea* is important in Section 3(3) of the Act. [redacted]

[redacted]

21.5. Jurisdictional objection: [redacted] Accordingly, OP-14 did not even know under what capacity, the DG had sought information from it. OP-14 was arrayed as an Opposite Party in the present matter without affording any opportunity to contest its inclusion.

21.6. [redacted] which duly reflects in the following major findings recorded in the Investigation Report: (a) HP India is the kingpin of the alleged cartel / bid rigging arrangement and it controls the entire business of Govt. supplies since other resellers have no say in the entire bidding process, (b) It uses MAF to restrict participation of resellers in tenders whose account was already mapped with other resellers, (c) HP India through its officials have mediated and tried to resolve the differences between the resellers and convinced them not to bid in tenders where such reseller has mapped the procurer as its MVC, and (d) HP India is the ultimate beneficiary of the supplies made by its resellers.

[redacted] [redacted]

[redacted] [redacted]

21.9. [redacted] The evidence relied upon by the DG in respect of this tender does not meet the evidentiary threshold. [redacted]. It is further submitted that the list of WhatsApp groups and their members does not contain the name of OP-14 or any of its office bearers. Also, it can be seen from the [redacted] It can be seen that [redacted]

21.10. OP-14 asserted that it had [redacted]. These aspects should be considered as mitigating factors.

21.11. It is further submitted that 2023 amendment to Sections 27 and 48 of the Act are inapplicable and so are the Penalty Guidelines. Nevertheless, it is requested to consider factors such as [redacted], no prior contravention of the provisions of the Act, [redacted], involvement in the conduct in order to survive in the market, and [redacted], to exonerate OP-14 and its individuals from imposition of any penalty.

[redacted] [redacted].

[redacted]

<u>Submissions of Shakti Marketing (OP-15)</u>

22. Shakti Marketing (OP-15) filed its objections/suggestions to the Investigation Report on 20.01.2025. After conclusion of oral arguments, OP-15 filed its post hearing written submissions on 22.12.2025. By way of written and oral submissions, the submissions made by OP-15 are as under:

22.1. The DG has erroneously and without any basis concluded involvement of OP-15 in alleged cartel activity. The basis of the same is second deposition of Mr. D.S. Rajpoot, proprietor of OP-15 as purportedly he gave vague replies during initial deposition. During his second deposition he admitted to existence of cartel arrangement between HP India and its resellers. He stated that during pre-GeM period, specific departments were allocated to Tier-2 resellers and they used to seek each other's help so that specific departments could be allotted to them. However, post GeM, a WhatsApp group was created titled '*Delhi GeM*' by Mr. Gurpreet of OP-8 to replicate the pre-GeM practice. During investigation, Mr. D.S. Rajpoot, also submitted that he was added to this group in 2018 and communications submitted by him voluntarily show that members of the group have asked for support on specific tenders of different departments.

22.2. Based on the second statement of Mr. Rajpoot and him being part of the WhatsApp group and having attended the meeting dated 14.05.2019, the DG has erroneously charged OP-15 for being involved in cartelization. The same is not correct due to following reasons:

22.2.1. There cannot be any cartel between HP India and its resellers for sale and supply of HP India's products because HP India operates under a structured franchise model with fixed margins on products and therefore, its only HP India who can sell their products, showing no possibility of cartelization. In the post hearing submissions, OP-15 reiterated that it was merely functioning as per business model of HP India. HP India decides which consumer a particular Tier-2 reseller will supply the goods and at what price such goods will be supplied to that particular consumer by the Tier-2 reseller and therefore, HP India exercises complete direct and absolute control.

22.2.2. It is not the case of the DG that HP India and its resellers colluded to control the price of and affect competition with regard to supply of ink and cartridges of any make or colluded with other makers to affect free competition and control the prices.

22.2.3. Reliance is placed on *Union of India v Hindustan Development Corporation* AIR 1994 SC 98, wherein the Hon'ble Supreme Court held that the cartel is an association of producers who by agreement among themselves attempt to control production, sale and prices of the product to obtain a monopoly in any particular industry or commodity. However, in the present case, the procurement is of a particular product of a particular manufacturer and hence there cannot be any alleged cartelization regarding the same.

22.2.4. Reliance is also placed on *Rajasthan Cylinder &Containers Ltd. v Union of Ind*ia (2020) 16 SCC 615, to assert that the necessary ingredient of bid rigging, among other things, is that parties be *engaged in identical or similar production or trading of goods and services.*

22.2.5. OP-15 was made part of the WhatsApp Group '*GeM Delhi'* only after eight months of forming the said group and OP-15 itself left the group after a brief period of 3 months. While being part of the group, OP-15 was not active in the said group. OP 15 attended the meeting held at the office of HP India on 14.05.2019 which was a routine meeting wherein business and projections of resellers are discussed and deliberated upon by HP India. OP-15 being reseller of HP India, is to work as per the directions and targets provided by HP India as it is a target-based business. No evidence is brought by the DG to show any specific direction by HP India or its official to OP-15 with regard to participation in any bid or non-participation in any specific bid.

22.2.6. The DG found 29 tenders meeting the monetary threshold out of which OP-15 participated in 4 tenders and the DG concluded that OP-15 contravened the provisions of the Act without noting that out of the 4 tenders, OP-15 got technically disqualified in two tenders [redacted] With regard to the other two tenders [redacted] OP-15 did not win. The DG failed to demonstrate that OP-15 placed a collusive or a higher bid as per any agreement. For the remaining 25 tenders, the DG failed to demonstrate that OP-15 deliberately did not participate. The DG tried to juxtapose the messages sent by OP-15 in the WhatsApp group with the aforesaid 29 tenders but in fact those tenders are not investigated by the DG as the same does not fulfill the criteria set out in the *prima facie* order.

22.2.7. The statement recorded on 22.04.2022 cannot be considered as evidence as the deponent, Mr. D.S Rajpoot nowhere stated that he was part of cartelization. It is further submitted that the word 'collusive' and 'cartel' are interchangeably used in the statement dated 22.04.2022 which demonstrates that Mr. D.S. Rajpoot was put to unnecessary fears/ coercion by the DG, which is also evident from the fact that the statement recorded on 19.04.2022 is different and contrary to statement dated 22.04.2022.

22.2.8. OP-15 has never sought any support from HP India *qua* any tender on GeM portal and the entire cartel was formed for the benefit of these specific resellers. OP-15 has not benefitted from the same. Also, OP-15 was never declared as an L-1 bidder in any of the tenders examined by the DG and there is no AAEC on account of conduct of OP-15.

22.2.9. It is further submitted that OP-15 was not acting under the instruction of HP India, which can be seen from the statement of Mr. Kuldeep Singh and Mr. Gurpreet Singh of OP-2 and OP-3, respectively that OP-15 was giving discount and even participating in the accounts specified for other resellers of HP India due to which they were complaining to HP India about OP-15. This demonstrates that OP-15 was not acting as per whatever agreement reached between HP India and its resellers.

22.2.10. For tender pertaining to [redacted], it is an admitted fact that OP -15 participated but was not declared as an L1 bidder. However, the documents which have been relied upon by the DG neither reflects any evidence to show that OP-15 colluded in any bid rigging for this specific tender nor any communication between HP India and OP-15, or between HP India and any of the three participating resellers.

22.2.11. It is requested to close the matter against OP-15 and impose no penalty on OP-15. In the event the Commission decides to impose penalty, the factors in terms of Penalty Guidelines be considered: duration of the specific year in which all the alleged three tenders were published, no role in orchestrating the cartel, submission of entire WhatsApp chat during investigation, full cooperation during investigation, no case of repeated contravention, fair disclosure of the conduct of HP India during investigation, no role in present alleged anti-competitive conduct and further undertaking not to be part of any anti-competitive conduct in future.

Submissions of International Computer Resources (ICR/ OP-16)

23. ICR (OP-16) along with its individuals *viz.* Mr. Rajeev Mohan and Mr. Naresh Kohli, filed their common objections/suggestions to the Investigation Report on 21.03.2025. After conclusion of oral arguments, OP-16 filed its post hearing written submissions on 18.11.2025. By way of written and oral submissions, the submissions made by OP-16 and its individuals are as under:

23.1. One of the preliminary objections of OP-1 is that when Mr. Rajeev Mohan, authorised representative of OP-16 appeared before the DG along with his advocate, the DG officials made the advocate sit in another room and not let him accompany Mr. Mohan during recording of his statement. The same is stated to be against the dicta in the matter *CCI and another v. Oriental Rubber Industries Private Limited* (LPA 607 of 2016), wherein the Hon'ble Delhi High Court held that the notice shall be allowed to be accompanied by his advocate while he is being examined by the DG. It is further pointed out that the advocates of HP India were allowed to accompany their officials while their statements were recorded and the signatures of the lawyers were present on their statements. Accordingly, this arbitrary action of the DG itself makes the entire statement of Mr. Rajeev Mohan recorded on 21.04.2022, illegal, tainted and violative of basic precepts of collecting evidence. A petition bearing No. W.P.(C) 8805 of 2022 is currently pending before the Hon'ble Delhi High Court. The Hon'ble Court has, in its order dated 31.05.2024, stated that OP-16 is not precluded from raising all these objections, including procedural infirmities.

23.2. It is relevant to note that before GeM, Government customers were aligned with specific Tier-II resellers under the MVC system. This meant that only designated resellers could supply to specific customers, ensuring a monopolized market structure. Further, resellers had stable, assured business relationships, but only if they remained compliant with HP India's internal policies. HP used to execute such tripartite agreement with end customers/ Government departments and a particular Tier-II reseller of HP for supply of ink and cartridges to that customer called MVC account, and the tripartite agreement was called a MVC contract. With GeM, the tendering process was opened to all Tier-II resellers, eliminating the MVC exclusivity. However, to continue the old system under a new name, HP India ensured that MAFs were granted predominantly to resellers who had prior MVC relationships from 2018 to mid-2020.

23.3. The DG has itself identified HP India as the kingpin of the cartel arrangement. HP India is an OEM in this segment and the current arrangement shows that it controls a significant share of the market and influences prices. HP controlled the market through selectively issuing MAFs to its resellers, being the sole issuer of MAFs, which gives it absolute control over who could participate, thus limiting free market. Resellers didn't have any independent decision making and had to obey HP India's directions. Being an active participant and controlling participation of resellers in each and every tender through MAFs, HP India cannot act as neutral whistle blower. The oligopolistic nature of the market is also an important factor.

23.4. The twin criteria identified by the Commission and adopted by the DG becomes the prism of through which the alleged contravention is looked at by the Commission. It is further submitted that out of the 29 tenders meeting the twin criteria, OP-16 has neither participated nor bid in any of the tenders, which is evident from the Investigation Report itself. With regard to OP-16 being the member of *Delhi GeM* WhatsApp group, it is submitted that OP-16's participation was limited.

23.5. OP-16 challenges the admissibility and evidentiary value of the video recordings submitted by HP India, which were recorded in secrecy and without consent from the resellers. Even if the video was legally obtained, it must be scrutinized for context and completeness to ensure it was not selectively edited to implicate resellers while shielding HP India's role in controlling the market. Even though the Commission and DG have the power and authority to regulate its own procedure, they must comply with normative principles of the Evidence Act, 1872, *vis-à-vis* admissibility and relevancy of any document especially for video clips and its transcripts. The source, editing, and context of the videos must be examined. The chain of custody of the said video clips needs to be established before looking into the same. Voice recognition was not carried out to check which part of the audio belonged to which individual/person present in the meeting. Furthermore, the person who transcribed the said videos has not given an affidavit to the said effect.

23.6. On merits, it is submitted that the videos do not reflect voluntary cartelization rather it shows resellers navigating an HP India controlled system, where MAFs were selectively given.

23.7. OP-16 sought support of bids to ensure necessary participation in the tender to avoid tender failure causing unnecessary delays and loss to the public exchequer. There is no AAEC on account of the conduct of OP-16. The requirement of at least three bidders for tender validation meant that, in the absence of enough participants, the tender itself could be suspended.

23.8. With respect to holding Mr. Rajeev Mohan and Mr. Naresh Kohli liable under Sections 48(1) and 48(3) of the Act, it is stated that Section 48 of the Act may only be invoked only after it is determined that the company has contravened a provision of the Act. Mr. Rajeev Mohan and Mr. Naresh Kohli are exposed to the penal consequences on mere subjective opinion of the DG before determination by the Commission of any contravention by OP-16. It is pertinent to note that Mr. Rajeev Mohan attended the meeting held at HP Office on 14.05.2019 and was part of the WhatsApp group and seeking support for certain tenders through WhatsApp messages. He revealed the MVC arrangement and revoking of authorization of those resellers who did not agree to pre-GeM arrangement. However, Mr. Naresh Kohli neither attended any meetings, nor was part of any discussion or any WhatsApp Group.

