



**COMPETITION COMMISSION OF INDIA**

**Ref. Case No. 01 of 2021**

**In Re:**

**CP Cell, Master General of Ordnance Service,  
Directorate General Ordnance Service,  
CP Cell/ OS Dte,  
Room No. 101,  
D-II Wing 1<sup>st</sup> Floor,  
Sena Bhawan,  
New Delhi-110001**

**Informant**

**And**

**M/s KKK Mills,  
B-40, Phase V, Focal Point,  
Ludhiana-141010**

**Opposite Party No.1**

**M/s Sankeshwar Synthetics Pvt. Ltd.,  
239, Oswal Road,  
Industrial Area- A,  
Ludhiana-141003**

**Opposite Party No.2**

**CORAM**

**Ms. Ravneet Kaur  
Chairperson**

**Mr. Anil Agrawal  
Member**

**Ms. Sweta Kakkad  
Member**

**Mr. Deepak Anurag  
Member**



**Present:**

*CP Cell, Directorate General Ordnance Service* Harikesh Pratap Singh  
GSO1/OS/CN  
On behalf of Union of India

*M/s KKK Mills* Utsav Mukherjee, Advocate  
Bhaskar, Advocate  
Vikas Gupta, Partner

*M/s Sankeshwar Synthetics Pvt. Ltd.* Pulkit Agarwal, Advocate  
Md. Anas Chaudhary, Advocate  
Anuj Jain, Partner

**Order under Section 27 of the Competition Act, 2002**

**Brief Facts of the Case**

1. The present matter was initiated based on a Reference from CP Cell, Master General of Ordnance Branch, Directorate General of Ordnance Services, ('DGOS'/'Informant') by the Competition Commission of India ('Commission') under the provisions of Section 19(1)(b) of the Competition Act, 2002 ('Act'). The Reference alleged that M/s KKK Mills ('OP-1') and M/s Sankeshwar Synthetics Pvt. Ltd. ('OP-2') entered into an agreement resulting in collusive bidding in the tender for procurement of Underpant Woollen, thereby violating the provisions of Section 3(3)(d) read with Section 3(1) of the Act. OP-1 and OP-2 are hereinafter referred to as the Opposite Parties ('OPs').
2. OP-1 is a partnership firm having its registered office at Ludhiana, Punjab. Shri Kamal Kant Gupta, Shri Naresh Kumar Gupta, Shri Vikas Gupta and Shri Atul Gupta are partners of the firm. OP-1 is engaged in manufacturing of textile items such as socks, jerseys, caps, gloves, woollen underpants, vests, blankets, shirting angola (cloth for shirt) and serge cloth.
3. OP-2 is a private limited company, incorporated on 20.02.1991 under the provisions of the Companies Act, 1956, having its registered office at Ludhiana, Punjab and corporate identification number as U17115PB1991PTC011107. It is engaged in the business of manufacturing of fabric as well as trading of yarn and raw wool.



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4. As per the Reference, this matter related to the re-tender for procurement of Underpant Woollen. The re-tender was done as the initial tender dated 11.07.2019, had been cancelled by the Informant due to suspicion of cartelization by the OPs, with both OP-1 and OP-2 quoting the exact same price *i.e.*, Rs. 127.90/- for the tendered item.
5. It was stated that the Informant, after cancelling the initial tender, had again issued a Request for Proposal for re-tendering and conclusion of the Rate Contract ('RC') to procure Underpant Woollen. In the re-tender, 15 firms participated, but only 9 firms qualified for opening of financial/commercial bids. After opening the financial/commercial bids of the re-tender, the Informant found that both the OPs, who were declared as L-1, had again quoted identical rates *i.e.*, Rs.122.75/- for the tendered item.

**Prima facie order of the Commission passed under Section 26(1) of the Act**

6. The Commission noted that both the OPs had quoted identical rates (up to two decimal points), both in the initial tender of 2019 *i.e.* Rs.127.90/- and in the re-tender of 2020-21 *i.e.* Rs.122.75/-. The Commission also noted that in the re-tender, the rates were lower than the ones quoted in the initial tender.
7. The Commission examined the submissions made in the Reference and noted that the Informant had highlighted the existence of price parallelism in the bids submitted by the OPs both in the initial tender of 2019 and the re-tender of 2020-21 for the same tendered item. In this regard, the Commission noted that the fact that both the OPs had quoted identical rates (till the last two decimal points) in 2 separate tenders, gave rise to a strong suspicion that the OPs may have had some prior understanding amongst themselves with respect to the rates quoted in their bids and that the quotes appeared to have not been independently made by the OPs in response to the tenders.
8. Accordingly, the Commission *vide* its order dated 03.12.2021 passed under Section 26(1) of the Act, formed a *prima facie* view that a case of contravention



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under Section 3 of the Act was made out against the OPs and directed the Director General ('DG') to investigate the matter.

### **Investigation by the DG**

9. The DG, pursuant to the directions of the Commission in the *prima facie* order, investigated the matter, and after seeking due extensions of time, submitted the Investigation Report dated 20.06.2024, in both confidential and non-confidential versions.

### **Issues for Investigation and Findings of the DG**

**Issue (i)** Whether the OPs have entered into an agreement for directly or indirectly engaging in bid rigging/collusive bidding, thereby violating the provisions of Section 3 of the Act?

