



COMPETITION COMMISSION OF INDIA

Case No. 18 of 2023

In Re:

XYZ

Informant

And

The PCMM, Integral Coach Factory

Opposite Party No. 1

Integral Coach Factory (ICF), Chennai – 600 038.

Super Steels

Opposite Party No. 2

C-17 Ind. Area, Phase -1, Mohali.

Alvind Industries

Opposite Party No. 3

212 Ind. Area, Phase -1, Chandigarh.

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 the Informant under Section 19(1)(a) of the Competition Act, 2002 (the ‘Act’) against the PCMM, Integral Coach Factory (‘OP-1’), Super Steels (‘OP-2’) and Alvind Industries (‘OP-3’), (collectively referred to as the ‘OPs’), alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.



सत्यमेव जयते



2. The Informant has also filed an application seeking confidentiality over its identity under provisions of Section 57 of the Act read with Regulation 35 of the Competition Commission of India (General) Regulations, 2009 ('GR').
3. The Informant has stated that OP-1 had published a Tender bearing no. 03220150 dated 06.02.2023 for procurement of 1811 nos. of 'Lower Spring Beam with vertical brackets PL No 31036065' for 453 coach sets ('Impugned Tender'). The Eligibility Criteria ('EC') mentioned therein was as follows:

"...For Regular Order: Approved vendors in ICF/RCF/MCF vendor directory for the tendered item. In case of differences in approval status of the firm between the PUs, then higher approval status will be considered.

(OR)

Bulk procurement will be made from the firms who have supplied the tendered item (or) similar item individually (Similar item means :1) Bogie frame complete for motor coaches of EMU/MEMU (BT electrics) drg. No. 57403001; 2) Bogie frame complete for 1600 hp DEMU. motor coaches of EMU/MEMU (Medha / BHEL electrics) drg. No. 53103001- PL 3103 0373; 3) Bogie frame complete for motor coaches of EMU/MEMU (Medha electrics) - drg. No. 61703001- PL 3103 2611; 4) Bogie frame complete for trailer coaches of EMU/MEMU - drg. No. 37503001 - PL 3103 6119; 5) Bogie frame complete for 1400 hp DEMU/DPC - drg. No.32403013; 6) Bogie bolster complete for EMU coaches - drg. No. 32404001, 37404001 - PL No.3104 0081; 7) Bogie bolster complete for MEMU - drg. No. 32904001 - PL No. 3004 0231; 8) Bogie frame for non-AC LHB coaches drg. No. 66703001 - PL No. 3370 0084; 9) Bogie frame for SLR/ Power LHB coaches - drg. No. 83403001, 83403002; 10) Bogie frame for LHB coaches (coil spring in secondary) - drg. No.45503001- PL No. 3350 9736; 11) Bogie frame for LHB power car - drg. No. 53803001; 12) Bogie bolster for LHB coaches - drg. No.45504008 -3399 3348; 13) Bogie bolster for LHB coaches - drg. No. 66704001 - 3399 6817) (or) as components of kits assemblies, to ICF/ RCF/ MCF to the extent of 20% of the tendered quantity against a single regular/bulk purchase order

OR

35% of the tendered quantity against multiple purchase order during the last three previous financial years and the current financial year upto the date of opening of tender.



In addition to fulfilling the requirement of bulk order as mentioned above, firm should have supplied minimum 50 coach sets (200 nos) of same/similar item in past to ICF/RCF/MCF for consideration of placement of bulk order.

Documents to be submitted: Firm has to submit summary statement of past supply performance of same/similar items duly indicating PO details, item description, quantity and date of supply duly enclosing the proof of supply to ICF/MCF/RCF in the form of PO copies along with Inspection Certificate/R-Notes. In case firm has supplied tendered items as a component of Kits/Assemblies, then the firm should attach evidence to prove that supplied Kits/Assemblies includes tendered item & quantity thereof and was manufactured by the tenderer itself and was not outsourced.

Note: The sources approved under bulk category/regular ordering for item id 2300037 of Lower Spring Beam (ICF) in United Vendor Approval Module as on date of tender opening shall only be considered for placement of bulk order. The tenderers who are on the approved list of the item id as above as on date of tender opening need not submit any other document in support of their performance, equipment & quality control and financial stability. ICF reserves the right to utilize the Performance Records, if readily available with it..."