23.9. It is further submitted that any direction requiring officials to submit financial details prior to addressing objections to the Investigation Report amounts to pre-judgment of liability. The Hon'ble Supreme Court *in Aneeta Hada v. Godfather Travels* (2012) 5 SCC 661, has held that vicarious liability of directors/officers arises only when the company itself is first found guilty. Also, the issue of whether officials can be compelled to furnish financial statements before a contravention is established under Section 27 of the Act is sub judice before the Hon'ble Supreme Court in *Cadila Healthcare v. CCI* (2018) 252 DLT 647.

23.10. As per the Investigation Report, OP-16 never crossed the financial threshold *i.e.* tenders above ₹20 lakh, hence, the findings against OP-16 and its individuals exceed the scope of investigation.

23.11. Penalty, if any, imposed by the Commission, must follow the principles laid down by Hon'ble Supreme Court in *Excel Crop Care* and be based on relevant turnover, limited to the alleged contravention period (2018–2019), and not global turnover.

23.12. As per the Investigation Report also, the alleged cartel period *qua* OP-16 is confined to FY 2018–19. The financial statements of OP-16 for FY 2016–17 and FY 2017–18 [redacted] from the sale of HP India products on the GeM marketplace. For FY 2018–19, the total sales of HP India products on GeM amounted to only [redacted]. In these circumstances, OP-16 cannot, by any reasonable standard, be characterised as an integral participant in the alleged hub-and-spoke arrangement. Any penalty, if at all warranted, must reflect OP-16's *de minimis* role and be restricted to the aforesaid amount. The conduct of each OP must be assessed individually.

23.13. It is further submitted that penalties imposed must not be arbitrary and must factor in aggravating and mitigating circumstances. Full cooperation during the proceedings, no AAEC or public harm, no benefit accrued to OP-16, first time offence, negligible role in alleged activity etc. may be considered as mitigating factors.

23.14. In view of the foregoing, OP-16, *inter alia*, requested to drop the proceedings against it and its individuals and exclude the deposition of Mr. Rajeev Mohan as the same being recorded in violation of Section 46A of the Act.

<u>Submissions of Arms Peripheral (OP-17)</u>

24. Arms Peripheral (OP-17) filed its objections/suggestions to the Investigation Report on 15.04.2025. After conclusion of oral arguments, OP-17 filed its post hearing written submissions on 19.11.2025. By way of written and oral submissions, the submissions made by OP-17 are as under:

24.1. OP-17 stated itself to be a sole proprietorship firm run by Mr. Aditya Mishra. Due to intense market competition, it sought to get dealerships from multiple OEMs and got authorization from HP India in 2007. OP entered into a contract under the MVC Program. OP-17 was not only working with HP India but also was engaged in fulfilment of IT needs of private customers.

24.2. OP-17 prepared its bids independently, taking into consideration all the market requirements, and submitted them to GeM portal. The decisions with regards to price were arrived at autonomously without any consultation or coordination with any other market participant, including HP India. It is also stated that Tier 2 resellers operate independently and purchase HP products on a principal-to-principal basis from Tier 1 authorised dealers without any direct contractual or commercial relationship with HP India. The Delhi GeM group chat was created to discuss information pertaining to the market regarding policy changes or compliance or digital ecosystem etc. Also, OP-17 exited the group in 2019. All meetings and individual gatherings between resellers were only for the purpose of discussing practical difficulties arising out of implementation and functioning of the GeM portal.

24.3. However, in the post hearing submissions dated 19.11.2025, OP-17 submitted that HP India was kingpin and in overall control of the business of printer cartridges in India. HP India restricted MAFs to those Tier-2 resellers who were not mapped to respective MVC accounts. Mr. Aditya Mishra, sole proprietor of OP-17 also admitted in his statement that there was a threat of debarment and revocation of authorization of resellers for non-adherence to HP India's diktats.

24.4. At no point has OP-17 objected to another reseller's quotation strategy, delivery location preference or tender participation, nor has it asked HP India to take any corrective action in such matters. OP-17 participated in the market independently and completely relied on its own merit and commercial decisions.

24.5. Regarding individual liability under Section 48 of the Act, the OP-17 is a proprietorship which is being run by Mr. Aditya Mishra. Under Section 48 of the Act, separate liability arises against officers and the company, but not in proprietorship firms.

24.6. Out of the 29 tenders examined by the DG, OP-17 was only in the two of them [redacted] This shows limited peripheral involvement of the OP-17 in alleged cartel activity. Also, in both instances of participation, OP neither secured the contract, nor emerged as the L1 bidder, thereby ruling out any possibility of benefiting from or influencing the bid outcomes in any manner. Mere participation in a limited number of tenders, without any material benefit or competitive advantage cannot form the basis of an allegation of cartelization.

24.7. Regarding the meeting held on 14.05.2019 shown in the video clippings, it is submitted that, the discussions were primarily related to continuation of MVC accounts and HP India's own internal expectations from its dealer network. Albeit the presence of OP-17 is admitted, there is no evidence of any agreement being reached or implemented concerning support bids or cover bids by the OP-17.

24.8. Arms Peripherals emerged as an L1 in Tender IDs [redacted] which are not included in the twin criteria in this particular matter.

24.9. In the post hearing submissions, it stated that the DG's findings against OP-17, being premised on a misreading of routine commercial communications and a flawed understanding of its business model, are factually and legally untenable. Mere participation in a WhatsApp group titled "*Delhi GeM*" has been wrongly treated as evidence of cartelisation, despite the absence of any material showing coordination, bid-rigging, or exchange of sensitive information by OP-17's. It is also stated that the deposition of OP-17 representative was recorded without him being accompanied with an advocate to assist, while the advocates of HP India accompanied their witnesses/deponents.

24.10. In terms of Section 3(3) of the Act, the concerted intention did not reach the concerted action which means that the mere expression of willingness, discussions, or unacted intentions do not amount to an anti- competitive agreement unless they result in coordinated behaviour. No document, communication, or conduct on record establishes a 'meeting of minds' with any reseller.

24.11. OP-17 did not initiate the collusive conduct and had merely taken a part in the meeting dated 14.05.2019 holding discussions of commercial difficulties faced by its resellers, which it was compelled to attend as reseller of HP India.

24.12. It is also submitted that nature of market is oligopolistic**,** wherein there is a likelihood of each player being aware of the actions of the other and in such a situation price parallelism is common and cannot be construed as evidence of collusion. It is also stated that the instant matter involves few resellers, a small number of new entrants and a standard product being supplied to the same parties year after year Such factors are beyond the control of the individual manufacturers and cannot be relied upon as factors to lead to a presumption that there is collusive conduct.

24.13. Regarding relevant turnover, it is stated that OP-17 have authorized dealership of not only HP India but also of multiple OEMs. Since OP-17 neither won any tenders nor benefitted from alleged conduct, no relevant turnover exists.

24.14. Lastly, it is requested to impose no penalty on OP-17. Penalty, if any, be imposed should be proportionate and must not be arbitrary. The Commission is also requested to consider mitigating factors such as limited participation, no benefit from the cartel arrangement, no indication of meeting of minds, WhatsApp chats not containing price discussion, bid quantity or tender strategy, first time involvement, limited overall AAEC and no AAEC due to individual conduct of OP-17.

Analysis:

25. Before proceeding to decide the case on merits, the Commission notes that OPs have raised certain legal and procedural issues such as no case of horizontal agreement as HP and its resellers are in vertical relationship, non-applicability of 2023 amendment regarding hub-spoke cartels, non-admissibility of the statement of authorised representative of an OP without accompanying the advocate, applicability of Section 48 only upon determination of contravention against the company/entity *etc.,* which need to be addressed.

26. Some of the OPs have contended that the vertical relationship between wherein the OEM and its resellers does not qualify to be called a horizontal arrangement which is the prerequisite of Section 3(3) of the Act. The Commission finds it imperative to look at the extant legal framework. 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. A plain reading of Section 3(3) of the Act shows that any agreement, practice, or decision, including cartels, by enterprises, persons or association thereof is amenable to the jurisdiction of the Commission if the parties that are engaged in identical or similar trade of goods or provision of service have directly or indirectly engaged in bid rigging/ collusive bidding, which means that they were competitors in the market.

27. In this regard the Commission notes that the DG has found communications not only between HP India and the reseller OPs but also among resellers showing that they were in direct contact with each other through emails and WhatsApp groups. In the present matter, the DG has uncovered numerous communications among the reseller OPs, seeking and providing support bids, thereby compromising the integrity of independent bidding process and stifling competition in tenders floated

by various government departments. It may be noted that HP India was a part of the said groups but not every conversation took place with or *via* HP India officials. As there have been instances of collusive bids by the resellers OPs, who are engaged in similar business of provision of HP Supplies Products to procurers through GeM, there has been no ambiguity regarding examining their role under Section 3(3) of the Act.

28. Regarding the role of HP India as a facilitator in the alleged anti-competitive conduct, the Commission is of the view that the same can also be examined under Section 3 of the Act. In this regard, the Commission also takes note of the contention of some reseller OPs that since the conduct pertains to the period from 2018 to 2020, the amendment in the Act in 2023, expanding the scope of Section 3 to include hub and spoke arrangements, must not be applied retrospectively by the Commission in the instant matter. In this regard, it must be noted that even prior to the 2023 amendment, the Commission came across cases such as Case No. 64 of 2014 titled *Madhya Pradesh Chemist and Druggist Federation v. Madhya Pradesh Chemist and Druggist Association and others*, involving anti-competitive conduct wherein the contravening parties were neither horizontally placed nor vertically related in the production chain. The Commission, in such matters, observed that even if an agreement does not specifically fall under Sections 3(3) or 3(4) of the Act, it can still be examined under Section 3(1) of the Act which has an independent existence and object. Further, if the contention of the contravening OPs that Section 3(1) does not have a standalone applicability is accepted, then an agreement, though anti-competitive, but not specifically covered under provisions of Section 3(3) and Section 3(4) of the Act, will escape scrutiny of the Commission, which could not have been the intent of the legislature. It is relevant to note that provisions of sub-section (3) and (4) of Section 3 of the Act are only species of Section 3 while sub-section (1) is the genre thereof. Accordingly, the collusive arrangement between HP India and its resellers as well as among resellers is subject to the rigors of Section 3 of the Act.

29. Some reseller OPs have contended that they either sought or provided support bids in order to meet the mandatory requirement stipulating participation of at least three entities in a given tender to prevent cancellation due to lack of adequate number of bids. Instead of causing AAEC the same has been done to save time and prevent loss to exchequer. The Commission finds such assertion devoid of merit. The DG has also brought to light the aspect of use of sister entities by some resellers to meet the requirement of minimum participation. Such sister concerns have participated in order to give a façade of competition. Such entities aided others in winning of tender. Hence, such conduct deprived the tendering authority/department from procuring at competitive rates.

30. The averment of OP-14, regarding DG's reliance on oral statements, is that the statement was taken without allowing an opportunity to cross-examine. The Commission notes that apart from documentary and electronic evidence, the DG has relied on the statement of [redacted] himself for holding OP-14 liable under the provisions of the Act. Similar is the case regarding other reseller OPs who admitted to their involvement in the cartel arrangement. In such circumstances, there arises no occasion for seeking or necessity and/or expediency of allowing cross-examination of themselves. The said objection is also not tenable in law as no such request was made by OP-14 during the course of the proceedings.

31. OP-14 has also raised jurisdictional objection regarding examining it without it being arrayed/identified as a party in the *prima facie* order. In this regard, the Commission notes that the directions contained in *prima facie* order are administrative in nature and does not crystalize all the aspects involved in the matter including identifying all the parties at that stage. This cannot deprive the DG from examining the concerned parties within the legitimate contours of the Act. Accordingly, the Commission does not find any merit in this assertion.

32. The Commission also takes note of the assertion of OP-16 regarding admissibility of video clippings and its transcript. In this regard, the Commission notes that most

of the individuals have admitted to having attended the meeting. It is further noted that the 65 B certificate in terms of erstwhile Indian Evidence Act, 1872, read with IT Act, 2000 was also submitted along with it. Accordingly, the Commission disregards the same being devoid of merit.

33. Most of the individuals of HP India as well as some of the reseller OPs have asserted that the provisions of Section 48 of the Act can be invoked against the individuals only after returning a finding of contravention against the OP. The Commission is aware that liability of individuals of an entity only arises upon establishing contravention against that particular entity. At the same time, it is also relevant to highlight that in *Pran Mehra v Competition Commission of India and Another* (Writ Petitions No. 6258/2014, 6259/2014 and 6669/2014 decided on 26.02.2015), the Hon'ble Delhi High Court relying on Hon'ble Supreme Court's judgment in *Anneta Hada v Godfather Travels and Tours Limited*, *(2012), 5SCC 661*, held that there cannot be two separate proceedings in respect of the entity and the individuals as scheme of the Act does not contemplate such a procedure. Also, the Division Bench of the Hon'ble Delhi High Court, in *Cadila Healthcare Limited and others v. Competition Commission of India and others*, *252/2018 DLT 647,* also reiterated the above ruling. Therefore, the Commission does not need to wait to issue a separate notice to individuals. The process of issuing investigation report and the opportunity given to concerned entities and their individuals can run simultaneously, provided that the individuals are given an opportunity to defend their specific conduct before a penalty is levied. In the instant matter, the Commission has shared the Investigation Report with the OPs and their respective individuals and have also made individuals part of the confidentiality ring upon their request for inclusion in the same for accessing the confidential version of the Investigation Report. In the instant matter, the Commission has accorded sufficient opportunities to the individuals to file their objections / suggestions in accordance with their right to defense.