10. During investigation, the DG noted that the Impugned Tender was advertised on 12.11.2020 bearing Tender No. *A/60186/Dept RC/Underpant Woollen/DGOS/OS-PIII/Proc Sec*. This tender was cancelled by the Informant due to suspicion of cartelization.

### **Evidence collected and analysed under Section 3 of the Act**

11. Regarding the quoting of identical price by the OPs, the DG found that the Informant had earlier floated a tender for procurement of Underpant Woollen on 11.07.2019 bearing Tender No. *A/60117/Dept RC/Underpant Woollen/DGOS/OS-PII/Proc Sec*. In the said tender, the OPs quoted exact same rate (up to two decimal points) *i.e.* Rs. 127.90/-. Due to suspicion of cartelization, the said tender was cancelled by the Informant. Thereafter, re-tender was done on 12.11.2020 for procurement of Underpant Woollen. In the re-tender as well, the OPs quoted identical rates (up to two decimal points) *i.e.* Rs. 122.75/-. The DG submitted that not only does this appear to be price parallelism, the fact that the OPs had quoted identical rates (up to two decimal points) in 2 separate tenders, cannot be ignored.



12. In this regard, officials of the OPs were confronted by the DG for quoting identical prices in both the tenders. These officials took the position that identical quotation of rates was a coincidence. Shri Anuj Jain, Director of OP-2 further stated that the cost of raw materials and manufacturing is almost equal for everyone.
13. Considering the above submissions and failure on the part of the OPs to provide any plausible explanation for their conduct, the DG observed that identical price up to two decimal points could not have been quoted without some type of agreement/arrangement between the OPs. In absence of any market condition and other factors which would lead the OPs to quote identical rates, the DG concluded that in the present case, the OPs mutually decided the rates to be quoted by them for becoming L-1 bidders.
14. The DG also found that there was a small time difference in the submission of financial/commercial bid in both the tenders by the OPs. When confronted by the DG on this aspect, Shri Vikas Gupta, Partner of OP-1 stated that re-tender was submitted 3 or 4 times by them to verify whether correct documents were attached or not. Shri Anuj Jain Director of OP-2, stated that as no decision was made about the rates, no cartel had been formed.
15. With regard to contact/relation between the OPs, the DG found evidence which shows that the OPs have been in contact with each other prior to the tendering process with respect to the Impugned Tender. The Investigation Report draws attention to the relation of OP-2 with another firm, *i.e.*, M/s Jainson Hosiery Industries ('**JHI**'), which has actively engaged in communications with OP-1 and Shri Anuj Jain.
16. The DG also found the partnership deed of JHI. As per the deed, Shri Arun Jain, father of Shri Anuj Jain, is a partner of JHI. Shri Anuj Jain stated on oath that JHI is not related to OP-2 in any manner and he does not know the partners of JHI. However, he admitted that Shri Satpal Jain was a Director of OP-2 and as per the partnership deed, Shri Satpal Jain was also a partner of JHI. The DG concluded that contrary to the submissions made by Shri Anuj Jain, OP-2 and JHI are related parties.



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17. During the course of investigation, notices were issued to Bharti Airtel and Reliance Jio Infocomm, in order to gather Call Data Records ('CDR') information/data of the OPs and their associated persons. The DG found evidence in form of CDR, emails and bank transactions which further indicates that the OPs were regularly in touch with each other both prior as well as after submission of the financial/commercial bid. Moreover, the emails between OP-1, OP-2 and JHI show that the OPs repeatedly discussed various tenders with each other.
18. The DG also submitted that the conduct of the OPs in other tenders including fixing rates, dividing supply orders, and maintaining consistent patterns of cooperation further reinforces the conclusion that their behaviour was not coincidental or market driven. Instead, it reflects a deliberate and sustained effort to manipulate bidding outcomes, thereby restricting competition and potentially causing harm to the procuring entities and public interest.
19. The DG further submitted that in other tenders, emails dated 19.08.2020, 16.09.2020, 06.10.2020, 10.10.2020, 28.07.2021 and 18.08.2021, were also exchanged between the OPs and other bidders. A perusal of the emails show that the bidders frequently contacted one another for deciding who will win various tenders and thereafter, the profits from the tenders were distributed between the bidders by sharing the supply orders equally. Relying on the emails, the DG submitted that the OPs were engaged in mutually deciding the rates to be quoted by them in various tenders which indicates pattern of collusive behaviour on their part.
20. On the basis of the foregoing, the DG concluded that the OPs have engaged in bid rigging by entering into an agreement in violation of Section 3(3) of the Act, thereby causing Appreciable Adverse Effect on Competition ('AAEC').

**Issue (ii)** if violation of the provisions of the Act by any of the OPs is found, who is/are the individuals held responsible under Section 48 of the Act?

21. The DG found the following individuals liable under the provisions of Section 48 of the Act:



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- i. Shri Vikas Gupta, Partner of OP-1
- ii. Shri Anuj Jain, Director of OP-2

22. The DG noted that Shri Vikas Gupta was actively involved in the affairs of the company and was handling the email address *kkkmills@ymail.com* which was actively used for discussing various tenders with OP-2 and other bidders. In this regard, few emails sent by OP-1 dated 14.07.2021, 07.07.2021 and 24.07.2021 were referred to by the DG.

