



COMPETITION COMMISSION OF INDIA

Case No. 38 of 2023

In Re:

Harish Kumar

A-62/1 Phase 1, Bannuval Nagar,
Behind Ramdev Ashram,
Pilibhit Bypass Road,
Bareilly 243005

Informant

And

M/s S B Telecommunication

618, EA 5/113, Madhobari, Bareilly 243005 (UP)

Also at:

31 Haziypur near Model Town
Police Chowki Bareilly, UP 243005

Opposite Party No. 1

M/s Indulge Sign & Graphics

D-96, Okhla Industrial Area, Phase- I
New Delhi 110020

Opposite Party No. 2

M/s Adtek Print & Media Pvt Ltd.

235, Janakpuri, Bareilly,
Uttar Pradesh 243001

Opposite Party No. 3

Bareilly Nagar Nigam

through Commissioner/Secretary,
Nagar Nigam, Bareilly
Opp. Bareilly College, Bareilly Civil Lines,
Uttar Pradesh 243001

Opposite Party No. 4

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. Harish Kumar, (**'Informant'**) under Section 19(1)(a) of the Competition Act, 2002 (**'Act'**) alleging contravention of Section 3(3)(d) read with Section 3 (1) of the Act by M/s S B Telecommunication (**'OP-1'**), M/s Indulge Sign & Graphics (**'OP-2'**), M/s Adtek Print & Media Pvt. Ltd. (**'OP-3'**) and Bareilly Nagar Nigam (**'OP-4'**), (hereinafter, OP-1 to OP-3 are collectively referred to as the **'Opposite Parties/OPs'**).

Facts and allegations as stated in the Information

2. The Informant is engaged in the business of advertisement and publicity and is a registered vendor of OP-4.
3. According to the Informant, on 28.03.2022, OP-4 published an advertisement in local newspapers for registration/renewal, of advertisement agencies who wished to work with OP-4. The last date of submission of applications for registration alongwith registration fee as ₹50,000/- and Earnest Money Deposit (**'EMD'**) as ₹2,00,000/- was 15.04.2022. The said date to deposit the EMD was further extended to 20.04.2022 for those agencies who had submitted their registration application and financial documents on or before 15.04.2022 but were unable to deposit the EMD by the given date *i.e.* 15.04.2022. About 28 advertisement agencies applied for the said registration by due date *i.e.* 15.04.2022.
4. Thereafter, e-tender Invitation Notice was published by OP-4 in newspapers on 05.05.2022. The said tender was issued for the allotment of unipole/single pole/cantilever/advertisement space at different places under the jurisdiction of OP-4 for the purpose of advertising. As per certain tender conditions, only those agencies which were registered with OP-4 and with turnover exceeding ₹20 crores, could participate in the tender process. Based on this turnover criteria, out of all agencies, only OP-3 was found to be eligible. The Informant had alleged that the terms and conditions were not in consonance with the provisions of the Act as these had been fixed by OP-4 to favour a particular company and preclude others.



5. Further, the Informant has alleged that OP-4 without giving any notice in any newspaper or communication to the public, reduced the turnover criteria from ₹20 crores to ₹9.5 crores and uploaded this information on the tender portal/OP-4's website on 18.05.2022. The last date of uploading of tender was extended from 20.05.2022 to 22.05.2022. As per the Informant, in case of any change in tender conditions, a new tender ought to have been floated. Thus, the change in turnover criteria was a violation of the Act and of vigilance guidelines.
6. The Informant has also alleged that both OP-1, engaged in the distribution of ITC and Cadbury products and OP-2, engaged in the provision of advertising services, provided the EMDs in the form of Fixed Deposit Receipt ('FDR') only on 21.05.2022. However, they were given registration by OP-4 on 04.05.2022, after the due dates *i.e.* 15.04.2022 and 20.04.2022.
7. It is alleged that OP-1 and OP-2 are dummy/associated firms of OP-3. Only 3 firms who were associated with each other participated in tender. For example, directors/partner of OP-3 and OP-1 were also directors in M/s Shree Divtatv Wellness Pvt. Ltd. Further, the workplace and head office address of M/s Shree Divtatv Wellness Pvt. Ltd. and OP-2 are the same.
8. According to the Informant, backdated registration was given by OP-4 to OP-1 and OP-2 which are associated concerns of OP-3, in connivance with them. This was done by OP-4 in haste, to accommodate the preferred firms (OP-1 to OP-3). As a result, only 3 firms participated in the tender process. It was alleged that OP-4's officials were also involved in bid rigging. They floated the tender for the benefit of the OPs who were all associated with each other. OP-4's officials advertised the tender in a manner that only these OPs could fulfil the required terms & conditions of the tender process and also changed these terms & conditions for the benefit of the said OPs. Hence, all the OPs indulged in bid rigging.
9. Thereafter, on 28.05.2022 the tender was awarded to OP-3. As per tender conditions, the party to whom the tender was awarded, was required to deposit 10% as EMD and 50% of the tender amount within 15 days. However, these amounts were deposited only by the end of July 2022 *i.e.* after almost 75 days.