34. Having dealt with the preliminary objections, the Commission proceeds to examine the matter on merits. The Commission has perused the Information, material available on record, the consolidated Investigation Report, the objections suggestions/replies/ to the Investigation Report filed by the OPs and their respective individuals as well as the oral and written submissions of the parties.

35. The Commission notes the findings of the DG that HP India and some of its Tier-2 resellers were engaged in the practice of bid rigging of various GeM tenders by means of cover bids/supportive bids and communicating with each other so that the designated Tier-2 resellers win their respective MVC departmental tender. The Commission also notes that the DG has found evidence of collusion among the OPs in respect of the GeM tenders pertaining to Delhi region that fall below the monetary threshold of INR 20 Lakh. Although such collusive conduct may not fall within the narrow scope of monetary threshold set out in the *prima facie* order for administrative convenience but it does come under the purview of provisions of Section 3(3)(d) of the Act. It is neither the intent of the legislature nor of the Commission to let administrative convenience be a defense to contravening entities for engaging in contravention of the provisions of the Act. Accordingly, the Commission considers the holistic evidence in terms of the provisions of the Act. Noting the findings of the DG, the Commission proceeds to examine the role of each OP and its individuals in the subsequent paras.

<u>HP India (OP-1)</u>

36. The Commission notes that the DG found HP India to be central to the aforesaid collusive arrangement. As per the Investigation Report, HP India played a very prominent role in the collusive arrangement to rig the Government tenders for procurement of toner and cartridges. It used to give sales targets to its dealers and to ensure that these dealers met their targets, it issued MAFs, very selectively to designated resellers and to those who agreed to support such designated resellers. MAF is an authorisation from OEM, which was necessary for the bidders/reseller OPs to be eligible to bid for the tenders on GeM, in the absence of which the reseller

used to get disqualified. This is also evident from emails where one reseller used to seek authorisation for other resellers, who agreed to support such reseller in the tenders of their respective accounts. HP India was aware that some of its resellers also had sister entities for ensuring winning of the MVC account as is evident in paragraphs below.

37. OP-1 used to issue such MAF authorisations to these sister entities despite the fact that business of such sister entities with HP India was almost nil. HP India not only used to monitor the collusive arrangement of customer allocation but also monitored the prices/ discounts to be offered by the bidders/ resellers. Some of the resellers also stated that the main discussion of the meeting held at HP India Office at Connaught Place, was regarding disputes related to various departmental accounts (MVCs), excessive price discounting and issuance of warning to non-compliant Tier-2 resellers for debarment from participating in GeM portal.

38. In this regard, the Commission also notes that HP India has admitted to the collusive arrangement. However, it controverted the DG finding holding it as the kingpin of the cartel arrangement. HP India stated that with introduction of GeM framework bringing more competition and transparency, the resellers began to lose customers. To minimise their loss, they approached HP India to facilitate an arrangement to restrict participation of other resellers, restrict MAFs, seek support in dividing MVC accounts, facilitate cover bids and maintaining the price hygiene for Supplies Products. [redacted]. It also stated to have played a limited role and acted in the above manner for resolving disputes among the resellers and restricted MAFs at their behest. It also stated to have not participated directly in GeM tenders.

39. The Commission is unable to agree with the contention of HP India that it played a limited role as the collusive arrangement could not have been initiated or continued without HP India's active involvement especially issue of MAF by the OEM. It is worth noting that HP India was aware of the existence of sister concerns/ related

entities of certain resellers, having no business with HP India and still issued MAFs to them for participation in the government tenders to manipulate the condition of minimum participation.

40. The Commission also does not find substance in the averment that HP India wherein HP India and its officials *viz.* [redacted] *etc.* stated that the resellers coerced HP India that they (resellers) will switch to counterfeit products in case HP India failed to protect them through the collusive arrangement. Being an OEM with a global presence, HP India had sufficient legal remedies to fix such alleged threats and illegal conduct of the resellers. Arguendo, that commercial pressure was exerted by certain dealers, such pressure cannot justify the conduct of HP India which is proscribed under Section 3 of the Act. If an OEM, instead of opting for other legal remedies, chose to engage in coordinated conduct with the resellers, such action would amount to active participation with full knowledge rather than passive involvement. Once participation is established, alleged commercial compulsion does not extinguish liability. Moreover, as per HP India's own submissions, the mechanism of MAF was introduced to counter the problem of counterfeit products. This averment also does not hold ground since, the products to be supplied were HP Supplies Products, which could only be supplied upon authorisation by HP India.

41. With respect to HP India's contention regarding insufficient economic incentive on its part, the Commission notes that maintaining price hygiene and restricting discounts to be offered by the resellers ultimately contribute to the bottom line/ profit of HP India only. It must be noted that these tenders pertained to procurement of HP Supplies Products, which implies that the Government departments were already using HP Printer products on account of which the tenders for HP Supplies Products were floated by such Government departments. It further confirms that the resellers dealing in HP India's products were only eligible to participate when the authenticity of the products was assured through MAF issued by OEM *i.e.* HP India. It is also to be noted that cartridges and inks are consumables which are required on

a recurring basis throughout the life of a product. In such case, price becomes a determinant factor. There have been multiple evidences- video recording transcript of meeting of resellers with HP India, statement of individual of reseller OPs *etc*. which demonstrate the issue of controlling/ restricting/limiting discounts and action taken against those deviating from the same. These have not been controverted by HP India rather the same has been admitted by it. Some reseller OPs have also submitted that being resellers and operating in the vertical chain, they were supposed to work in terms of the directions by HP India and failure to abide by the same had penal consequences including debarment from participation in tenders.

42. The Commission takes into account the submission of OP-2 to OP-13 in this regard wherein it is stated that resellers who tried to offer discounts or compete with each other were 'thrown out' or 'removed' from the system. Reliance is placed on excerpts of the meeting dated 14.05.2019 as well as various WhatsApp chats of officials of HP India. Some of those excerpts of Whats App Group chats are reproduced below:

[redacted]	[redacted]
[redacted]	
	[redacted]
[redacted]	
	[redacted]

	[redacted]
[redacted]	[redacted]

	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

43. The Commission also notes that HP India was involved in monitoring of prices. For instance, *vide* [redacted], Mr. Tarun Gupta (OP-6) explained the reasons for quoting low prices in [redacted] in response to a query from an official of HP India about the same. In the said email, Mr. Tarun informs HP India about undercutting by DD Enterprises (OP-2) because of which VSM (OP-9) and Alankar

(OP-6) were losing their MVC Accounts. He stated that the role of HP India (OP-1) was to ensure that the margins of dealers were not eroded by bids of other resellers and the yearly targets set by HP India were achieved.

44. The Commission notes that as per HP India, it engaged in such anti-competitive conduct on request of the resellers. The Commission observes that out of the 29 tenders examined by the DG, DD Enterprises participated in twenty (20) tenders and emerged as L-1 in eighteen (18) of them. Similarly, Alankar distributors won 4 out of 9 tenders in which it participated, Perfect Innovative won 3, Kaypee won 2 and Delphi won one tender. It can be seen that not every reseller emerged as L-1. The Commission observes that certain resellers did participate in tenders but never emerged as L-1 or won the tender, for instance, Shakti Marketing, Pioneer, VSM, Arms Peripherals, GR Enterprises, Ascent Information *etc*. This indicates that the said arrangement was devised not to benefit all resellers but to select/specific resellers.

45. Considering the above, the Commission is of the view that the role of HP India was central to the cartel arrangement and found it to be liable for contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act.

46. Regarding the contention of HP India of granting hundred (100) percent reduction in the penalty on account of it being the first to disclose the cartel arrangement and provide true and full disclosures, the Commission is of the view that taking into accounts its prominent role in devising the arrangement, facilitating the same over a long duration from the years 2017 to 2020 and being the key beneficiary of the collusive arrangement, complete reduction in penalty would defeat the objectives of the Act.

<u>DD Enterprises (OP-2) and Ascent Information (OP-3)</u>

47. As per the Investigation Report, DD Enterprises (OP-2) is stated to be a sole proprietorship firm run by Mr. Kuldeep Singh Nagpal (proprietor). Ascent

Information System (P) Ltd. (OP-3) is a company run by Gurpreet Singh Nagpal, son of Mr. Kuldeep Singh Nagpal. Both are directors in this company. However, Mr. Kuldeep has mentioned in his statement that Mr. Gurpreet assisted him in the business of DD Enterprises (OP-2). Both the OP-2 and OP-3 are engaged in the business of supplying Printer Cartridges (Ink & Toner) and consumables for printing and imaging hardware to Delhi, NCR based Govt. Departments and also participated in GeM Tenders. During investigation, the DG uncovered various incriminating emails sent by OP-2 to HP India officials to prevent participation of other resellers in accounts serviced by OP-2, which were confronted to and admitted by Mr Gurpreet Singh and Mr. Kuldeep Singh. The DG also noted that Mr Gurpreet Singh used the email account in the name of his father to communicate with HP India's officials. During deposition, the DG found that support bids were sought by OP-2 for the tenders of [redacted] was found to be jointly shared by OP-2 and Kaypee Enterprises (OP-4). Further, both OP-2 and OP-3 were confronted with the video clippings of the meeting held on 14.05.2019 with HP India's officials attended by them along with various other resellers.

48. The Commission notes that OP-2 and OP-3 have admitted to the collusive conduct of submitting cover bids. During investigation, the authorised representative of OP-2 and OP-3 were confronted with numerous WhatsApp chats in both the *Delhi Gem Group* and also in *DD_HP Sales* group, emails etc. and they admitted to the *modus operandi* of the cartel arrangement including seeking support bids and submitting cover bids, seeking MAFs for themselves, *etc*. For instance, Mr. Gurpreet Singh of OP-3 has admitted to submitting cover bid stating that '*As the account of* [redacted] *did not belong to M/s DD Enterprises, I Gurpreet Singh agreed to submit a cover bid at GeM registered price.*'

49. The Commission further notes that although OP-2 and OP-3 admitted to cartel arrangement but they stated to have acted only on the directions of HP India. In this regard the Commission notes that they have not always acted on the directions of

HP India and there have been various chats wherein OP-2 is seeking cover bids from other OPs. Besides, OP-2 and OP-3 are related entities operated by father and son *viz.* Mr Kuldeep Singh and Mr. Gurpreet Singh. Mr Gurpreet Singh had formed a WhatsApp group named *Delhi Gem Group* Chat and colluded with other resellers to win GeM tenders. The Commission also notes that OP-2 engaged in seeking support bids for its multiple MVC accounts. The Commission further notes that among the tenders examined by the DG, OP-2 participated in 20 tenders and emerged as L-1 in 18 of them, whereas OP-3 participated in 16 tenders but was awarded none. This could not have been possible without the active role of OP-2 and OP-3 coupled with support from HP India. Participation by OP-3 and not emerging as winner in any of those tenders also reinforces the misuse of related/sister entity to meet the tender requirement of minimum participation. The Commission finds the conduct of OP-2 and OP-3 in contravention of provisions of Section 3(3)(d) of the Act read with Section 3(1) of the Act.

Kaypee Enterprises (OP-4) and Britex Enterprises (OP-5)

50. During investigation, Mr. Paramjeet Singh stated that he is the sole proprietor of the proprietorship firm Kaypee Enterprises (OP-4) and his sister Ms. Raminder Kaur was the owner of Britex (OP-5), however, he admitted to solely managing the affairs of both the firms himself and decisions regarding participation in tenders used to rest with Mr. Paramjit Singh of OP-4. Thus, it was found that both of them were sister entities.