23. It was noted by the DG that emails retrieved from the account of *kkkmills@ymail.com* exchanged with *vinodjain\_2009@yahoo.in* (owned and handled by Shri Anuj Jain) could not be found in the email communications provided by Yahoo India. This showed that all relevant emails and most of the communications with *kkkmills@ymail.com* were deleted by Shri Anuj Jain and that an attempt was made by Shri Anuj Jain to hide evidence from the DG.

24. In his statement on oath, Shri Anuj Jain stated that after the death of Shri Satpal Jain, he started managing the business as well as the aforementioned email address in 2021. However, the evidence suggests that Shri Anuj Jain was managing the email address, prior to submission of bid in the Impugned Tender. The DG further noted that Shri Anuj Jain has made false statement on oath regarding OP-2's relation with JHI and OP-1.

### **Consideration of the Investigation Report by the Commission**

25. The Commission considered the Investigation Report in its ordinary meeting held on 02.08.2024 and directed to forward a copy of the non-confidential version of Investigation Report to the Informant, the OPs and their individuals held liable by the DG under Section 48 of the Act. In terms of the Commission's orders dated 02.08.2024, 25.09.2024 and 13.11.2024, the OPs filed their objections/suggestions to the Investigation Report along with their financial details.

26. On 20.08.2025, the Commission heard the Informant, the OPs and their individuals in terms of Section 35 of the Act and directed them to file their written



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submissions. OP-1 submitted its written submissions dated 04.09.2025 on 12.09.2025 and OP-2's written submissions dated 03.09.2025 were filed on 03.10.2025.

### **Objections/ Submissions of the OPs**

27. A summary of replies/objections/written submissions to the Investigation Report filed by OP-1 and its individual are as under:

- i. The Impugned Tender is a re-issuance of the earlier tender of 2019 as the same was cancelled. As far as the present Impugned Tender is concerned, the grounds for levelling the charges of bid rigging/collusion against the OPs are more or less the same as the ones levelled in Ref. Case No. 01 of 2020 in which the Commission *vide* order dated 20.05.2021, passed under Section 26(2) of the Act observed that *“mere existence of price parallelism or identical prices is not per se sufficient to hold parties liable for bid rigging.”* Considering that the issue on the basis of which the present conclusion of bid rigging in the Impugned Tender has been arrived at has already been dismissed previously by the Commission, the present report is not maintainable at the outset.
- ii. During investigation, the DG reviewed the email accounts and call records of both the OPs. However, no evidence of collusion or agreement in respect of either of the tenders was produced. Further, the Impugned Tender was not cancelled owing to any conduct of OP-1 or any cartel arrangement as alleged and there is no AAEC by the conduct of OP-1.
- iii. The Impugned Tender was in the nature of a RC, which means that the RC Concluding Authority reserved the right to carry out negotiation with more than 1 Capacity Verification ('CV') compliant firms whose rate fall within a range of 15% of the L-1 rate. A RC is in the nature of a standing offer and a legal contract comes into being only when a supply order is placed at the negotiated/L-1 rate by the Competent Finance Authority. No entity can derive any advantage by bid rigging or collusion of any nature as the rate on which the tender would eventually be awarded and the entity to which it is awarded is not dependent on the bid submitted



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by OP-1. Consequently, the basic ingredient of Section 3 of the Act remains unsatisfied and there cannot be any violation of the same.

- iv. Coincidental closeness in the timing of bid submission cannot be considered a ground for bid rigging because during submission of the bid, a potential bidder is required to file hundreds of documents to avoid any disqualification due to non-compliance. It is submitted that in order to safeguard themselves, a potential bidder keeps on submitting amended bids and during the said process it is not unusual that 2 or more bidders file their respective bids within a gap of some minutes.
- v. The emails relied upon by the DG neither have any relation to the Impugned Tender nor do they belong to any communication made between OP-1 and OP-2. Hence, the said emails cannot be the basis for concluding that any alleged collusion exists between the OPs.
- vi. Market in which the Impugned Tender was floated is oligopsony because the purchaser in the Impugned Tender is Ministry of Defence, which makes the market of supply of products in the defence sector an oligopsony. Also, the raw material to the final product is heavily regulated by the Directorate of Ordnance of Ministry of Defence, which has a direct influence over the price of such products. The Hon'ble Supreme Court in the matter of *Rajasthan Cylinders and Containers Ltd. vs. Union of India & Anr.* (2020) 16 SCC 615, has also held that in the situation of oligopsony, parallel pricing would not lead to a conclusion that there was an agreement between the parties.
- vii. OP-1 has cited the ruling by Hon'ble High Court of Allahabad in the case of *Harlal Saini v. Union of India*, 2019 SCC OnLine All 5172 in which the Hon'ble High Court has observed that "*Mere assumption of any situation on hypothetical criteria without any supportive evidence (even circumstantial) would not be proof even on the principles of preponderance of probabilities. The said principle does not give leverage to the disciplinary authority to create a hypothesis by its own imagination without any evidence. The reason given by the disciplinary authority in the order impugned of holding the petitioner guilty is nothing but creation of his own imagination.*"



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A mere perusal of the above-mentioned judgement makes it clear that the Investigation Report cannot assume existence of an agreement on the basis of some unconnected indirect evidences and take refuge under the principle of preponderance of probabilities while failing to produce any evidence with respect to the Impugned Tender.