4. The Informant has stated that the aforesaid EC sought to place order on those vendors:
 - a. who are in the approved list of the Unified Vendor Approval Module ('UVAM') for item identity 2300037 on the date of tender opening; OR
 - b. who have supplied 20% of tendered quantity i.e., 363 or more nos. against single regular/bulk order in past three years; OR
 - c. who have supplied 35% of tendered quantity i.e., 634 or more nos. against multiple orders in past three years.
 - d. In addition to fulfilling the requirement of bulk order as mentioned in b & c above, should have supplied minimum 200 nos. in last three years.
5. The Informant has averred that in the UVAM, under the item lower spring beam PL No. 30054205 and 31036065 bearing identity 2300037, there were only five approved sources as on date of the Impugned Tender opening viz., (a) Pennar Industries Limited; (b) Nanda Engineering Works; (c) EC Blade and Tools Pvt. Ltd; (d) Alvind Industries; and (e) Super Steels.



6. The Informant has alleged that *vis-à-vis* the Railway Board guidelines of a minimum five active vendors in tenders, only two sources were active here. Performance and participation criteria were not applicable on the three non-active but approved sources, consequently, effective competition was limited to two vendors only.
7. The Informant has further alleged that the EC ignores past bulk suppliers irrespective of their past performance and proven record but recognises approved sources irrespective of their non-performance and non-participation. Furthermore, it ignores Railway Board guidelines for weeding out of non-participating and non-performing vendors. It also ignores Railway Board guidelines for inclusion of past suppliers in approved vendor list.
8. The Informant has alleged that despite sudden increase in tendered quantity, EC even excludes regular/ bulk sources which is against the public policy laid down by the Manual for Procurement of Goods, 2022, Department of Expenditure, Ministry of Finance, Government of India and the policy laid down in various Government of India notifications.
9. The Informant has alleged that OP-2 and OP-3 have continuously been L1 and L2 respectively accepting counter offer rates of L1, amongst the approved sources, for last 6-7 years. Furthermore, careful examination of the previous quotations made by OP-2 and OP-3 will exhibit cartel pattern between them. The Informant has alleged that without cartel between them, it would have been impossible for OP-2 to remain L1 for so many years because OP-3 has been accepting rates of L1 without aspiring to become L1. In the Impugned Tender also, OP-2 had reduced its own offer by 14% and OP-3 had reduced its own offer by 27% without any substantial change in steel price index in that period. The cartel between them has always been ignored by OP-1 not only in the Impugned Tender but also in the previous tenders to keep competition out.
10. The Informant has alleged that the standard bid document of OP-1, *inter alia*, provides that offers from different tenderers submitted from the same IP address in a tender shall be treated as a suspected cartel and all such offers received from the same IP address will be summarily rejected except offers resulting in same IP address due to administrative reasons like technical/ networking issue at CRIS server and the decision of the Railway administration will be binding on all tenderers. As per the Informant, the



सत्यमेव जयते



said condition regarding suspected cartel due to same IP address restricts fair competition.

11. Making the aforesaid averments, the Informant has alleged that OP-2 and OP-3 are acting in collusion and submitting bids resulting in bid-rigging and cartelisation in contravention of provisions of Section 3 of the Act.
12. In support of its allegations of cartelisation amongst OP-2 and OP-3 in the Impugned Tender, the Informant has provided the financial bids received by OP-1 not only in the Impugned Tender, but also in past two tenders viz. Tender No. 03221028 dated 11.05.2022 and Tender No. 03211577 dated 12.10.2021.
13. Apart from the aforesaid, the Informant has also alleged that OP-1 has abused its dominant position by imposing restrictive EC for the Impugned Tender and supporting cartel formation by OP-2 and OP-3, in violation of Section 4(2)(a)(i) of the Act.
14. The Commission considered the Information filed in its ordinary meeting held on 15.11.2023, and decided to grant confidentiality upon the identity of the Informant in terms of Regulation 35(1) of the GR as requested. Further, directed the Informant to furnish certain additional information, supported with relevant documents, regarding the tenders issued by OP-1, partial information of which was submitted by the Informant vide e-mail dated 05.12.2023 (hard copy received on 08.01.2024).
15. Thereafter, the Commission considered the matter in its ordinary meeting held on 08.05.2024 and decided to pass an appropriate order in due course.
16. The Commission at the outset notes that tender-wise details of various bidders in different categories viz. approved, developmental, bulk, regular etc. has not been provided by the Informant. The Informant has however, furnished a tabulation of previous year tenders mentioning their tender numbers, PO, quantity ordered, price per unit and vendor name on whom the order has been placed to the extent available with him. The Informant has also stated that “*There had not been any reverse auction in these tenders.*”
17. Details of the financial bids received in the said three tenders are tabulated as under based on the information received from the Informant:

Table 1: Bid Details of Impugned Tender No. 03220150

Date of Tender Opening: 06.02.2023 Quantity: 1811 Value: INR 2,67,84,907



सत्यमेव जयते



Position	Participant Vendor/ Bidder	Bid Price (INR)	Quantity awarded	Award rate (INR)
L1	Aditya Techno Fab Engineering - Dhar	14790.00	0	N.A.
L2	P D Automotives - Mandi	15989.00	0	N.A.
L3	Raj Engineering Corporation - Kanpur	16887.00	0	N.A.
L4	SKM Industries - Umbergaon, Valsad	17629.00	0	N.A.
L5	P D Autos - Mandi Gobindgarh	17744.00	0	N.A.
L6	I R G Fabrication - Chennai	18244.00	0	N.A.
L7	Global Engineering and Process - Chennai	18879.00	0	N.A.
L8	Universal Engineers Chennai Pvt. Ltd. - Chennai	19899.00	0	N.A.
L9	Super Steels - Mohali	20060.00	1268	17690.12
L10	Raunaq Engineering Pvt. Ltd. - Pune	21594.00	0	N.A.
L11	Kartikeya Industries Pvt. Ltd. - Hyderabad	21983.00	0	N.A.
L12	Alvind Industries - Chandigarh	22148.00	543	17690.12
L13	Raizan Steel Engineering Pvt. Ltd. - Pune	23364.00	0	N.A.
L14	Mekins Industries Pvt. Ltd. - Hyderabad	24308.00	0	N.A.
L15	Nanda Engineering Works - Bhilai	28320.00	0	N.A.
L16	Bharat Industries- Sangrur	29500.00	0	N.A.
L17	Bethal Engineering Industries - Kancheepuram	31715.00	0	N.A.
L18	Plasto Power Engineers - Sangrur	34810.00	0	N.A.
L19	Agartta Global Engineering LLP - Kanpur	36899.00	0	N.A.

Table 2: Bid Details of Tender No. 03221028

Date of Tender Opening: 11.05.2022 Quantity: 545 Value: INR 73,95,650

Position	Participant Vendor/ Bidder	Bid Price (INR)	Quantity awarded	Award rate (INR)
L1	Raizan Steel Engineering Pvt. Ltd. - Pune	13570.00	0	N.A.
L2	Laimer Engineering - Thiruvallur	17010.55	0	N.A.
L3	Laimer Engineering - Thiruvallur	17166.35	0	N.A.
L4	P D Automotives - Mandi	18337.20	0	N.A.
L5	P D Autos - Mandi Gobindgarh	18927.20	316	18927.20
L6	Thanuvan Enterprises - Chennai	19951.76	0	N.A.
L7	Pranav Engineering - Chennai	20536.84	0	N.A.
L8	Kane - Panchkula	20549.70	0	N.A.
L9	I R G Fabrication - Chennai	20926.90	0	N.A.
L10	GK Sons Engg. Enterprises Pvt. Ltd. - Tiruchy	21210.02	0	N.A.
L11	P. K. Metal Casting - Bhopal	22066.00	0	N.A.
L12	Super Steels - Mohali	22167.48	N.A.	N.A.



Position	Participant Vendor/ Bidder	Bid Price (INR)	Quantity awarded	Award rate (INR)
L13	Alvind Industries - Chandigarh	22178.10	N.A.	N.A.
L14	SKM Industries - Umbergaon, Valsad	22656.00	0	N.A.
L15	Vaani Precision Industries - Panchkula	25606.00	0	N.A.
L16	Nanda Engineering Works - Bhilai	25842.00	0	N.A.
L17	Ganeh Auto - Pune	29500.00	0	N.A.
L18	Bharat Industries - Sangrur	33040.00	0	N.A.
L19	A.D. Electro Steel Co. Pvt. Ltd. - Kolkata	35999.91	0	N.A.
L20	Plasto Power Engineers - Sangrur	37642.00	0	N.A.