51. During deposition, Mr. Paramjit Singh was confronted with multiple emails and WhatsApp messages apart from various tender documents, exchanged with other resellers and HP India officials during the period from 2017 to 2019, the analysis of which demonstrated that he was engaged in seeking support bids and that there existed an arrangement between HP India and its resellers wherein all resellers have designated accounts (tenders) which are being exclusively catered by that particular reseller only. Mr. Paramjit Singh also revealed that the WhatsApp Group namely

"*Delhi GeM Group Chat*" was created by Mr. Gurpreet Singh of GR Enterprises (OP-8) for coordinating and seeking support from other resellers regarding GeM Tenders of various Govt. departments pertaining to supply of toner and cartridges. Regarding the MVC arrangement, the DG found that in tenders of [redacted] OP-4 had submitted cover bids in favour of other reseller OPs such DD Enterprises (OP-2), G R enterprises (OP-8), Britex (OP-5) and also the tenders of [redacted] in which other resellers such as DD Enterprises (OP-2), Pioneer (OP-13), VSM (OP-7), had submitted cover bids in favour of OP-4. Mr. Paramjit admitted to arrangement/ understanding/agreement regarding bidding and quoting cover bids for other resellers of HP India - *"Yes, Support was sought in terms of quoting GeM price/ cover bid/ High price bids or by not submitting any bid by the other resellers / competitors. This was mutually decided by resellers."*

52. The Commission notes that OP-4 and OP-5 have not controverted the aforesaid findings of the DG and have admitted to the same. However, it is stated to have been done in line with the directions of HP India and that HP India is stated to be the ultimately beneficiary of this collusive arrangement. The Commission does not find substance in the argument that said arrangement was imposed upon them and they were merely acting in terms of direction of HP India only. This is so because besides communications with officials of HP India, multiple communications in the form of emails and chats have been found by the DG wherein O-4 can be seen seeking support of other resellers and offering support in favour of resellers having MVC accounts such as OP-2. The Commission notes that the DG also found OP-4 seeking MAF authorization from HP India officials, *vide* [redacted], not only for itself but also for Britex Enterprises (OP-5), DD Enterprises (OP-2), Ascent Information Systems (OP-3) and G.R Enterprises (OP-8) in respect of specific tenders floated by procurers including [redacted]. All of these tenders were below the fiscal threshold set out in the *prima facie* order except

tenders of [redacted]. As a result of such arrangement, it can be seen that out of 29 tenders found by the DG that met the twin criteria, OP-4 participated in 22 and won 2 of them. These two tenders pertained to [redacted]. This also reinforces the assertion that [redacted] was one of the MVC accounts of OP-4. The Commission finds the conduct of OP-4 of seeking as well as providing support/cover bids to other resellers in order to retain their allocated customers as anti-competitive conduct, in contravention of the provisions of Section 3(3)(d) of the Act read with Section 3(1) of the Act.

53. Regarding OP-5, it may be noted that Mr Paramjit Singh admitted to the contravention and indicated in his statements recorded during investigation that he had stated acted on behalf of Britex (OP-5), *"I supported VSM* [OP-7] *as it was mutually agreed by resellers and HP India that they will support each other in their respective accounts/ Govt. department's GeM tenders for toner and cartridge.."*. The same is also admitted in its written submissions to the Investigation Report. The Commission notes that OP-5 did not participate in any of the 29 tenders meeting the fiscal threshold, but evidence on record shows that OP-5 submitted as well as sought support bids for retaining the MVC accounts. For instance, OP-4 had sought MAF authorization in respect of OP-5 for participation in [redacted] as [redacted] was stated to be joint MVC account of OP-2 and OP-4, and OP-8 also stated to have submitted support bids in favour of OP-5 for [redacted]. Collusion regarding tenders below INR 20 lakh threshold does not absolve OP-5 from the wrongdoing of non-genuine participation in the government tenders, thereby manipulating the bid outcomes through collusive conduct and hence, the Commission also hold OP-5 to have acted in contravention of the provisions of Section 3(3)(d) of the Act read with Section 3(1) the Act.

<u>**Alankar Distributors (OP-6) and Vijay Stationary Mart (VSM/OP-7)**</u>

54. As per the Investigation Report, Mr. Tarun Gupta stated that he manages the business of Alankar Distributors (OP-6) and Vijay Stationary Mart (OP-7) is a

family firm controlled by his uncle Mr. Ajay Kumar Gupta. He also stated that both are sister entities engaged in supply of printer cartridges and ink toner, stationery products and cleaning products to Delhi NCR based Government departments and PSUs. It is further stated that OP-6 and OP-7 coordinated bids in order to win Government tenders. He also admitted that a meeting of HP India and other resellers had taken place in the Delhi office at Connaught Place. The purpose of the meeting was to discuss bids by resellers in the GeM platform, among other things.

55. During deposition, Mr. Tarun Gupta of OP-6 admitted to being part of the WhatsApp group *'Delhi Gem Group'* chat and also affirmed that all the resellers used to coordinate the bids and support each other. The DG found various WhatsApp chats during investigation wherein OP-6 sought support for tenders of [redacted] *etc.* and also submitted cover bids in respect of OP-2 and OP-4 for [redacted]. The DG also found certain incriminating emails during investigation. During deposition, Mr. Tarun Gupta stated that '*As in* [redacted] *our firms VSM and Alankar have been supplying toner cartridges of HP India since l joined the Alankar Distributors and developed good will with the Ministry hence l wanted my firms to continue supplying the said products. Therefore, I have requested HP India to ensure other resellers either do not participate or submit a cover bid in support of our firms.'* He also stated that *'Supporting quote means to submit high price cover bid in support of our firms VSM and Alankar. As* [redacted] *was an MVC account of VSM before introduction of GeM, hence, to continue that supply arrangement with* [redacted]*, we had requested HP India to request other resellers to submit cover bids in favour of our firms.*' It is noted that [redacted] were among its MVC accounts for which it colluded and sought support/cover bids.

56. OP-6 and OP-7 have admitted to the findings of the DG except that the same has been stated to be on the directions of HP India. However, the Commission finds that there have been communications from them to HP India requesting authorisation in their favour, protection of their MVC account *etc*. For instance, *vide* [redacted]

[redacted], Mr. Tarun Gupta requested [redacted] of HP India, to ensure that other dealers do not quote in their departmental account*s* and Mr. Anupam Gupta directed other resellers to support VSM for winning the [redacted]. The Commission also notes that Mr. Tarun Gupta admitted in his deposition and written submissions that '*Discussion were regarding seeking support of other resellers for the GeM tenders for toner/cartridges as well as discussions related to tendering and submission of bids in GeM tenders.'* The Commission also notes that OP-6 participated in 9 tenders [redacted]. Out of these, it emerged as winner in 4 tenders. The Commission further notes that OP-6 sought authorisation from HP India not only for itself but also for OP-7. For instance, [redacted], Mr. Tarun Gupta requested HP India official for providing authorization in favour of Alankar (OP-6) and VSM (OP-7) for [redacted] tender. On the same date, the HP official directed all the resellers to support VSM (OP-7) by quoting the standard GeM price *via* WhatsApp group "GeM Group". Also *vide* [redacted], from Mr. Tarun Gupta (OP-6) to sought authorization from OP-1 for Alankar (OP-6), VSM (OP-7) and Perfect Innovative (OP-9) for a tender of [redacted]. During deposition, he also admitted seeking authorisation for OP-9 as OP-9 agreed to support VSM in this tender.

57. In view of the foregoing, the Commission finds that OP-6 was engaged in anti-competitive conduct of seeking as well as providing support/cover bids to other resellers in order to retain their respective allocated customers (MVC account), thereby contravening provisions of Section 3(3)(d) read with Section 3(1) of the Act.

58. Regarding the role of VSM (OP-7), the Commission notes that in the 29 tenders meeting the fiscal threshold, OP-7 participated in 4 but was awarded none. Mr. Tarun Gupta admitted during deposition that *"Yes, both our Firms namely M/s Alankar & M/s VSM submitted cover bids in support of M/s Perfect as requested by Mr. Ajay Khandelwal*. He also stated that '*Yes, my Firm VSM submitted a cover bid*

in the above mentioned [redacted]. The Commission finds that OP-7 to have participated in tenders to submit cover bids in order to facilitate winning of MVC accounts by respective resellers, and holds OP-7 to have acted in contravention of Section 3(3)(d) read with Section 3(1) of the Act.

<u>G R Enterprises (OP-8)</u>

59. During investigation, Mr. Gurpreet Singh Hans (OP-8) stated that, he is the sole proprietor of the GR Enterprises (OP-8). During deposition, he was confronted with emails and WhatsApp messages along with certain tender documents. He also confirmed having created "*Delhi GeM Group Chat*" on 28.06.2018 on the advice of HP India officials '*for the purpose of seeking support of other resellers for the GeM tenders for toner/cartridges as well as discussions related to tendering and submission of bids'*. He further stated that *'to ensure coordination among resellers and also to avoid disputes regarding accounts or Govt. departments the aforesaid whatsapp group was created.'* and such coordination used to happen *'through phone as well as physical meeting in the office of HP India'*. He also submitted that '*with the assistance of HP India officials, various Govt. departments organisation etc. were distributed among resellers based on their MVC status. Further, as HP India used to give targets to resellers it also ensured and facilitated that bids in GeM tenders are submitted in such a manner that the reseller having the MVC account continues to be the L1 supplier in those tenders and the other resellers support the bids of the MVC account holder so that the stock with the reseller can be liquidated and targets are achieved.'* He also admitted to attending the meeting dated 14.05.2019 along with other resellers. He also affirmed indulgence in support bids on direction of HP India as well as on request of OP-4. The DG found that *vide* [redacted], OP-8 sought authorization for other resellers *viz.* DD Enterprises (OP-2), Ascent Enterprises (OP- 3) and Kaypee (OP-4) and Britex Enterprises (OP-5), in respect of [redacted].

60. The DG also found WhatsApp chat dated 18.10.2018 wherein GR enterprises (OP-8) was advising another reseller *viz.* Shakti Marketing (OP-15) against giving discounts. There were other chats dated 10.01.2019 and 22.10.2018 wherein OP-8 was requesting other resellers not to provide discount and for correcting their pricing.

61. Mr. Gurpreet Singh Hans, revealed that role of HP India officials in issuing authorisations for participation in Govt. tenders, deciding bid prices, retention of MVC accounts by resellers of the pre-GeM era, issuing MAFs to participating resellers and monitoring achievement of sales targets designated to its resellers by ensuring the MVC accounts are won by the designated resellers. He admitted that his firm used to submit bids at GEM prices as per directions of HP India (OP-1) and request of Kaypee Enterprises (OP-4). He also admitted requesting other resellers at multiple occasions not to give more discount in order to protect the margins/ profits. He admitted attending the meeting with HP officials at Connaught Place, Delhi.

62. The Commission notes that OP-8 has not controverted the findings of the DG rather stated to have engaged in such conduct on the behest of HP India. In this regard, the Commission notes that OP-8 has sought support bids from other resellers as well as provided the same to enable them to retain their MVC account. OP-8 also admitted in its written submissions that '*Discussion were regarding seeking support of other resellers for the GeM tenders for toner/cartridges as well as discussions related to tendering and submission of bids in GeM tenders.*' The Commission notes that out of 29 tenders, OP-8 participated in seven tenders [redacted] but was awarded one. Out of these seven tenders, 4 were won by OP-2, two by OP-9 and one by OP-4. The Commission is of the view that OP-8 has played key role in enabling these resellers to retain their MVC account, facilitated bid rigging, and as such acted in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act.

Perfect Innovative (OP-9) and Khandelwal Traders (OP-10)

63. During deposition, Mr. Ajay Khandelwal stated that he is the Director of Perfect Innovative (OP-9) and admitted that both Perfect Innovative and Khandelwal Traders (OP-10) are sister entities as the latter is in the name of his mother Ms. Sumitra Devi, but he only manages both the firms. During deposition, he stated that all the decisions including bidding in GeM tender were taken only by him and there was an understanding between both the firms wherein either of the firm submit its bid for a tender, other firm will support by submitting supportive bids or cover bids in the said tender, which shows that OP-10 is a sister entity of OP-9. During investigation, Mr. Ajay Khandelwal was confronted with emails, WhatsApp messages and tender documents wherein he sought support from other resellers such as OP-4 and OP-7 and asked HP India to prevent other partners from participating in those tenders for which OP-9 and OP-10 were aligned and Mr. Ajay Khandelwal admitted to submitting support bids in favour of other resellers such as OP-2, OP-6 and OP-13. for ensuring retention of MVC accounts by those resellers. He also admitted that HP India officials used to support them by restricting the MAF to only few resellers. The DG found that *vide* [redacted], from Mr. Ajay Khandelwal addressed an email to [redacted] of HP India, stating that: "*M/s DD Enterprises participated in* [redacted] *bid, pls take clarification from him how he was participates in that bid and advice to him not to participate in* [redacted] *bids in future. As you know that we are not participates in other vendors bids*." The DG also found that *vide* [redacted], Mr. Khandelwal requested for support bids from OP-4 and OP-7 for support bids. There are other such mails and WhatsApp chats wherein he can be seen seeking support bids or coordinating with other resellers. He also admitted that [redacted] were his MVC accounts for which other resellers supported his firm by providing support bids and HP India officials supported by restricting MAF authorisation to only few resellers. This practice is stated to have been followed in [redacted].