- viii. The procedure of investigation has led to violation of natural justice as OP-1 has been denied the right to deal with the statements of other entities and cross-examine them, prior to placing reliance on their statements.
- ix. On the issue of penalty, OP-1 has submitted that without prejudice to the above-mentioned submissions, in case the Commission finds any violation on the part of OP-1, then the following submissions may be considered: (a) in compliance to the order passed by the Commission, OP-1 has filed its Income Tax Returns ('ITRs') which contain audited balance sheet and profit and loss account, (b) in light of the observation by the Hon'ble Supreme Court in the case of *Excel Crop Care Ltd. v. Competition Commission of India & Ors., (2017) 8 SCC 47* ('**Excel Crop Care case**'), a penalty may be imposed only on the relevant turnover *i.e.*, on the income derived from the infringing activity, and not from other incomes from non-infringing activities and OP-1 has not derived any income from the Impugned Tender. Thus, no penalty is capable of being imposed under clause (b) of Section 27 of the Act in view of the ruling of the Hon'ble Supreme Court in *Excel Crop Care case*, and (c) imposing any penalty on the turnover of OP-1, would severely impact and cripple the functioning of OP-1 in light of the very low profit/actual income of the company and would lead OP-1 into insolvency under the Insolvency and Bankruptcy Code, 2016 thus, would be violative of the dictum laid down in the *Excel Crop Care case*. OP-1 stated that it is small company under the Micro Small and Medium Enterprises Act, 2006 ('**MSME Act**') which has been serving the nation and the armed forces by supplying products to them without any complaint or default, since 1950.
28. A summary of replies/objections/written submissions to the Investigation Report filed by OP-2 and its individual are as under:



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- i. The findings of the DG regarding earlier tender of 2019 were dismissed in Ref. Case No. 01 of 2020 *vide* order dated 20.05.2021, passed by the Commission under Section 26(2) of the Act and the Impugned Tender is a re-tender of the above-mentioned tender.
- ii. The Impugned Tender was cancelled for reasons unconnected to conduct of the OPs.
- iii. The Impugned Tender was in the nature of a RC and OP-2 has not derived any financial advantage through collusion.
- iv. The Investigation Report relies on purported emails between OP-1 and OP-2, all of which are unrelated to the Impugned Tender, and thus cannot be the fulcrum for concluding that such arrangement communications existed prior to the actual communications. The DG has completely ignored the fact that the entities which were deposed have been in the same business, are settled in Ludhiana, have familial ties and hence, communications in the ordinary course of business and life are not evidence of any collusion.
- v. The market in which the Impugned Tender was floated is oligopsony. The Investigation Report completely ignores the dicta laid down by the Hon'ble Supreme Court in the matter of *Rajasthan Cylinders and Containers Ltd. vs. Union of India & Anr. (2020) 16 SCC 615*. In oligopsony, price proximity would not lead to cartelization as in an oligopolistic market, prices being similar in a tender is not an unusual characteristic. A similar observation was given by the Appellate Tribunal in the case of *Deputy Chief Materials Manager, Rail Coach Factory, Kapurthala, Punjab vs Faiveley Transport India Ltd. & Ors. MANU/TA/0005/2016* wherein, the Appellate Tribunal observed the following:

*“We may add that in an oligopolistic market like the one in question, the identity of price quoted by the bidders is not an unusual feature. The players in a limited market are aware of the price quoted by each other in one or the other bid and it is a normal tendency to quote the same price in response to the next tender. Therefore, identical price quoted by the respondents for the*



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*items of AMDBS did not constitute sufficient evidence of cartel formation and in the absence of other plus-factors, it is not possible to record a finding that the respondents had acted in violation of Section 3(3)(d) read with Section 3(1) of the Act.”*

- vi. The DG in his findings has wrongfully made a contention that OP-2 had deleted the emails dated 13.07.2021, 11.08.2021, 14.07.2021, 07.07.2021, 24.07.2021, 10.02.2020, 26.10.2020, 02.01.2021 and 09.08.2021 in anticipation of the investigation. Though OP-2 deletes the communications made in expired tenders, which is completely legal, but it had never deleted emails after receipt of the summons. Thus, the entire charge against OP-2 on this issue is completely misplaced only to prejudice the Commission against it.
- vii. On the issue of penalty, OP-2 has submitted that without prejudice to the above-mentioned submissions, in the event the Commission finds any violation on part of OP-2, then the following submissions may be considered: (a) as directed by the Commission, OP-2 has filed its ITRs which contain audited balance sheets and profit and loss accounts, (b) as per the Hon'ble Supreme Court's decision in Excel Crop Care case, in the present matter, the Commission may impose a penalty only on the income derived from the infringing activity, and not from other incomes from non-infringing activities; OP-2 has not derived any income from the Impugned Tender as it was not contracted to supply any products and the Impugned Tender was ultimately cancelled, (c) no income or wrongful gain has been earned by OP-2 from the Impugned Tender, (d) in light of its very low profit/actual income, imposing any penalty on the turnover of OP-2, would severely impact and cripple its functioning of OP-2 and would lead it into insolvency which would be violative of the dictum laid down in the Excel Crop Care case, (e) OP-2 is a small business which participates in very few defence related tenders and has not received any tender since 2019.

### **Analysis of the Commission**

29. The Commission has carefully perused the Reference, material available on record, the Investigation Report, objections/suggestions to the Investigation



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Report and post-hearing written submissions of the OPs dated 20.08.2025.