Table 3: Bid Details of Tender No. 03211577

Date of Tender Opening: 12.10.2021 Quantity: 198 Value INR 28,11,695

Position	Participant Vendors/Bidders	Bid Price (INR)
L1	Super Industries - Mohali	14200.48
L2	Global Engg. and Electronics Corporation - Chennai	17100.01
L3	Super Steels - Mohali	17216.20
L4	Alvind Industries - Chandigarh	17226.82
L5	Kane - Panchkula (Hr.)	18644.00
L6	Jagannathan Engineering Works - Trichy	18644.64
L7	Nanda Engineering Works - Bhilai	19470.00
L8	B.I. Enterprises - Kolkata	19470.00
L9	P.D. Autos - Mandi Gobindgarh	19965.60
L10	Mekins Industries Limited - Hyderabad	21872.48
L11	Bharat Industries - Sangrur	24544.00
L12	D. Electro Steel Co. Pvt. Ltd. - Kolkata	26999.84
L13	Precision Coats and Fin Product - Chennai	27000.01
L14	Plasto Power Engineers - Sangrur	35400.00
L15	Standard Profile Industries - Pune	206500.00

18. It is noted from the above tables that in the Impugned Tender, there was a significant difference of more than INR 2000/- between bids quoted by OP-2 and OP-3; in the remaining two tenders *viz.* Tender Nos. 03221028 and 03211577, there seems to be a minor difference of around INR 10 in the bid amounts of OP-2 and OP-3. However, there is no evidence on record that any part of the remaining two tenders were awarded to OP-2 and/ or OP-3. Further, it is noted that the bids quoted by several remaining bidders (approved or un-approved sources) were in the same range or higher than the bids quoted by OP-2 and OP-3. Specifically, it is noted that in all three tenders, the approved source Nanda Engineering Works, quoted rates higher than the OPs.



सत्यमेव जयते



19. Therefore, in light of the above, the Commission observes that apart from the bid quotations made by OP-2 and OP-3 in two tenders with minor difference in their prices, there is no other evidence on record, which may support the allegations of the Informant regarding cartelisation between them.
20. In any case, it is no longer *res integra* that mere price parallelism is not sufficient to arrive at a finding of cartelisation without there being evidence of any plus factors in support of parallel pricing.
21. In Ref. Case No. 03 of 2013 (*Delhi Jal Board And Grasim Industries Ltd Ors.*), Opposite Parties were bidding allegedly collusively by quoting similar prices with a difference of INR 200-400 for certain quantity of Poly Aluminium Chloride (PAC) from the year 2006-07, till the year 2012. The DG concluded that there was an understanding between the bidders for all tenders floated by the Informant and they acted in a collusive manner to artificially jack up the bid prices without offering any real competition. Based on the reports submitted by DG and data available, the Commission held that ABCIL, GIL and GACL were acting in concert in respect of the tenders floated by the Informant during 2009-10 to 2014-15, for procurement of liquid PAC. In its order dated 05.10.2017 under Section 27 of the Act, the Commission stated that “parallel pricing is not *per se* violative of the Act.” There have to be plus factors *i.e.* some additional evidence tangible enough to come to the conclusion that prices have been quoted as a result of concerted action or as result of meeting of minds.
22. In its order dated 29.12.2020 under Section 26(2) of the Act in Case No. 47 of 2019 (*Brickwork Ratings India Pvt. Ltd. And CRISIL Ltd. & Ors.*), the Commission noted that “*there is no material available on record which may show that there was any meeting of minds between the Opposite Parties. In other words, apart from the alleged price parallelism in the NHAI tender for the FY 2019-20 (which also included an identical quote by at least two OPs during FYs 2018-19 to 2020-21) .. there is no other material available on record which may indicate collusion or any concerted action between the Opposite Parties ..*”
23. In the present matter, there are no plus factors averred by the Informant indicating meeting of minds or collusion between OP-2 and OP-3 or among OPs. Accordingly, in view of the Commission, neither case of cartelisation in contravention of the provisions



सत्यमेव जयते



of Section 3 of the Act is made out in the present matter against OP-2 and OP-3 nor there arises any question of violation of the provisions of Section 3 of the Act by OP-1.