10. It was also alleged that OP-1 had submitted a bid of ₹4,11,12,121/-. However, it had not paid ₹50,000/- required for registration before the due date as can be seen from the date of the FDR. The Informant had also stated that the information relating to bid price of other bidders in the said tender, may be obtained from OP-4.
11. The Informant has also stated that tenders published on the website by OP-4 or any such organisation, gets reflected in the column “TENDERS” and remains available on the site. OP-4 also keeps its tenders on its home page under the sub-heading “TENDERS”, where “Tenders of Nagar Nigam Bareilly” can be accessed. However, it was found by the Informant that while all tenders from 16.08.2014 to 23.09.2022 were displayed with download facility, no information was available relating to the advertisement dated 05.05.2022. This, allegedly, shows ulterior motive and suppression of facts to the public at large.
12. Thus, the Informant has prayed that the case be sent for investigation in terms of Section 3(3)(d) read with Section 3(1) of the Act. Further, the role of the directors and officers of OP-1 to OP-3 be investigated under the provision of section 48(1) and 48(2) of the Act as they were engaged in anti-competitive practices under Section 3(3)(d) of the Act. Accordingly, the Informant has prayed to the Commission for passing a cease-and-desist order with penalty in terms of Section 27 of the Act. The Informant has further prayed that since it has incurred irreparable loss due to the anticompetitive conduct of the OPs, the Commission may grant it interim relief under Section 33 of the Act.
13. *Vide* order dated 08.05.2024, the Commission decided to seek response of OP-4 on the Information filed by the Informant alongwith its response on the following:
- 1.1. Name of agencies which applied for registration/renewal in response to advertisement notice dated 28.03.2022 alongwith their date of applications, date of security deposit/EMD, turnover details and their dates of registration.
 - 1.2. Name of all the registered agencies as on 05.05.2022 (date of e-tender publication), with their turnover details.
 - 1.3. Provide the information related to Bid prices/date and timings of the bids/IP addresses of all the bidders who participated in the e-tender alongwith their complete e-tender FDR details with dates.



1.4. Any other relevant information.

14. OP-4 filed an application dated 14.06.2024 seeking extension of time for filing its response. The Commission in its ordinary meeting held on 26.06.2024 granted extension of time to OP-4. Thereafter, OP-4 filed its reply dated 19.08.2024. On 25.09.2024, the Commission decided to pass an appropriate order in due course.

Observations and analysis of the Commission

15. The Commission perused the reply filed by OP-4 alongwith the Information filed by the Informant and notes that OP-4 in its response, *inter alia*, submitted the bidding information pertaining to OPs 1-3 which is tabulated as under:

S.No.	Bidder Name	Bid Offer (Rs.)	Date and Time of Bid
1.	SB Telecommunications (OP-1)	4,03,01,000/-	22.05.2022 06:44 PM
2.	Indulge Sign and Graphics (OP-2)	4,05,02,000/-	22.05.2022 07:20 PM
3.	Adtek Print and Media Pvt Ltd. (OP-3)	4,11,12,121/-	22.05.2022 11:48 PM

16. The Commission notes from the response of OP-4, that 28 firms applied for registration in response to advertisement dated 28.03.2022. The applications were largely submitted during the period between 19.04.2022 and 20.04.2022. OP-4 further stated that out of 28 firms which applied for registration, 25 firms got registered and registration of 3 firms got cancelled due to non-payment of fees as per the advertisement dated 28.03.2022. OP-4 referred to tender condition no. 5 and stated that only those firms which had a turnover of Rs. 20 crores in any one year of the last 3 years could participate in the tender process. On perusal of the response submitted by OP-4 (turnover figures of all 28 firms which applied for registration), the Commission observed that OP-1 to OP-3 were eligible to participate in the tender process.