30. The Commission notes that in the present matter the investigation concluded that the OPs have indulged in bid rigging in the tenders floated by the Informant, thus contravening the provisions of Section 3(3)(d) read with Section 3(1) of the Act. The DG also found the following individuals to be in contravention of Section 48 of the Act: (a) Shri Vikas Gupta, Partner of OP-1 (b) Shri Anuj Jain, Director of OP-2.
31. The OPs have refuted the findings of the investigation and stated that there exists no cogent or concrete evidence against them to be held liable for contravention of the provisions of the Act. Now, the Commission proceeds to analyse whether the OPs and their individuals are in contravention of the provisions of the Act.
32. The first issue before the Commission is whether the OPs have entered into an agreement for directly or indirectly engaging in bid rigging/collusive bidding, in violation of the provisions of Section 3 of the Act.
33. The Commission notes that the OPs have quoted the exact same rate (up to two decimal points) in both the initial tender floated in 2019 for procurement of Underpant Woollen and the re-tender for the item in 2020-21. It is also noted that officials of both the OPs when confronted regarding quoting identical prices, defended the same stating that it was a coincidence. During investigation, the OPs were asked to provide the detailed procedure adopted for determining rates to be quoted with respect to the tenders in question. Shri Vikas Gupta, Partner of OP-1 in his reply, provided a general procedure adopted by the firm for determining the rate to be quoted in various tenders. He also submitted that OP-1 does not maintain exact records of the calculations for prices quoted. Shri Anuj Jain, Director of OP-2 evaded the question and provided a general answer. He further stated that the rate of raw material and cost of manufacturing is almost equal for everyone.
34. Regarding the OPs' submission that the Impugned Tender was in the nature of RC, the Commission is of the view that the rate, terms and conditions are finalised



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after a competitive bidding process but actual purchase order is issued later as and when required. Thus, RC is applied after completing the bidding process. In the present case, the Informant suspected cartelization by the OPs. Hence, the present Reference was filed. Thus, the OPs' contention that the Impugned Tender was in the nature of RC does not dispel the allegation of cartelization against the OPs.

35. The Commission notes the submission of the OPs, that the purchaser in the Impugned Tender is the Ministry of Defence and thus, the market in which the Impugned Tender was floated, is an 'Oligopsony'.

36. In this regard, the DG had stated in its Investigation Report that the market in the present case is not an 'Oligopsony' as there are many government as well as private buyers and the OPs can sell their textile/hosiery products to them. The DG relied on the order of the Hon'ble Supreme Court of India in *Rajasthan Cylinders and Containers Ltd. v. Union of India (2018 SCC Online SC 1718)*, in which the Hon'ble Court clarified the standard of proof required for establishing bid rigging in an oligopsony. An 'Oligopsony' is a market characterized by demand for a commodity represented by a small number of purchasers wherein a manufacturer with no buyers will have to exit the market. However, in the present case, the Investigation Report notes that apart from government procurers, textile/hosiery items are also sold in the open market. Thus, the Commission is of the view that even if the OPs are unable to receive a supply order from the tendering authorities, they can still remain in the market of textile/hosiery manufacturing by selling their products to private buyers. Also, there are several other government buyers as well, like Central Reserve Police Force, Indo Tibetan Border Police, Border Security Force, Home Guard and Central Industrial Security Force to whom they can sell their product.

37. Considering the aforementioned submissions and failure on part of the OPs to provide any plausible explanation for their conduct, the Commission observes that quotation of identical price by the OPs up to two decimal points in 2 separate tenders could not have happened without some form of agreement/arrangement between them. In absence of any market condition and other factors which would lead the OPs to quote identical rates, the Commission holds that the OPs in the



present case, mutually decided the rates to be quoted by them so as to become L-1 bidders.

38. With respect to the timing of submission of financial/commercial bid, the Commission notes that, as per the DG, the OPs had submitted the financial/commercial bid in the Impugned Tender, as well as in the earlier 2019 tender, on the same date, within a gap of few minutes. The officials of both the OPs were confronted about the small gap between the timing of their submissions in both tenders. Shri Vikas Gupta, Partner of OP-1 stated that re-tender was submitted 3 or 4 times by them to verify whether correct documents were attached or not. Shri Anuj Jain, Director of OP-2 stated that no cartel was formed as no decision was made about the rates.
39. The Commission notes that the opening and closing date and time for bid submission of tender of 2019, was 11.07.2019, 05:00 PM and 10.08.2019, 12:30 PM, respectively. In the case of the re-tender of 2020-21, the opening and closing date and time for bid submission was 12.11.2020, 05:00 PM and 10.12.2020, 12:30 PM, respectively. In the tender of 2019, OP-1 submitted its bid on 10.08.2019 at 12:08 PM and OP-2 submitted its bid on the same date at 12:07 PM. In the re-tender, OP-1 submitted its bid on 09.12.2020 at 06:19 PM and OP-2 submitted its bid on the same date *i.e.*, on 09.12.2020 at 06:07 PM. It is noted that in tender of 2019, both the OPs submitted bids prior to the closing date and time but within a gap of few minutes and quoted identical rates. In the Impugned Tender as well, the OPs submitted the bids on the same date within a gap of only a few minutes and quoted identical prices, which shows that the submission of bids was co-ordinated.
40. The Commission is of the view that OP-1 and OP-2 have not only quoted identical prices but have also submitted bids within a gap of few minutes on 2 separate occasions. These submissions were not last-minute uploads, but made well before the final submission deadline. The repetition of this pattern in 2 separate tenders more than a year apart, involving the same parties, considering the conduct of the OPs in other tenders and again resulting in identical bid prices, suggests more