64. The Commission notes that OP-9 and OP-10 have not controverted the findings of the DG, but stated to have done the same on the directions of HP India. The Commission notes that multiple communications in the form of chats and emails have been found by the DG wherein OP-9 and OP-10 were seeking and providing support to other resellers. It is also reaffirmed in written submissions of OP-9 that "*As per support sought from my firms I* [Mr. Ajay Khandelwal] *use to give support in GeM bids of other Resellers for their accounts and seek support of other Resellers. It was an arrangement among Resellers as per directions of HP India.*" Regarding OP-9, he also admitted that *"Yes, my firm M/s Perfect supported M/s DD Enterprises by submitting supportive bid by quoting GeM registered price in the said tender as per understanding with HP India and Resellers."* The Commission also notes that out of the 29 tenders, OP-9 participated in 6 tenders *viz.* [redacted], and emerged as L-1 in 3 of them. The Commission further notes that all the three tenders in which OP-9 emerged as winner pertained to [redacted], which also corroborates the assertion that [redacted] was MVC of OP-9. Considering the overall material available regarding OP-9, the Commission finds OP-9 to have indulged in bid rigging in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act.

65. Regarding OP-10 also, Mr. Khandelwal can be seen indulging in communications with other resellers for seeking and providing support bids. The Commission observes that out of 29 tenders, OP-10 participated in none. However, during deposition, Mr Khandelwal had submitted that *"Yes, my firm M/s Khandelwal supported M/s Alankar* [OP-6] *by submitting supportive bids in favour of M/s Alankar..*" Accordingly, the Commission is of the view that OP-10 has acted in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act.

<u>A Square Technologies (OP-11) and Innovative Solutions (OP-12)</u>

66. As per the Investigation Report, Mr. Aman Arora is the proprietor of A Square Technologies (OP-11) and also manages the affairs of its sister entity Innovative

Solutions (OP-12) (which is in the name of his wife), by taking decision on price bids and participation in tenders. His firm is engaged in supply of ink, cartridges, and toners to various Government departments such as [redacted] in the State of Delhi. He stated that OP-11 and OP-12 became the authorised resellers of HP India in 2018. He also admitted being part of WhatsApp group *Delhi Gem Group Chat,* and also stated that discussions for coordinating GeM bids used to take place on this group. His firms engaged in both seeking as well as providing support bids. He also admitted to attending the meeting of HP and its resellers held in Connaught Place, Delhi. During investigation, he voluntarily submitted certain WhatsApp chats with HP India officials, [redacted] of Delphi (OP-14), Mr. D.S. Rajpoot of Shakti Marketing (OP-15), and Mr. Rajiv Mohan of ICR (OP-16).

67. Mr. Aman Arora admitted discussing bids with other resellers till March, 2020. Both OP-11 and OP-12 have not controverted the findings of the DG. Regarding OP-11, the Commission notes that in the 29 rigged tenders above the monetary threshold, OP-11 has participated in 4 such tenders *viz.* [redacted], but none of them found to have been won by it. The Commission notes that Mr. Aman Arora admitted to submitting cover bids through his firm OP-11, stating that '*Yes, my firm M/s A Square submitted a supportive bid in favour of M/s Perfect Innovative as the* [redacted] *is an MVC account of M/s Perfect.'* He also admitted to seeking support for [redacted] tenders in favour of OP-11. The Commission observes that OP-11 indulged in bid rigging and hence has acted in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act.

68. Regarding OP-12, the Commission observes that OP-12 did not participate in any of the 29 tenders. However, the Commission notes that while being confronted with the evidence during investigation, Mr. Aman Arora admitted to submitting cover bids through his firm OP-12 stated that "*Yes, as the* [redacted] *account was an MVC account of DD Enterprises, my firm M/s Innovative Solutions had submitted a*

supportive/cover bid in favour of DD Enterprises in the above said tender of [redacted]*".* The Commission also notes that Mr Aman Arora also admitted before the DG that his firm OP-12 submitted cover bids in [redacted]. The Commission notes that the 29 tenders do not include any tender of [redacted] however, it does not preclude the Commission to overlook the anti-competitive conduct of OP-12. Accordingly, the Commission is of the view that OP-12 has acted in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act.

<u>Pioneer Enterprises (OP-13)</u>

69. As per the Investigation Report, Mr. Puneet Singhal of Pioneer Enterprises (OP-13), stated himself to be responsible for managing the business of OP-13, including making decisions related to participation and bidding in tenders. His firm is engaged in sale of ink toner cartridges, consumables, imaging hardware *etc*. to Delhi based Government departments such as [redacted] *etc*. He admitted coordination among competitors through WhatsApp groups formed for the purpose of seeking support in GeM bids. During deposition, he was confronted with emails, WhatsApp chats and tender documents. For instance, DG found that *vide* [redacted], OP-13 sought support for [redacted] through HP officials. In response email, HP India official communicated that [redacted] was already mapped with another reseller. There are numerous WhatsApp chats wherein OP-13 agreed to submit support bids in favour of certain resellers such as OP-2, OP-4 *etc* to aid them in retaining their respective MVC accounts of [redacted] and [redacted]. During deposition, Mr. Puneet Singhal of OP-13 admitted that '*Bids on GeM were made on the basis of MVC accounts of a reseller by way of supportive bids from other resellers/bidders, who supported the said MVC account holder to win the tender*. He had also stated to have indulged in cover bidding in [redacted] tenders in favour of OP-2. He also admitted seeking support from other resellers in support of his firm Pioneer for tenders of [redacted].

70. OP-13 have not controverted the findings of the DG and have admitted to the same in its written submissions. The Commission notes that OP-13 participated in 7 tenders out of the 29 tenders, but was awarded none. It is further noted that OP-2 emerged as L-1 in 6 of these tenders, which further corroborates the role of OP-13 in the collusive arrangement to enable OP-2 to retain its MVC account. The Commission finds OP-13 to have acted in contravention of Section 3(3)(d) read with Section 3(1) of the Act.

<u>Delphi Infosolutions Pvt. Limited (Delphi)/(OP-14):</u>

71. During investigation, [redacted] stated that Delphi (OP-14) is engaged in sale of IT, hardware, networking peripherals, ink and toner cartridges and printers in State of Delhi and participates in Government tenders through GeM portal. Further, he stated himself to be final and sole decision taking authority for his company Delphi. He further stated that his brother [redacted], who is Director in the said company, also assists/manages OP-14. Upon being asked if he is in contact with the other resellers (arrayed as OPs in this matter), he stated to be knowing most of the concerned persons of the other resellers/OPs but had interacted occasionally with Mr. Puneet Singhal of OP-13 and Mr. Aman Arora of OP-11. He also stated to have no discussions with other resellers for price or quantity bids. However, he stated to have discussed with Mr. Aman Arora of OP-11 about Government tenders. [redacted] of OP-14, admitted participating in two meetings along with his brother, one held at *HP offices in Connaught Place near Park Hotel in 2018 or 2019* and another *follow up meeting held in 2019 in a Green Park hotel*. The DG found that out of the 29 tenders, OP-14 had won one tender of [redacted] for which it had coordinated with Mr. Aman Arora of OP-11.

72. The Commission notes that OP-14 has controverted the findings of the DG against it regarding the aforementioned [redacted]. The Commission further notes

the assertion of OP-14 that it won [redacted] competitively and without any collusion as A Square (OP-11) was technically disqualified in the impugned tender and the other two bidders in the said tender were [redacted].

73. The Commission further notes that the [redacted] indicates that DD Enterprises (OP-2), Ascent Information (OP-3), Kaypee Enterprises (OP-4), Britex (OP-5) and GR Enterprises (OP-8), as aligned partners for certain tenders including [redacted]. The Commission notes that OP-14 averred to have participated in the aforesaid tender and there is no evidence of coordination with the resellers who participated in the aforesaid tender to hold OP-14 liable for contravention of provisions of the Act. However, the Commission notes that during deposition, [redacted] affirmed that he "*…discussed toner cartridges related bids of Government tenders with Aman Arora of A Square Technology*". [redacted] of OP-14 was confronted with his one-to-one WhatsApp chats exchanged with Mr. Aman Arora of OP-11 from October, 2019 to August, 2020 regarding coordination in various Government tenders. In these chats [redacted] can be seen seeking support bid from Mr. Aman in respect of Government tenders such as [redacted] bids through WhatsApp chats dated 10.01.2020 and 25.01.2020 and also giving support bid to OP-11 for mapped accounts such as [redacted] through WhatsApp messages dated 18.01.2020. Upon confronting the WhatsApp chats, [redacted] stated that "*I would like to emphasise that I was not a channel partner of HP Cartridges vertical till 2015. Subsequently, I was invited by the HP Sales team for becoming HP Supplies partner. During that time, I was directed to find new Government Departments/Corporate entities which would serve as Most Valued Customer (MVC) so that majority of the sale of cartridges and other associated items would be carried out by my firm Delphi. It was a standard practice that various Government departments/Corporate entities were distributed or being handled by only specific channel partners and these departments or corporate entities used to serve as MVC accounts for these channel partners. Subsequently, the GeM Portal was functionalized by the Government of India. As a result of which*

many of the channel partners started outbidding each other without adhering to MVC accounts." In view of the foregoing, the Commission finds that OP-14 took part in the collusive conduct of coordinating bids with another reseller *viz*. OP-11, in contravention of the provisions of the Act. The Commission further notes the submission of OP-14 that its [redacted]. The Commission notes that these factors may be considered as mitigating factors while imposing penalty. In view of the foregoing, the Commission holds OP-14 to have acted in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act.

<u>Shakti Marketing Associates (OP-15):</u>

74. During investigation, Mr. D S Rajpoot, sole proprietor of OP-15 stated that his firm started participating in GeM portal since 2018 and he is the final authority to take decisions by OP-15. He admitted to have attended the meeting dated 14.05.2019 of HP India officials and other resellers at HP India office in Connaught Place. He said that the main discussion of the *meeting during 2018 or 2019* relates to bidding participation for specific departmental accounts (MVCs) and price discounting. He explained that due to the large discounts offered by various resellers, the allocated accounts of various department for certain resellers were not getting any orders, therefore one of the agenda of these meetings were that excessive price discounts should not be offered by all the resellers and specific departments for certain resellers should not be disturbed. He also stated himself to be part of the WhatsApp group "Delhi GeM Group".

75. During deposition, when he was asked about what kind of support he was seeking in the WhatsApp group, he submitted that "*During pre-Gem period, specific departments were allocated to type II resellers and by this arrangement, the type II resellers used to seek support from each other so that specific tenders of specific*

departments could be allotted to them. However, there were occasions of price discounts being given by other resellers which used to ensure that the specific tenders are not won by specific type II resellers" and "*….resellers used to continuously fight with each other to get the tenders despite the arrangement between them. This specific collusive arrangement was closely monitored by officials of HP so that the compliance is ensured. Further, a warning was issued by them that the non-compliant Tier-2 resellers shall be debarred from participating in GeM portal by revoking their specific HP authorization for GeM portals. In fact, several times I was threatened by Mr. Manoj Grover, the then employee of HP to stop participating in the open tender of* [redacted] *on one occasion for which I had already submitted my bids".* Mr. Rajpoot also revealed that he was added to the group in 2018 and he voluntarily offered the WhatsApp chat communication available with him for the period 28.06.2018 to 24.01.2020, containing details of chats/ communications which shows that various members of the group had asked for support for specific tenders of different departments. However, the DG did not find existence of any MVC account in respect of OP-15. It was also noted in a WhatsApp chat dated 22.10.2018 wherein Mr. Gurpreet Singh of OP-8 asked ICR (OP-16) and Shakti Marketing (OP-15) to remove discounts from bids.

76. At the outset, the Commission notes that OP-15 has stated in its written submissions that as per the Investigation Report Mr. Rajpoot gave vague replies in first deposition but was forthcoming in second deposition as he was put to unnecessary fears by the DG. The same may not be acceptable as he himself voluntarily submitted WhatsApp chats and also had this been the case, Mr. Rajpoot ought to have brought the same to the attention of the Commission soon after recording of statement or at least after sharing of the Investigation Report in May, 2024. Accordingly, such contention of OP-15 is rejected being devoid of merits.

77. The Commission notes that OP-15 had controverted the findings of the DG and stated that it has been erroneously charged by the DG for cartel conduct based on statement of Mr. D.S. Rajpoot, him being part of the WhatsApp group and having

attended the meeting dated 14.05.2019. Regarding the statement relied upon by the DG, OP-15 submitted that it has nowhere admitted itself to be part of cartel. With regard to WhatsApp group, OP-15 stated that it was made part of the WhatsApp Group GeM Delhi after eight months of formation of the said group and that OP-15 itself left the group after a brief period of 3 months. While being part of the group also, OP-15 was not active in the said group. In this regard, the Commission notes that during investigation, the DG had found that through 3 WhatsApp chats exchanged between June to July 2018, OP-15 affirmed support to Mr. Tarun Gupta of VSM (OP-7) for [redacted] and OP-15 also sought support from other resellers for itself in respect of tenders of [redacted].

