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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 41 of 2023

In Re:

Vijay Halder

S/o Bhushan Halder R/o 62, Ganesh Nagar-2,
Shakarpur, East Delhi, Delhi-110092

Informant

And

Chetan

Opposite Party No. 1

Ramesh

(1) 10735 Andha Mughal, Gali No. 12,
Pratap Nagar, Delhi-110007
(2) AC Surgipharma Pvt. Ltd.,
Office No. C 13/1 Basement Block C,
Wazirpur Industrial Area.

Opposite Party No. 2

Sandeep Gupta

68 Khaibar Pass

Opposite Party No. 3

Lakhvinder Singh (Nova Pharma)

684, Block A, Mayapuri Industrial Area Phase 1,
Mayapuri, New Delhi-110064.

Opposite Party No. 4

Rajan Shukhija (Hospimax Care Pvt. Ltd.)

109, First Floor, DDA Building No. 5, District Centre,
Janakpuri, Delhi.

Opposite Party No. 5

Deputy Medical Commissioner, ESIC

Panchdeep Bhavan, Comrade Indrajeet Gupta (CIG) Marg,
New Delhi- 110002.

Opposite Party No. 6



CORAM:

Ms. Ravneet Kaur

Chairperson

Mr. Anil Agrawal

Member

Ms. Sweta Kakkad

Member

Mr. Deepak Anurag

Member

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

1. The present Information has been filed by Mr. Vijay Halder (**'Informant'**) under Section 19(1)(a) of the Competition Act, 2002 (**'the Act'**) against five individuals namely Mr. Ramesh, Mr. Chetan, Mr. Sandeep Gupta, Mr. Lakhwinder Singh (Nova Pharma) and Mr. Rajan Sukhija (Hospimax Health Care Pvt. Ltd.) and Deputy Medical Commissioner, Employees' State Insurance Corporation (**'ESIC'**), alleging cartelization in respect of procurement of medicines by ESIC, in contravention of provisions of Section 3(3) of the Act. The Informant has also alleged contravention of Section 3(3) of the Act by the Commissioner ESIC, the Secretary, Ministry of Labour and Employment, and 29 pharmaceutical companies, but has not specifically arrayed them as opposite parties in the format prescribed for filing of information.
2. The Informant is stated to be an individual residing in Delhi.
3. It is stated in the information that ESIC is a multifaceted social security scheme designed to provide socio-economic protection to employees working in organised sector by way of providing healthcare. To discharge aforesaid function, ESIC procures



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medicines for its huge infrastructure of 144 hospitals, 42 hospitals annexed, 1753 panel of clinics, 795 branch offices and 51 regional and sub-divisional offices in India from its central headquarters situated in Delhi through e-tendering procedure.

4. The Informant has alleged that there is cartel arrangement among five individuals (OP-1 to OP-5), officials of ESIC and 29 drug manufacturing companies through their directors/representatives/employees and other departments directly/indirectly involved in the tendering procedure. Due to such cartel arrangement, the prices of the medicines and health care products are inflated in the procurements made by such departments.
5. The Informant further stated that it is never clear that who decides the guidelines along with the rate structure and under whose supervision the policy/rate structure is decided *etc.* but under influence of this alleged cartel, the guidelines and contract terms of the tender are drafted to facilitate award of tenders at over-priced structure.
6. The Informant has further stated that due to such collusive practice, there is over-pricing to the tune of approximately 40% in comparison to the cost. Since, the annual value of such contracts is approximately 1000 crores, consequently, there is direct loss of 40% amounting to approximately 400 crores per year, due to such connivance of these opposite parties. The same may be considered as 'commission' amount under these cartels who indulge with these companies in order to get the final tender at huge over-valuations.
7. It is further stated that other government bodies also take the ESIC prices as a benchmark for their respective procurements. As per the Informant, malpractice adopted by the opposite parties has not only resulted in huge loss of public money to the government but has also made it difficult for a common man to purchase such medicines even though he is not entitled/enrolled for ESIC scheme.
8. The Informant has prayed for (a) to conduct an immediate enquiry against the masterminds and above stated agencies/companies involved in this, directly or indirectly; (b) to immediately cancel all allocation of tenders given to these companies;



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- (c) to appoint an investigation agency to extract emails, phones, messages of Mr. Ramesh and Mr. Chetan in order to get a clear picture of their association with the officials of government department(s) helping them to get these tenders sanctioned at over price; and (d) to form a Committee to redecide pricings of needful healthcare or related items and a fresh open bidding system may be allowed under the supervision of this Commission.
9. The Informant has also prayed for grant of interim relief, *inter alia*, in the form of initiating enquiry into cartel, cancellation of tender allotted, appointment of monitoring committee for transparency of tendering procedure, investigation of alleged drug cartel masterminds, framing of new guidelines for better pricing.
 10. The Commission considered the Information in its ordinary meeting held on 01.05.2024 and noted that the Informant has not provided sufficient details/ material to enable the Commission to examine the matter. Accordingly, the Commission decided to give an opportunity to the Informant to file the following details within three (03) weeks' time from the date of receipt of the order: (a) details of the person(s) and/ or enterprise(s) who were alleged to have indulged in the alleged anti-competitive conduct and need to be arrayed as opposite parties, (b) details of the specific tender(s) in which alleged cartelisation has taken place; and (c) other relevant details, if any. Despite service of the aforesaid order, no response was received from the Informant within the stipulated period.
 11. Thereafter, the Commission considered the matter in its ordinary meeting held on 19.06.2024 and decided to grant one last opportunity to the Informant to file the requisite details as mentioned in para 10 above, latest within fifteen (15) days from the date of receipt of the order. However, again, no response was received from the Informant despite service of order dated 19.06.2024.
 12. The Commission next considered the matter in its ordinary meeting held on 31.07.2024 and decided to pass an appropriate order in due course.



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13. In the absence of response from the Informant, the Commission decided to proceed in the matter based on material available on record.
14. At the outset, the Commission notes that the Informant appears to be alleging existence of a cartel arrangement amongst certain individuals, probably belonging to certain pharma companies and officials of ESIC/ related government department in respect of procurement of medicines and healthcare products by ESIC through e-procurement system purportedly resulting in procurement at inflated prices causing loss to public exchequer at large on one hand and increasing cost of healthcare for common man on the other.
15. The Commission further notes that in support of its allegations, the Informant has only provided an unspecified document/paper comparing the price of a dressing product - Plaster of Paris Bandage ('POP Bandage') in some 'J&K purchase order' with the purported 'ESIC purchase price'. From the same, it is noted that the price of 10cm x 2.7mtrs POP bandage in J&K purchase order is ₹20.16 rupees per unit; however, rate for the same in ESIC purchase order document is ₹405 for 10 rolls *i.e.* ₹40.50 per roll. From the publicly available information, it is noted that the price of POP Bandage of dimension 10cm x 2.7mtrs was ₹36 per unit for a minimum quantity of 144 units.
16. The Commission observes that there are numerous medicines and medical/healthcare products which are procured by ESIC and other government bodies. The Informant has not provided details of tenders/ medicines/ parties involved in the alleged conduct. Apart from making bald allegations, the Informant has not placed on record any cogent material to enable the Commission to examine the matter. Rather, the Informant failed to provide the requisite information in spite of being accorded two opportunities.
17. In the facts and circumstances of the present case, the Commission finds that no *prima facie* case of contravention of the provisions of Section 3(3) of the Act is made out against any of the OPs in the instant matter. Accordingly, the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises and the said request is rejected.

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

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

Place: New Delhi

Date 09/08/2024