than mere coincidence. This repeated behaviour, along with the lack of independent justification for price determination go beyond mere price parallelism and support the conclusion of concerted action. This strengthens the inference of a pre-arranged understanding between the OPs as such behaviour by 2 separate entities resulting in nearly simultaneous submissions and quoting identical prices in bids for 2 different years is not just a mere coincidence. Thus, the Commission is of the view that submission of financial/commercial bids by OP-1 and OP-2 in both the 2019 and 2020-21 tenders, within a gap of only a few minutes, strongly indicates coordinated conduct of the OPs.

41. With regard to contact/relation between the OPs, the Commission notes that the OPs have been in contact with each other prior to the tendering process with respect to the Impugned Tender. The Investigation Report draws attention to the relation of OP-2 with another firm, *i.e.*, JHI, which had actively engaged in communications with OP-1. During investigation, Shri Anuj Jain, Director of OP-2 stated on oath that JHI is not related to OP-2 in any manner and he doesn't know the partners of JHI. The Commission further notes that the DG found the partnership deed of JHI. As per the deed, Shri Arun Jain, father of Shri Anuj Jain, is a partner of the said firm. Shri Anuj Jain also admitted in his statement that Shri Satpal Jain was a Director of OP-2 and a partner of JHI. Based on the above, the Commission concurs with the DG's finding that OP-2 and JHI are related parties and notes that Mr. Anuj Jain, Director of OP-2 deliberately made a false statement on oath and misled the investigation.
42. The Commission notes that the DG also found evidence in the form of emails dated 11.09.2019, 10.02.2020, 22.06.2020, 21.10.2020, 26.10.2020, 02.01.2021, 07.07.2021, 13.07.2021, 14.07.2021, 24.07.2021, 09.08.2021 and 11.08.2021, and observed that Shri Anuj Jain, Director of OP-2 was part of the discussion, regarding various tenders between OP-1 and JHI. Upon perusal of the emails, the Commission is of the view that OP-1 and OP-2 were in contact with JHI. The above-mentioned relevant emails, which were reiterated by the DG, are mentioned below:



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- i. Email dated 11.09.2019, from *jainsonldh@yahoo.com* to OP-1, Anuj Jain and others providing details of supply orders received by JHI from Sashastra Seema Bal ('SSB').
- ii. Email dated 10.02.2020 sent by Anuj Jain to *kkkmills@ymail.com*, providing revised packing list for Serge SSB.
- iii. Email dated 22.06.2020, from *jainsonldh@yahoo.com* to OP-1 and others providing RTGS details of OP-2.
- iv. Email dated 21.10.2020, from *jainsonldh@yahoo.com* to OP-1, Anuj Jain and others providing details of supply order received by JHI from CRPF.
- v. Email dated 26.10.2020, sent by Anuj Jain to *kkkmills@ymail.com*, providing packing list titled "CRPD ANGOLA 32053".
- vi. Email dated 02.01.2021 of *kkkmills@ymail.com*, sent to *vinodjain\_2009@yahoo.in*, providing various documents relating to tender for blanket floated by DGOS.
- vii. Email dated 07.07.2021 of *kkkmills@ymail.com*, sent to *vinodjain\_2009@yahoo.in*, *jainsonldh@yahoo.com*, *jainsonhosiery@gmail.com*, *sp@bansalspinning.com* and *ramanpreet@bansalspinning.com* and cc to Heena Knitwear, regarding supply of Combat T-Shirt by Heena Knitwear. The email states that there is no response from M/s Heena Knitwear and share of Heena Knitwear of 70110 shall be allotted between OP-1, JHI and Bansal Spinning Mills ('BSM').
- viii. Email dated 13.07.2021 of *jainsonldh@yahoo.com*, sent to OP-1, Anuj Jain and others providing details of order received by JHI for Shirting Angola from ITBP.
- ix. Email dated 14.07.2021 sent by *kkkmills@ymail.com* to *vinodjain\_2009@yahoo.in*, *jaonsonldh@ymail.com* and *jainsonhosiery@gmail.com* providing Distribution Chart of Blankets.
- x. Email dated 24.07.2021 of *kkkmills@ymail.com*, sent to *jainsonldh@yahoo.com*, *jainsonhosiery@gmail.com*,



*vinodjain\_2009@yahoo.in*, *ramanpreet@bansalspinning.com* and SP BSML, providing for allocation chart of 70110 Combat T-Shirt between OP-1, JHI and BSM.

- xi. Email dated 09.08.2021 of *kkkmills@ymail.com*, sent to *vinodjain\_2009@yahoo.in*, providing copy of contract received after bidding process through GeM.
- xii. Email dated 11.08.2021 of *jainsonldh@yahoo.com*, sent to OP-1, Anuj Jain and others, providing allocation of order received by JHI for ITBP Shirting Angola.

43. Regarding the OPs being in contact with each other, the Commission further observes that the evidence in the form of CDR, emails and bank transactions indicate that the OPs through JHI were in contact with each other. Moreover, the emails between OP-1, OP-2 and JHI show that the parties usually discussed various other tenders with each other. Thereby, the contention of the OPs, that there is no evidence of any contact between the OPs with respect to the Impugned Tender or any other tender is without substance.