78. The Commission observes that OP-15 participated in four out of 29 tenders in which 2 were won by OP-9 and one each by OP-2 and OP-14. The Commission notes the contention of OP-15 that four out of 29 tenders in which it participated, it did not win any rather got technically disqualified in two of them. The Commission further notes the averment of OP-15 that the DG has failed to demonstrate any evidence that OP-15 placed any support bid as per any collusive arrangement with other resellers. The Commission is not inclined to accept the argument of OP-15. Not winning a tender or getting disqualified in a tender is of no consequence if the purpose of participation is to meet the criteria of minimum participation and give an impression of competition in the tender. The Commission further notes that seeking or submitting support bids in respect of tenders which did not meet the monetary threshold does not absolve OP-15 specifically when there is evidence of inter-seller communications in the form of WhatsApp chats. Accordingly, the Commission finds OP-15 to have acted in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act. However, the Commission notes that OP-15 was found indulging in offering discounts which were not in terms of the directions or agreed upon between the resellers and HP India and that it was not having an MVC account; these may be considered as mitigating factors.

International Computer Resources (ICR/OP-16):

79. During deposition, Mr. Rajeev Mohan, Director of OP-16 stated that his firm started participating in GeM portal from August, 2018 and that he was added to the WhatsApp Group named "*Delhi GeM Group*" around 2018 wherein such discussions were held. He also admitted to have attended the meeting which was held between HP India officials and their tier-2 resellers. He said that the main discussion of the meeting that was held at HP Office at Connaught Place, related to various departmental accounts (MVCs), excessive price discounting and warning issued for non-compliant Tier-2 resellers. The DG also found certain WhatsApp chats during November-December 2018 wherein Mr. Rajeev Mohan sought support bids for certain tenders. Upon confronting, he stated that he wanted more people to participate so that the tender is not suspended.

80. The Commission notes that out of the 29 tenders meeting the monetary threshold, ICR participated in none of the tenders. However, there have been WhatsApp chats dated 23.11.2018, 13.12.2018 and 17.12.2018 sent by OP-16 seeking support bids from resellers in respect of other tenders. Upon confronting with these chats, he stated that OP-16 are working with these customers for long. The Commission notes that, in its deposition as well as in the written submissions, OP-16 has not controverted to seeking or submitting the cover bids. In this regard, the Commission notes that in the written and oral submissions, OP-16 raised objections regarding recording of statement of Mr. Rajeev Mohan being not in accordance with the due procedure and requested not to rely on the same as evidence against it. Even if the Commission does not place reliance on the statement of Mr. Rajeev Mohan, the existence of chats and its corroboration in written submissions indicates that OP-16 indulged in anti-competitive conduct of rigging tenders. Accordingly, the Commission finds OP-16 to have acted in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act.

Arms Peripherals (OP-17):

81. During investigation, Mr. Aditya Mishra (OP-17) stated himself to be the decision-making authority of his firm Arms Peripherals (OP-17), which is engaged in the sale of toner cartridges, hard disks, printers and other computer peripherals and started participating in Government GeM tenders from 2018. On being asked about interaction with other resellers regarding bids in Government tenders, Mr. Aditya Mishra of OP-17 stated that for maintaining business and meeting sales targets set by OP-1, the resellers coordinate with each other regarding price and discounts for specific tenders as floated on GeM portal. He also stated to be part of the WhatsApp group formed by Mr. Gurpreet Singh Nagpal of OP-2, who was the admin of the said group, which according to him was formed in 2017 and deleted in 2019. He also stated that *"it is pertinent to mention that the group was revived, having HP as consistent member of the group, on several occasions and was dissolved several times*". He also stated that "*we resort to quote bid price without offering any kind of discounts so that we don't end up as L1 bidder in the said bidding process*". He also stated that he abided by the directions of HP India from time to time to avoid facing debarment from the dealership of HP India. Upon being confronted with an [redacted] wherein it was requested to take action against his firm for trying to get tender of some other firm, he stated that OP-1 forbids resellers from encroaching into the business territory of other designated resellers. He also admitted to have attended meetings organized by HP India before covid pandemic in Gurgaon (2017), Mussoorie (2018) and Chandigarh (2019), further stating that "*..the agenda of such meetings was to promote sales, grievance faced by dealers, suggestions and future prospects of the print business of dealers and resellers of HP".*

82. The Commission noted that in its objections to the Investigation Report, OP-17 denied any role in collusive conduct, however, OP-17 changed its stance in its post hearing submissions. The Commission notes that OP-17 admitted to the collusive arrangement in its post hearing submissions but stated to have done so on the behest

of HP India. The Commission notes that during investigation OP-17 was found seeking support from OP-2 and OP-8 through WhatsApp messages dated 06.12.2018 in *Delhi Gem Group*, for tender of [redacted].

83. The Commission also noted the contention of OP-17 that out of the 29 tenders found to have met the monetary threshold, OP-17 had won none of them. In this regard the Commission further notes that OP-17 had participated in 2 out of 29 tenders *viz.* [redacted] floated by [redacted] but emerged as L-1 in none. It may be noted that both these tenders were won by OP-6. Non-winning of tender does not absolve OP-17 of its role being played in submitting a cover bid for other resellers.

84. Accordingly, the Commission, considering the role of OP-17 in indulging in cover bidding to protect MVC of other resellers and seeking support bids to win tenders, finds it to have acted in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act.

Confidentiality

85. [redacted]

[redacted]

However, the Commission does not accept the request of keeping confidential the identity of HP India as LP applicant as it will be against the extant decisional practice as well as global practice of disclosing the markers in the final orders.

Period of contravention

86. It must be noted that as per the *prima facie* order the alleged cartelisation existed [redacted]. The DG has examined the tenders (above 20 lakhs) post introduction of GEM *i.e.* 2017 during which lot of documentary evidence (tender documents), and electronic evidence (emails, WhatsApp messages, video clips) pertaining to the period from 2017 to 2020 was unearthed (except few emails pertaining to 2015). However, to optimize time and resources of investigation and for administrative reasons, the Commission narrowed the scope of investigation to GeM tenders of value exceeding INR 20 lakhs in Delhi Region. The oral testimonies of the key personnels of the OP resellers, including officials of HP India, establish that HP India used to designate accounts (Government departments) to resellers termed as MVC accounts of the designated resellers [redacted], HP India ensured that such resellers are able to retain their respective MVC accounts. Thus, HP India indulged in customer allocation [redacted] when there was no e-tendering, and ensured that such allocation continues even after introduction of e-tendering at GeM portal. However, considering the scope of investigation, the Commission considers 2017-2020 as the relevant period for consideration for the purpose of imposition of penalty.

<u>Conclusion</u>:

87. In view of the foregoing, the Commission holds conduct of OP-1 to OP-17 to be in contravention of Sections 3(3)(d) read with Section 3(1) of the Act.

88. The Commission notes the observation of the DG that the liability under section 48 of the Act arising in case of officer(s)/person(s) of contravening companies including partnership firms is not applicable in context of proprietorship firms. Accordingly, the following individuals of OP-1, OP-3, OP-9, OP-14 and OP-16 are found by the DG to be liable under Section 48 of the Act for contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act by their respective companies. Individuals, who were in charge of and responsible for the affairs of their respective companies are held liable under Section 48(1) of the Act and those individuals who played specific role in the contravention committed by their respective companies are held liable under Section 48(3) of the Act. The details of the individuals are as under:

Table 2: Details of individual found liable by the DG under Section 48(1) and 48(3) of the Act

OP No.	Name of contravening enterprise	Individuals	Designation	Liability under Section 48(1)/(3) of the Act
1	HP India Sales (P) Ltd.	[redacted]	Senior Vice President - Strategy & Transformation	48(1)
		[redacted]	(Head of distribution)	48(3)
		Mr. Manoj Grover	Ex Zonal Manager	48(3)
		[redacted]	Country Lead, Print and Supplies	48(3)
		[redacted]	Acquisition Lead	48(3)
		[redacted]	Ex. Account Manager	48(3)

		[redacted]	Growth Manager (Printing Supplies)	48(3)
		[redacted]	Partner Business Manager	48(3)
		[redacted]	Consumer Distribution Lead	48(3)
		[redacted]	MVC Operation Manager	48(3)
		[redacted]	Country Manager (Print Distribution)	48(3)
		[redacted]	Regional Manager	48(3)
		[redacted]	Distribution Lead	48(3)
		[redacted]	Category Manager	48(3)
		[redacted]	Ex-Employee of HP India	48(3)
		[redacted]	Zonal Manager of HP India	48(3)
		[redacted]	Ex-Key Account Manager	48(3)
		[redacted]	Ex-Employee of HP India	48(3)
		[redacted]	Ex- ASM of HP India	48(3)
3	Ascent Information Systems (P) Ltd. (OP-3)	Gurpreet Singh Nagpal	Director	48(1) and (3)
		Kuldeep Singh Nagpal	Key Official of Ascent Information System	48(3)
9	Perfect Innovative	Ajay Khandelwal	Director	48(1) and (3)

	Computers Pvt. Ltd. (OP-9)			
14	Delphi (OP-14)	[redacted]	Director	48(1) and (3)
		[redacted]	Director	48(1) and (3)
16	International Computer Resources (OP-16)	Rajeev Mohan	Partner	48(1) and (3)
		Naresh Kohli	Partner	48(1) and (3)

89. The DG found [redacted], MD of HP India from May, 2017 to August, 2019, to have knowledge of commercial flow of printer supplies to the end customer. He also admitted to his role in engaging with large and strategic customers and with Government bodies on the issues of policy formulation as MD of the company. Regarding [redacted] of OP-1, the Commission notes that he is not able to prove that the contravention was committed without his knowledge or he exercised due diligence to prevent the commission of such contravention, given the fact that post introduction of GeM, it was a conscious call of OP-1 to coordinate bids with Tier-2 resellers in order to enhance its chances of winning GeM tenders. The averments of [redacted] of introducing training and compliance programs for its official can at best be mitigating factors while imposing penalties. Therefore, the Commission finds [redacted] liable for acts committed by OP-1 under Section 48(1) of the Act.

90. With regard to other eighteen individuals of OP-1, referred in the table above, the DG held them liable on account of evidence of their involvement in coordination with resellers through WhatsApp group, emails, physical meetings for support/cover bids in favour of designated resellers, restrictions on MAF issuances *etc*. The specific roles of these individuals of OP-1 for the purpose of Section 48(3) of the Act are tabulated below:

Table 3: Role of individuals of OP-1

Sl. No.	Name of individual and Designation	Designation	Role
1.	[redacted]	(Head of distribution)	He admitted that a meeting of HP India officials and other resellers had taken place in the Delhi office located at Connaught Place. [redacted] was one of the participants. The purpose of the meeting, among other things, was to discuss bids by resellers on the GeM platform.
2.	[redacted]	Country Lead, Print and Supplies	He participated in WhatsApp Groups "GeM Group" and "DD_HP Sales". He also admitted that HP India officials used to coordinate and resolve any dispute among the resellers regarding any specific Government Department tender and also admitted that a meeting of HP India officials and other resellers had taken place in the Delhi office located at Connaught Place, where he was one of the participants. He also admitted in his deposition that OP-2 (Tier-2 Reseller) had added the entire HP Team of Delhi, in a WhatsApp group for seeking support of the HP officials in GeM bids.
3.	[redacted]	Acquisition Lead	He was participant of WhatsApp groups "Gem Group" and "DD_HP Sales" to coordinate the GeM bids of various Govt. Departments to supply toner and cartridges. He admitted to participating in the meeting held at CP, New Delhi between HP officials and resellers. The purpose of the meeting, among other things was to discuss bids by resellers in the GeM platform. He admitted that since customer needs minimum 3 bids in any GeM tender, Tier 2 resellers of HP India among themselves arrived at an understanding to provide supporting bids to each other

			to meet the minimum participation criteria. Accordingly, sometimes a reseller used to ask for MAF on behalf of himself and other supporting partners.
4.	[redacted] [redacted]	Ex. Account Manager	He created WhatsApp group "GeM Group". Also, he was one of the participants of another WhatsApp group namely "DD_HP Sales" for coordinating GeM bids of various Govt. Departments to supply toner and cartridges. He admitted that during his tenure at Delhi-NCR, Tier 2 resellers used to support each other by putting dummy/proxy bids for tenders on GeM.
5.	[redacted] [redacted]	Growth Manager (Printing Supplies)	He admitted that in the meeting of HP India officials and other resellers that had taken place in the Delhi office located at Connaught Place, he was one of the participants.
6.	[redacted] [redacted]	Partner Business Manager	He admitted that in the meeting of HP India officials and other resellers that had taken place in the Delhi office located at Connaught Place. He was one of the participants.
7.	[redacted] [redacted]	Consumer Distribution Lead	He admitted that in the meeting of HP India officials and other resellers that had taken place in the Delhi office located at Connaught Place. He was also a participant in the WhatsApp group "DD HP Sales" created by DD Enterprises to coordinate the GeM bids of various Government Departments to supply toner and cartridges.
8.	[redacted] [redacted]	MVC Operation Manager	He admitted to participating in the meeting of HP India officials and other resellers that had taken place in the Delhi office located at Connaught Place. He admitted that some Tier-2 reseller partners had created multiple entities and were having different HP

			partner ID but actually controlled by a single individual/family.
9.	[redacted]	Country Manager (Print Distribution)	He admitted that a meeting of HP India officials and other resellers had taken place in the Delhi office located at Connaught Place, where he was one of the participants.
10.	[redacted]	Regional Manager	He used to receive request through emails from HP Tier-2 resellers regarding issuance of multiple MAF in names of different Tier-2 resellers from a particular Tier 2 reseller. He was a participant in the WhatsApp group "DD_HP Sales" created by DD Enterprises to coordinate the GeM bids of various Govt. Departments to supply toner and cartridges. He admitted that in the meeting of HP India Officials and other resellers that had taken place in the Delhi office located at Connaught Place, he was one of the participants.
11.	[redacted]	Distribution Lead	He was one of the participants of WhatsApp group namely "DD_HP Sales" created by DD Enterprises to coordinate the GeM bids of various Govt. Departments to supply toner and cartridges. He admitted that in the meeting of HP India officials and other resellers that had taken place in the Delhi office located at Connaught Place, he was one of the participants.
12.	[redacted]	Category Manager	He admitted that he was one of the participants of meeting held between HP officials and Tier 2 resellers to resolve MVC accounts and quantum of discount being offered on GeM. He also admitted having knowledge of multiple accounts of Mr. Kuldeep Singh.
13.	[redacted]	Ex- ASM of HP India	He admitted that HP India used to coordinate and resolve disputes among