24. Now coming to the allegations of contravention of the provisions of Section 4 of the Act by OP-1, the Commission observes that the Informant's allegation that *vis-à-vis* the Railway Board guidelines of minimum of five active vendors for tenders, only two sources were active, does not hold true as another active vendor Nanda Engineering Works is seen to be regularly bidding in the Railway tenders. From other data submitted by the Informant, it is also seen that another approved vendor EC Blade and Tools Pvt. Ltd also bid for certain Railway tenders earlier.
25. Further, the Informant has also not submitted as to in what relevant market, is OP-1 alleged to be abusing dominant position. It has merely alleged that OP-1 is abusing its dominance in procurement of the impugned item.
26. In this regard, it is pertinent to note that regarding the procurers, the Commission in its earlier matters, has held:

Case No. 40 of 2016 (Shri Kailash Chander Sharma And Coal India Ltd. and Others)

“... A consumer of services must be allowed to exercise its consumer choice and freely select between competing products or services. This right of consumer's choice must be sacrosanct in a market economy because it is expected that a consumer would decide what is best for it and free exercise of consumer choice would maximize the utility of the product or service for the consumer. For an individual, that consumer's choice is based on personal assessment of competing products or services, their relative prices or personal preferences. For any other type of consumer, this process of decision making in exercise of consumer's choice is more structured and reflected in procurement procedures. Such a consumer may use experts or consultants to advise, do its own technical assessment, take advice of others it may trust or even purchase from known and reliable sources. The process of such decision making may result in purchase by nomination or limited tender or open tender. The consumer is the best judge. In case of public entities, the entity is a representative consumer on behalf of the public. There are administrative mechanisms in place for carrying on the due process of exercising consumer's choice on behalf of the public. Of course, there could be competition concerns in rare cases where a monopoly/dominant buyer exercises the option in an anti-competitive manner but the present case is not in that category ...”



सत्यमेव जयते



Case No. 69 of 2016 (Suntec Energy Systems And National Dairy Development Board)

“... With regards to the allegation of stipulation of certain specification or the brand name in the tender, the Commission observes that a procurer, as a consumer, can stipulate certain technical specifications/ conditions/ clauses in the tender document as per its requirements which by themselves cannot be deemed anti-competitive. It may be noted that the party floating the tender is a consumer and it has the right to decide on the appropriate eligibility conditions based on its requirements. The Commission also observes that in a market economy, consumers’ choice is considered as sacrosanct and in such an economy, a consumer must be allowed to exercise its choice freely while purchasing goods and services in the market. It is expected that a consumer can decide what is the best for it and will exercise its choice in a manner which would maximise its utility that is derived from the consumption of a good/ service ...”

Case No. 48 of 2021 (Mr. Dushyant And National Accreditation Board for Testing and Calibration Laboratories)

“... The Commission has, in some previous cases, recognising the autonomy of the procurer, stated that the procurer is the best judge of what and how it wants. At the cost of repetition, the Commission notes that every consumer/ procurer must have the freedom to exercise its choice freely in the procurement of goods/services and such a choice is sacrosanct in a market economy. While exercising their choice, OPs are free to stipulate standards for procurement, and the same cannot be held to be out-rightly anti-competitive and will depend, inter alia, on factors such as the nature of the procurement, the size of procurer, the goods/ services sought to be procured by it, and whether such buying will result in foreclosure for other sellers operating in the market who are competing to sell and are substantially dependent on such buying process. Further, the autonomy to specify the requirements of procurement is inherent in the procurers. When the procurer is a dominant buyer in its sphere of economic activity and its unilateral conduct in the buying process can tend to distort competition on the supply side of such market, then there is reason to be circumspect ...”

27. In view of the aforesaid, the Commission is of the view that OP-1 being a consumer/ procurer of the impugned item has freedom to specify its requirements/ conditions/ EC and the said requirements/ conditions/ EC themselves cannot be deemed to be anti-competitive. Thus, the Commission does not find OP-1 to be in violation of the provisions of Section 4 of the Act also.



28. Accordingly, the Commission finds that no *prima facie* case of contravention of provisions of the Act is made out against any of the OPs in the present matter and decides to close the matter forthwith in terms of the provisions of Section 26(2) of the Act.
29. The Secretary is directed to communicate certified copy of the present order to the Informant, accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

Place: New Delhi
Date: 12.07.2024