44. The Commission notes that with respect to other tenders, sharing information such as list of rates quoted by various bidders, invitation to Reverse Auction ('RA') with other bidders and exchanging information on rates being quoted during the reverse bidding process, are strong indications of collusive behaviour. This further suggests that the OPs often indulged in sharing rates prior to submission of bid. Thus, the Commission is of the view that the evidence collected by the DG with respect to other tenders clearly shows that the OPs were not acting independently while participating in Government tenders. Emails exchanged between them show that prices to be quoted were pre-decided which is a clear case of price fixing. The Commission also notes that there are several email communications and transactions between OP-1 and OP-2 in tenders other than the Impugned Tender, which establish a pattern of collusion.

45. OP-1 stated that the Investigation Report has completely ignored the dicta laid down in *Chief Materials Manager- I, Office of the Controller of Stores, North-*



*Western Railway, Jaipur vs M/s Rajasthan Transformers and Switchgears (Reference Case No. 07 of 2013)* wherein the Commission, in the following words, laid down the basic ingredients that are necessary for collusion to have occurred:

*“The Commission observes that the DG has mainly relied on the structural linkages to arrive at a finding of collusion. It is not the case that these Opposite Parties have camouflaged their relationship before the Railways. Considering that there is no ban by railways on related parties to bid, this alone does not support collusion. There is only one instance of similar price quoted by OP-2 and OP-3 in Impugned Tenders which needs to be appreciated considering similar raw material costing coupled with bidders’ knowledge of prices quoted in previous tenders. The Commission also notes that even in other tenders of various Railway zones investigated by the DG instances of quoting of identical/similar prices are sporadic. Thus, in absence of discernible bidding patterns, existence of structural linkages between related entities alone cannot be used as a basis to conclude collusion. Further, given the fact that even the entities not related to OP-2 & OP-3 were quoting prices in a close range rather gives an indication of common raw material costing/pre-knowledge of rates in earlier tenders, as explained by the Informant. Considering the totality of facts, Commission is unable to conclude that OP-2 and OP-3 have quoted in collusion with each other in contravention of the provisions of the Act.”*

46. The OPs argued that there is no direct evidence of co-ordination in the Impugned Tender. They submitted that communication between related entities or within business groups is not unusual, especially where there are raw material purchases or financial transactions involved. However, the Commission notes that such explanations fall short when the evidence collected during investigation shows that email addresses associated with OP-2 were used to participate in discussions concerning tenders in which OP-1 and JHI were involved. The fact that these communications took place before the submission of bids further suggests potential coordination between the OPs and the contention of the OPs that



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structural linkage alone cannot establish collusion is unsustainable as other above-mentioned factors establishing coordination between them are also present in the present matter.

47. The Commission further observes that mere association or familial ties are insufficient by themselves, to prove collusion. However, in the present case, these are accompanied by other plus factors such as synchronized bid submission, repeated quoting of identical rates in 2 separate tenders and admitted familial/business relationships, which cannot be brushed aside. These plus factors taken together in such cases of bid rigging, establish the existence of a collusive agreement.
48. The Commission notes that the OPs in their objections/suggestions stated that the present case should be dismissed in light of the Commission's order dated 20.05.2021 in the previously closed case *i.e.* Ref Case No. 01 of 2020 filed against the same OPs wherein the Commission had itself observed that price parallelism or identical price is not per se sufficient to hold parties liable for bid rigging. The OPs stated that the rationale for accusing them of being violative of Section 3 of the Act is more or less the same, *i.e.*, the price quoted by the OPs was similar and in close proximity of time to each other. Hence, the present case also stands non-maintainable. On this issue, the Commission is of the view that in the present case, there are other plus factors apart from price parallelism as discussed above which indicate that the OPs have engaged in bid rigging/collusive bidding thereby, violating the provisions of Section 3(3)(d) of the Act.
49. The second issue before the Commission is to determine the persons in charge and responsible for the conduct of business of the respective enterprises, under Section 48 of the Act.
50. Once contravention by the OPs is established, the Commission proceeds to analyse the conduct of Directors/Individuals and Proprietors of the OPs who were directly involved in the activities/affairs of such OPs, had full knowledge of the same and played an active role in the anti-competitive conduct, thus making them



liable under Section 48 of the Act. The DG has found the following individuals liable under Section 48 of the Act:

- i. Shri Vikas Gupta, Partner of OP-1
- ii. Shri Anuj Jain, Director of OP-2

51. The Commission notes that as the Partner of OP-1, Shri Vikas Gupta has been actively involved in the affairs of the company. He was handling the email address *kkkmills@ymail.com* which was actively used for discussing various tenders with other bidders. Few emails sent by OP-1 in this regard are dated 14.07.2021, 07.07.2021, 24.07.2021 and 08.04.2021.

52. Shri Anuj Jain, has been the Director of OP-2 prior to submission of bid in the Impugned Tender. Further, the email address *vinodjain\_2009@yahoo.in* was being handled by him. In his statement on oath, Shri Anuj Jain stated that he started managing the business and the email address in 2021, after the death of Shri Satpal Jain. However, upon perusal of emails mentioned in the Investigation Report, the Commission notes that Shri Anuj Jain was managing the email address, prior to submission of bid in the Impugned Tender.