	[redacted]		the resellers. He used to receive request through emails from HP Tier-2 resellers regarding issuance of multiple MAFs in names of different Tier 2 resellers from a particular Tier 2 reseller. He was one of the participants of WhatsApp group namely "DD_HP Sales" to coordinate the GeM bids of various Govt. Departments to supply toner and cartridges.
14.	[redacted] [redacted]	Ex-Key Account Manager	He admitted that in the meeting of HP India officials and other resellers that had taken place in the Delhi office located at Connaught Place, where he was one of the participants.
15.	[redacted] [redacted]	Zonal Manager of HP India	He admitted to issuing selective MAF by HP India to Tier-2 resellers having MVC account with a particular customer in pre-GeM period. He also admitted that he was a non-active participant of the WhatsApp groups "DD_HP Sales" and "GeM Group". He also admitted that he was one of the participants of the meeting held on 14.05.2019, though he was present only as an employee on directions of his senior official.
16.	[redacted] [redacted]	Ex-Employee of HP India	He admitted to participation in the 'Delhi GeM' WhatsApp group. He also admitted to participating in one of the meetings held in 2018 between HP and Tier-II resellers to resolve MVC accounts and quantum of discount being offered on GeM. He also admitted knowing about the multiple groups of tier-2 resellers and was a part of the WhatsApp group made by DD Enterprises. He stated to have no role over continuation of MVC Program. Tenure in HP India was limited to less than one year, *i.e.,* from May 2018 to 30.04.2019.

17.	[redacted]	Ex Zonal Manager	He admitted the existence of WhatsApp group namely Delhi GeM group which was created post GeM to discuss and allocate bids on GeM amongst the participating partners and to request other partners not to quote or provide supporting bids. He also admitted that HP India issues selective MAFs for specific tender, date and department and thereby, controls the participation for each tender.
18.	[redacted]	Ex-Employee of HP India	He was one of the participants of WhatsApp group namely "DD_HP Sales" created by DD Enterprises to coordinate the GeM bids of various Government departments to supply toner and cartridges. He admitted that in the meeting of HP India officials and other resellers that had taken place in the Delhi office located at Connaught Place, he was one of the participants.

91. The fourteen individuals *viz.* [redacted] of HP India, through their common counsel, have submitted that they did not initiate the arrangement and merely responded to the commercial difficulties faced by the resellers. They have admitted to have restricted the issuance of MAF only to incumbent Tier-2 resellers or their sister concerns and inadvertently facilitated interaction among Tier-2 resellers, at the behest of Tier-2 resellers.

92. [redacted] admitted to being part of the two WhatsApp groups but stated that he was a non-active participant and that he attended the meeting on 14.05.2019 on the directions of his senior official. He also stated to be aware of the collusive arrangement but did not restrict MAF issuances during his tenure.

93. [redacted] of HP India, also admitted to being part of the WhatsApp group but stated to have no role in managing them. The messages posted by him in the WhatsApp group were in furtherance of the duties assigned to him by HP India. He further stated that he was not part of the meeting owing to his transfer to Mumbai and that he did not restricted MAF issuances to any reseller. He stated to have no role in continuation of MVC program by HP India and he served in the Delhi office from May 2018 to April 2019.

94. Mr. Manoj Grover of HP India, worked from 2004 to April 2020, in various roles. He stated to have no control or influence over the business of OP-1. However, knowing the practices to be anti-competitive in nature, he filed a separate lesser penalty application under Section 46 of the Act.

95. Despite several opportunities being extended to [redacted] of OP-1, he only preferred to file his financial documents/ ITRs on 30.06.2024 and did not file any response to the Investigation Report or avail the opportunity of oral hearing.

96. The Commission notes the aforesaid averments of the individuals of HP India, and finds it difficult to believe that owing to their respective roles and regular interactions with the resellers, through WhatsApp chats/emails/meetings, they were not aware of or had not played any role in the coordination of bids with the resellers. [redacted] and [redacted] did not deny being part of the WhatsApp group. Rather they admitted to having discharged their duties as assigned by OP-1. Mr. Manoj Grover also acted in line with the duties assigned to him by OP-1. His coming forward for reporting the anti-competitive conduct may be considered as a mitigating factor at the time of imposition of penalty. Accordingly, taking into account the roles played by these individuals in the collusive arrangement existing between HP India and its reseller OPs as detailed in preceding paras of this order, the Commission finds that the above officials of HP India acted in terms of the roles assigned to them by HP India, and therefore played their respective roles in the coordination of bids with the resellers. Hence, all the

aforementioned individuals of OP-1 are found to be liable under Section 48(3) of the Act.

97. The Commission now examines the role of the following officials of OP-3, OP-9, OP-14 and OP-16, found liable under Section 48(1) and/ or 48(3) of the Act by the DG for their role in the anti-competitive conduct of their respective companies and decides their liability as under:

Table 4: Role of individuals of OP-3, OP-9, OP-14 and OP-16

OP	Name of individual and Designation	Role in the company and the anti-competitive conduct
Ascent Information (OP-3)	Mr. Gurpreet Singh Nagpal Director	He was the Director of the company during the period of contravention from the year 2017 till June 2020. He looked after the conduct and affairs of the company, and was responsible for the conduct of the business of the company during the said period of contravention. Further, he used to seek authorization (MAF) from HP India on behalf of DD Enterprises (OP-2), Ascent (OP-3), Kaypee Enterprises (OP-4), Britex Enterprises (OP-5), and G R Enterprises (OP-8). He was a member of WhatsApp group namely 'Delhi GeM Group Chat' wherein incriminating messages regarding seeking support/cover bids of accounts held by them as MVC accounts were exchanged and in several such exchanges, he was involved. He was also a participant of WhatsApp Group namely 'DD_HP Sales' and admitted to coordinate with HP officials regarding various issues relating to GeM tenders and other issues arising from other resellers. Accordingly, the Commission finds him liable under Section 48(1) and 48(3) of the Act.
	Mr. Kuldeep Singh Nagpal	The Commission notes that during his deposition Mr. Kuldeep Singh stated to have

	Key Official	looked after day-to-day work of OP-3, and assisted Mr. Gurpreet Singh Nagpal in day-to-day business activities of OP-3. He was also a member of WhatsApp group namely 'Delhi GeM Group Chat' wherein incriminating messages regarding seeking support/cover bids of accounts held by them as MVC accounts were exchanged. Accordingly, the Commission finds him liable under Section 48(3) of the Act.
Perfect Innovative (OP-9)	Mr. Ajay Khandelwal Director	The Commission notes that Mr. Ajay Khandelwal, Director of OP-9, admitted to taking all the decisions for managing the business including decisions related to GeM tenders. The Commission further notes that he was a member of WhatsApp group namely 'Delhi GeM Group Chat', wherein incriminating messages regarding seeking support/cover bids of accounts held by them as MVC accounts were exchanged. Accordingly, the Commission finds Mr. Ajay Khandelwal liable under Section 48(1) and 48(3) of the Act.
Delphi (OP-14)	[redacted]	It was admitted by [redacted] during his deposition that, [redacted] was director of OP-14 and he assisted [redacted] in making final decisions with regard to bidding in GeM tenders. [redacted] also attended the meeting held on 14.05.2019. Accordingly, the Commission finds him liable under Section 48(1) and 48(3) of the Act.
	[redacted]	[redacted] was found indulging in seeking and submitting cover bids through WhatsApp messages exchanged with OP-11. He also stated to assist [redacted] in bidding in GeM tenders. Accordingly, the Commission finds him liable under Section 48(3) of the Act.

International Computer Resources (OP-16)	Mr. Rajeev Mohan Partner	The Commission notes that Mr. Rajeev Mohan was the final authority in taking decisions pertaining to final price and quantity bids for tenders both during pre and post - GeM period. The Commission also notes that Mr. Rajeev Mohan admitted to having attended the meeting which was held between HP India officials and Tier-2 resellers, and that he was a member of Delhi GeM WhatsApp group wherein discussions related to cover bid/support bid and particular govt. department being MVC account of a particular Tier 2 reseller used to take place between HP India and its Tier 2 resellers members. Mr. Rajeev was confronted with several WhatsApp messages including messages dated 13.12.2018 wherein he was seeking support for [redacted] Tender no. [redacted]. In view of the foregoing, the Commission finds Mr. Rajeev Mohan liable under Section 48(1) and 48(3) of the Act.
	Mr. Naresh Kohli Partner	The Commission notes that Mr. Naresh Kohli was a partner in OP-16, but was not a member of any WhatsApp groups where alleged discussions took place. The Commission also notes his submission that neither did he attend any meetings nor did he participate in any such discussions. No documentary, electronic, or oral evidence was discovered by the DG linking Mr. Kohli to any contravention of the provisions of the Act. The Commission also notes that Mr. Rajesh Mohan was the final authority regarding tender bidding decisions. Accordingly, the Commission does not find Mr. Naresh Kohli liable under either Section 48(1) or 48(3) of the Act.

Order

98. On the basis of investigation, submission of the parties and individuals and after considering all material available on record, the Commission finds that OP-1 to OP-17 have acted in contravention of provisions of Section 3(3)(d) read with Section

3(1) of the Act. Accordingly, the Commission, in terms of Section 27(a) of the Act, directs these contravening OPs and their respective officials who have been found liable in terms of provisions of Section 48 of the Act, to cease and desist in future from indulging in practices resulting in manipulation of GeM tenders including favoring MVC arrangement, indulgence in seeking, providing or facilitating cover/support bids, restrictions on issuance of MAF in furtherance of bid manipulation and discount control, as found in the present order to be in contravention of the provisions of the Act, as detailed hereinabove.

99. In terms of Section 27(b) of the Act, the Commission is empowered to impose appropriate penalty upon contravening OPs.

100. In determining the quantum of penalty, the Commission is required to consider factors such as the nature and gravity of the contravention, role and duration of role of the enterprise in orchestrating the contravening conduct, recourse to retaliatory measures on other enterprises to participate in contravention, duration of involvement, admission of contravention, extent of cooperation during the proceedings, nature of the industry, and any other factor deemed appropriate. The Commission also notes that in the instant matter, since the period of contravention relates to 2017-2020, accordingly, for the purpose of imposing penalty, the average turnover/income shall be calculated based on the turnover/income for the FYs 2017-18, 2018-19 and 2019-2020.

101. With respect to imposition of penalty and submissions regarding mitigating factors, OPs put forth their oral arguments at the time of final hearing. OPs requested to consider relevant turnover in India in light of principles laid down by the Hon'ble Supreme Court in *Excel Crop Care*. Some reseller OPs, placing reliance on *Excel Crop Care* matter, have contended that penalty ought to be computed only on the turnover arising from the allegedly tainted transactions conducted through the procurement platform in question, and not on their entire turnover from the relevant product category. It is also averred by the parties that pursuant to the amendment in

the year 2023 in Section 27 of the Act, the Commission ought not to consider the global turnover for imposition of penalty. In this regard, the Commission is cognisant of the rationale laid down in *Excel crop care* that penalty must bear nexus with the actual infringing product or service. Taking this principle into account, the Commission directed the OPs to file the turnover derived from the sale of Supplies Products. However, the OPs are stretching the principle to buyer or platform specific turnover *i.e.* revenue generated from GeM tenders or Government departments. In this regard, it must be noted that the purpose of imposition of penalty is not only to penalise anti-competitive conduct that has occurred but also to create sufficient deterrence for recurrence in future. Accordingly, the Commission is of the view that restricting turnover only to specific tenders undermines deterrence in cartel enforcement, particularly where enterprises systematically coordinate bidding behaviour across multiple procurements within a product segment. Accordingly, this contention of OPs, being devoid of merit, is rejected.