17. OP-4 further stated that the firms gave their applications on 20.04.2022 by personally visiting the office of OP-4 and submitted their applications by hand alongwith their respective cheques/EMD/FDR deposits. Thereafter, OP-4 had to follow its internal



procedure for scrutiny and clearing of cheques/FDR/EMD deposits. It also needed to get approval from the Municipal Commissioner to get these firms registered. All this took some time and only after the Commissioner gave approval on 04.05.2022 for registering 25 firms, these firms could get their registration certificate on 10.05.2022 and 12.05.2022. Therefore, on 05.05.2022, all the eligible firms were undergoing process of registration and got their registration certificates only on 10.05.2022 and 12.05.2022. It also submitted that even the Informant submitted his registration application on 19.04.2022 along with FDR/ EMD *vide* no. 645272 and got his registration certificate on 10.05.2022. OP-4 added that, as per the e-tender invitation notice, it was categorically mentioned that all registered firms with OP-4 may apply for Tender but it was nowhere mentioned that only those firms can apply for tender that are registered till 20.04.2022.

18. The Informant in para 6 of the Information had stated that though OP-1 and OP-2 had provided the EMD on 21.05.2022 they were given registration by OP-4 on 04.05.2022 which was beyond the due dates of getting registration *i.e.*, 15.04.2022 and 20.04.2022. In its response, OP -4 has submitted that OP-1 and OP-2 had provided the EMD deposit in the form of FDR on 14.04.2022 and 13.04.2022 respectively and not on 21.05.2022. OP-1 and OP-2 were given registration on 12.05.2022 and 10.05.2022 after getting approval from the Municipal Commissioner of OP-4 on 04.05.2022. OP-4 further submitted that the tender was to be opened on 23.05.2022. So, the two firms *i.e.* OP-1 and OP-2 got their registration done within time and prior to the closing date of e-tender and hence, the question of giving the registration to these firms beyond due date does not arise at all.

19. OP-4 denied that OP-1 and OP-2 are dummy and associated firms of OP-3 for want of knowledge and stated that it had issued a public tender and not to the firms in question. Further, it allotted the tender to OP-3 only after going through the eligibility as well as considering the highest bid made by OP-3 in the entire e-tender process. The allotment of tender process was transparent as well as in consonance with the bye-laws and terms and conditions of the tender. Further, M/s Divtatv Welness Pvt. Ltd. has no concern with the tender process nor it has got itself registered or participated in the e-tender process. This allegation of links is an afterthought of the Informant. OP-4 further stated



that in the said tender process it earned income more than the previously issued tender. As per OP-4, the criteria of ₹20 crores was slashed to ₹9.5 crores to make competition healthy.

20. OP-4 submitted that, earlier the last date to submit the tender was 20.05.2022 and later on, it was extended to 22.05.2022 and there was no violation of any guidelines and bye-laws while extending the last date of submission of tender because it was clearly mentioned in the e-tender invitation notice dated 05.05.2022 that in case of any changes, amendment and additional information, the same will be uploaded on the official website of OP-4 i.e. www.nagarnigambareilly.com, which was published in two newspapers i.e. Amar Ujala and Dainik Bhaskar. Therefore, OP-4 has not violated any terms and conditions of the tender and the entire tender process was conducted as per rules and regulations. Moreover, if there were any violation of terms and conditions in the tender process on the part of OP-4, the Informant would have raised this objection at that time and not at a belated stage. OP-4 added that due to technical issues it was only available to and seen by the parties who applied for the tender.
21. OP-4 stated that OP-3 had deposited the entire amount by 28.06.2022. The work order was issued by OP-4 on 15.06.2022 and accordingly OP-3 was directed to deposit 50 % of Tender amount within 15 days from the date of work order. Thus, there was no delay in the deposit of the amount as per OP-4.
22. The Commission notes that OP-4 as a procurer has replied to the allegations made by the Informant, as briefly discussed above, concerning the tender process and is of the view that the allegations are misconceived and a *prima facie* case is not made out under the provisions of Section 3(3) of the Act which may merit an investigation into the matter. Further, the Commission is also of the view that setting tender terms and conditions is largely within the domain of the procurer and generally does not call for any interference within the provisions of the Act.
23. In light of the above, the Commission directs that the matter be closed forthwith under 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 same is also rejected.



24. The Secretary is directed to communicate the decision of the Commission to the Informant and OP-4, accordingly.

**Sd/-
(Rayneet Kaur)
Chairperson**

**Sd/-
(Anil Agrawal)
Member**

**Sd/-
(Sweta Kakkad)
Member**

**Sd/-
(Deepak Anurag)
Member**

**New Delhi
Date: 11/11/2024**