102. Therefore, the Commission, in line with the Turnover Regulations, 2024 and in terms of the principle laid down in *Excel Crop Care* matter, considers the relevant turnover from the sale of Supplies Products as per certificates submitted by the OPs for the purpose of imposition of penalty.

103. As per Section 27(b) of the Act, the Commission is empowered to impose such penalty, as it may deem fit which shall be not more than ten per cent of the average of the turnover or income, as the case may be, for the last three preceding FYs, upon each of such person or enterprise which is a party to anti-competitive agreement. Though in terms of *proviso* to Section 27(b) of the Act, the Commission, in case any agreement referred to in Section 3 of the Act has been entered into by a cartel, may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover or income, as the case may be, for each year of the continuance of such agreement, whichever is higher.

However, the Commission, considering the peculiar nature of cartel among resellers with OEM as the facilitator in the present matter, decides not to invoke the aforesaid *proviso* for the purpose of imposing the monetary penalty.

104. As per the Penalty Guidelines, for calculating average relevant turnover or average income, the Commission, subject to the facts and circumstances of each case, may consider a period of three years preceding the year in which the Investigation Report is received by the Commission or in appropriate cases, the Commission may consider three years preceding the period of contravention. In the instant matter, the DG has examined the conduct of parties with respect to GeM tenders pertaining to the period from 2017 to 2020. Also, post year 2020, some OPs discontinued the business of Supplies Products and some individuals were no longer serving with the OPs. Accordingly, the Commission considering the facts and circumstances of the instant matter, decides to take into account the average relevant turnover for the FYs 2017-18, 2018-2019 and 2019-2020 for the purpose of imposition of penalty.

105. Considering the prominent role played by HP India (OP-1) in the overall collusive arrangement with various resellers and the fact that OP-1 is the ultimate beneficiary of the overall arrangement, the Commission decides to impose a penalty @[redacted] percent upon OP-1 and its individuals as the basis for determination of penalty under Section 27(b) of the Act for contravening the provisions of Section 3(3)(d) read with Section 3(1) of the Act.

106. It has been contended by some reseller OPs that HP India played a central role in the alleged cartel activity, by allowing MAFs to selected resellers, to keep intact the MVC arrangement *etc*., and hence, being the orchestrator of the cartel arrangement, HP India should not be allowed any concessional treatment. Reliance is placed on competition law framework prevailing in the US and EU. In this regard, the Commission notes that the contention of the OPs is misplaced. A comprehensive overview of competition law framework in the US reveals that under the *Corporate Leniency Policy of U.S. Department of Justice (DOJ)*, a corporation cannot be

granted automatic immunity or total criminal immunity if it was the ringleader, instigator, or originator of the illegal activity, but such entity can apply for reduced penalties. Similarly, EU competition law also denies full/100 percent immunity to the entity if such entity coerced other undertakings in joining or staying in the cartel. In the instant matter, HP India came forward and was the first one to report and file for leniency before the Commission. Hence, it can be seen that globally while complete immunity/ reduction to such entities is not there, neither is there denial of incentive for such leniency applicant. It must be noted that before the filing of leniency application by HP India, there was no material available with the Commission or the DG to enable the Commission to form a *prima facie* view regarding existence of the alleged cartel conduct in the instant matter. In terms of the extant leniency framework, while determining the quantum of reduction in penalty, the Commission will give due regard to relevant factors such as stage of disclosure, nature of evidence provided, quality of information and facts and circumstance of the case.

107. Accordingly, considering the disclosures made by OP-1 which have enabled the Commission to form a *prima facie* opinion of existence of contravention of provisions of the Act, as well as the mitigating factors of admitting to the contravention, cooperation during investigation, first time contravention, nature and gravity of contravention, the Commission decides to grant a reduction in penalty [redacted] to OP-1 and its individuals found liable under provisions of Section 48 of the Act. The Commission notes that [redacted], has also been penalized for his role as MD in *Suo Moto* Case No. 07 of 2020 for similar conduct, based on his ITR for the same period *i.e.* 2017-2020 and accordingly, the Commission deems it fit to impose no separate penalty upon him in the present matter. Consequently, the penalty amount imposed and payable by OP-1 and its individuals are as under:

Table 5: Penalty over OP-1 and its individuals liable under Section 48 of the Act

Name of the OP and its individuals	2017-18	2018-19	2019-20	Average turnover	Penalty imposed	Penalty payable after reduction
HP India (INR Crore)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	11.98
[redacted] (INR Crores)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Nil
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	1,18,533
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	41,492
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	35,634
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	29,316
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	41,530
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	43,258
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	41,971
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	11,439
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	91,585
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	36,538
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	87,037
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	56,213

[redacted] **(INR)**	[redacted]					38,802
[redacted] **(INR)**	[redacted]					14,102
[redacted] **(INR)**	[redacted]					89,662
[redacted] **(INR)**	[redacted]			[redacted]		42,541
[redacted] **(INR)**	[redacted]					29,051
Manoj Grover **(INR)**	[redacted]					79,646

108. With regard to Mr. Manoj Grover, the Commission observes that during the course of employment with OP-1, he was engaged in the anti-competitive conduct as discussed above. However, the Commission also takes into account the fact that Mr. Manoj Grover came forward for filing individual application for lesser penalty, reporting the conduct of OP-1 to the Commission. Accordingly, considering the above, besides the reduction applicable to Mr. Grover in the capacity of the individual of HP India, the Commission considers his case with more leniency and accordingly decides to grant a further reduction in penalty @100% on the penalty computed above. as individual of OP-1. The Commission also notes the averment of Mr. Grover that after being terminated by OP-1, he is unemployed since 2020. Accordingly, the penalty imposed and payable by Mr. Manoj Grover of HP India is as under:

Table 6: Penalty over Manoj Grover of OP-1

Name of individual	**Penalty imposed**	**Further reduction**	**Penalty payable after reduction**
Manoj Grover of OP-1	79,646	79,646	NIL

109. Further, the Commission notes that Tier-2 resellers *viz*. DD Enterprises (OP-2), Ascent (OP-3), Kaypee (OP-4), Britex (OP-5), Alankar Distributors (OP-6), Vijay Stationery Mart (OP-7), G.R Enterprises (OP-8), Perfect Innovative (OP-9),

Khandelwal Traders (OP-10), A Square (OP-11), Innovative Solutions (OP-12), Pioneer Enterprises (OP-13), ICR (OP-16) and Arms Peripheral (OP-17) engaged in the conduct of seeking and/or providing support bids for retention of their designated MVC accounts, using sister concerns or among themselves to manipulate GeM tender process and requested OP-1 for selective issuance of MAF so as to prevent other resellers from participating the GeM tenders. Considering the nature and gravity of conduct of the resellers and period of contravention, the Commission decides to impose penalty @ [redacted] on these OPs and their respective individuals as the base penalty to be imposed upon the aforementioned OPs under Section 27(b) of the Act for contravening the provisions of Section 3(3)(d) read with Section 3(1) of the Act.

110. Further, considering the mitigating factors put forth by these resellers of being MSME, cooperation during investigation, no prior contravention *etc*., the Commission decides to impose penalty @ [redacted] upon OP-2 to OP-13, OP-16 and OP-17, including their individuals, found liable under provisions of Section 48 of the Act. Accordingly, the penalty imposed and payable by the aforesaid OPs and their individuals is as under:

Table 7: Penalty over OP-2 to OP-13, OP-16, OP-17 and their individuals

(Figures in INR)

OP No.	Name of the OP	2017-18	2018-19	2019-20	Average turnover	Penalty imposed
2	DD Enterprises	[redacted]				77,25,747
3	Ascent Information	[redacted]				7,59,596
	Gurpreet Singh Nagpal	[redacted]				34,381

	Kuldeep Singh Nagpal	[redacted]				1,44,910
4	Kay Pee Enterprises	[redacted]				21,94,282
5	Britex Enterprises	[redacted]				1,73,840
6	Alankar Distrubutor	[redacted]				12,27,607
7	VSM	[redacted]				15,72,199
8	G R Enterprises	[redacted]				2,81,946
9	Perfect Innovative	[redacted]				13,79,801
	Mr. Ajay Khandelwal	[redacted]				18,345
10	Khandelwal Traders	[redacted]				2,57,439
11	A Square	[redacted]		[redacted]		5,60,912
12	Innovative Solutions	[redacted]				48,462
13	Pioneer Enterprises	[redacted]				17,73,040
16	ICR	5,76,27,648	5,59,02,492	6,58,34,421	5,97,88,187	17,93,646
	Mr. Rajeev Mohan	[redacted]				35,138
17	Arms Peripherals	[redacted]				15,50,984

111. With respect to Delphi (OP-14), the Commission notes that it was not part of the WhatsApp group which was used by the aforementioned resellers for coordinating bids and also its official [redacted], opposed the MVC arrangement during the meeting held on 14.05.2019. Similarly, regarding Shakti Marketing (OP-15), the

Commission notes that it was involved in seeking cover bids in respect of GeM tenders but also notes that OP-15 participated in tenders against HP India's directives issued in context of MVC and discount arrangements. In view of the foregoing, the Commission decides to impose a penalty @ [redacted] on OP-14 including its individuals and OP-15 as the base penalty under Section 27(b) of the Act for contravening the provisions of Section 3(3)(d) read with Section 3(1) of the Act.

112. Further, considering the mitigating factors put forth by OP-14 and OP-15 of being MSME (OP-14), cooperation during investigation, no prior contravention *etc*., the Commission decides to impose penalty @ [redacted] upon OP-14, including its individuals found liable under provisions of Section 48 of the Act and OP-15. The Commission notes that [redacted] have also been penalized for their respective roles in *Suo Moto* Case No. 07 of 2020 for similar conduct, based on their ITRs for the same period *i.e.* 2017-2020 and accordingly, the Commission deems it fit to impose no separate penalty upon them in the present matter. Accordingly, the penalty imposed and payable by OP-14, its individuals and OP-15 are as under:

Table 8: Penalty over OP-14, its individuals and OP-15

(Figures in INR)

OP No.	Name of the OP	2017-18	2018-19	2019-20	Average turnover	Penalty imposed
14	Delphi	[redacted]				2,44,337
	[redacted]	[redacted]				NIL
	[redacted]	[redacted]				NIL
15	Shakti Marketing	5,02,74,966	9,20,53,048	7,06,42,843	7,09,90,286	14,19,806

113. Accordingly, the Commission directs the OPs and the respective individuals to deposit their respective penalty amount as detailed above, within sixty (60) days of the receipt of this order.

114. The Commission, in terms of Section 27(g) of the Act, also directs the contravening OPs to organise a competition compliance training in order to spread awareness about competition laws and to promote a culture of competition compliance within their organisation and submit a compliance report within a period of sixty (60) days from the date of receipt of this order.

115. Before parting with the order, the Commission deems it appropriate to deal with the request of the parties seeking confidentiality over certain documents/information filed by them under Regulation 36 of the General Regulations, 2024. Considering the grounds given by the parties for the grant of confidential treatment, the Commission grants confidentiality to such documents / data / information in terms of Regulation 36 of the General Regulations, 2024, subject to Section 57 of the Act, for a period of three years from the date of passing of this order. It is however made clear that nothing disclosed in the public version of this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used and disclosed for purposes of the Act in terms of the provisions contained in Section 57 thereof. Accordingly, the Commission directs that two versions of the present order may be issued *i.e.,* public version shall be served upon all the OPs and a confidential version shall be shared with the OPs in the confidentiality ring through members of the confidentiality ring. The public version of the order shall be prepared keeping in mind the confidentiality requests and the provisions of Section 57 of the Act read with Regulation 36 of the General Regulations 2024. For convenience, it is directed that the confidential version of this order may be provided to such ring members/ individuals through one of the ring members, who may then share the same with the other ring members nominated by the OP. OP-1, OP-3, OP-9, OP-14 and OP-16 are directed to serve a copy of the confidential version of this order upon their respective individuals upon whom penalty has been imposed for the purpose of compliance of this order.

116. Any pending application(s) filed by the parties shall be deemed to be disposed of in light of the above order.

117. The Secretary is directed to forward a copy of this order to the OPs and their respective individuals in terms of provisions of the Act.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi
Dated: 13/07/2026