53. The Commission notes that OP-2 in its submission stated that the reliance placed by the DG on the alleged subsequent conduct of OP-2, namely, the deletion of email correspondence from its account, does not disclose any material fact indicative of collusion between the OPs. It was also submitted that OP-2, in the ordinary course of business, routinely deletes emails relating to expired tenders, and such deletion occurred prior to any knowledge of the investigation proceedings. Significantly, the Investigation Report does not allege that the said emails were deleted after receipt of summons. In these circumstances, the conclusion drawn by the DG that OP-1 and OP-2 entered into an agreement to quote identical rates in the tender, thereby contravening Section 3(3)(d) of the Act, and Shri Anuj Jain, Director of OP-2 being liable under Section 48 of the Act is wholly unsustainable.

54. On the issue of Shri Anuj Jain's relationship with JHI, the Commission notes that during investigation, Shri Anuj Jain, in his statement to the DG on oath, denied



his relations with JHI and gave an evasive response when he was asked whether he knows Shri Vinod Jain, Partner of JHI. On the issue of deletion of emails, the Commission also notes that the DG in its Investigation Report stated that Shri Anuj Jain intentionally deleted emails exchanged with OP-1 from the email address *kkkmills@ymail.com* in an effort to conceal evidence of collusion in tenders, including the Impugned Tender. This conclusion is based on the absence of certain emails that had previously been available in OP-1's account but were not retrieved from OP-2's account during the year 2024 disclosure by Yahoo. Thus, the Commission is of the view that the conduct of Shri Anuj Jain in deleting the email communications, hiding his relationship/connection with JHI and providing evasive answers indicates an attempt to conceal information from the DG.

55. Thus, the Commission is of the view that Shri Vikas Gupta, Partner of OP-1 and Shri Anuj Jain, Director of OP-2 engaged in anti-competitive conduct amounting to bid rigging/collusive bidding and are liable under Section 48 of the Act.
56. In view of the foregoing, the Commission observes that OP-1 and OP-2 have engaged in bid rigging/collusive bidding, in contravention of Section 3(3)(d) read with Section 3(1) of the Act. Further, the Commission holds Shri Vikas Gupta, Partner of OP-1 and Shri Anuj Jain, Director of OP-2 liable under Section 48 of the Act, for their participation in the aforesaid anti-competitive conduct.
57. The Commission now proceeds to decide on the imposition of penalty for the anti-competitive conduct on the part of the OPs and its individuals.
58. Section 27(b) of the Act provides that the Commission may impose such penalty upon the contravening parties as it may deem fit which shall not be more than ten percent of the average of the turnover or income, as the case may be, for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse. In this regard, the Commission notes that the Competition (Amendment) Act, 2023 amended this section by way of adding the following two 'explanations:



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*Explanation 1.—For the purposes of this clause, the expression ‘turnover’ or ‘income’, as the case may be, shall be determined in such manner as may be specified by regulations.*

*Explanation 2. - For the purposes of this clause, ‘turnover’ means global turnover derived from all the products and services by a person or an enterprise.*

59. Further, in terms of the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 (**‘Penalty Guidelines’**), the first step is determination of ‘relevant turnover’. Thereafter, the Commission would consider an amount up to thirty percent of the average relevant turnover of the enterprise for the purpose of determination of penalty to be imposed on an enterprise under Section 27(b) of the Act. The amount so determined would be adjusted, subject to the mitigating and aggravating factors applicable to a given case. Clause 2(1)(h) of the Penalty Guidelines provides that *“relevant turnover means the turnover derived by an enterprise directly or indirectly from the sale of products and/or provision of services, to which the contravention relates to and determined for the purpose of imposition of penalty.”*

60. In the present matter, the Commission *vide* its order dated 02.08.2024 sought financial statements from the OPs as per the Penalty Guidelines for the Financial Years (**‘FYs’**) 2016-17, 2017-18, 2018-19 and 2019-20. The financial statements were submitted by the OPs on 26.12.2024. It is noted that the OPs have not provided ‘relevant turnover’ in terms of the Penalty Guidelines and have only provided ‘turnover’ of FYs 2016-17, 2017-18, 2018-19 and 2019-20.

61. On the issue of penalty, OP-1 submitted that no penalty is capable of being imposed under clause (b) of Section 27 of the Act in view of the ruling of the Hon’ble Supreme Court in Excel Crop Care case, and in light of its very low profit/actual income, imposing any penalty on the turnover of OP-1, would severely impact and cripple its functioning and would lead OP-1 into insolvency which would be violative of the dictum laid down in the Excel Crop Care case.



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OP-1 also stated that it has derived no income from the tender in question as the tender was cancelled and hence, no penalty would arise. OP-1 further stated that it is a small company under the MSME Act which has been serving the nation and the armed forces by supplying products to them without any complaint or default, since 1950.

62. OP-2, while reiterating submissions of OP-1, has submitted that it has not derived any income from the Impugned Tender as it was not contracted to supply any products and the Impugned Tender was ultimately cancelled, thus no income or wrongful gain has been earned by OP-2 from the same.

63. The Commission notes that in the instant case, the violation relates to tender for supply of Underpant Woollen. The Commission finds that it is not feasible to determine the relevant turnover derived from the supply of the tendered item viz. Underpant Woollen from the financial statements submitted by the OPs. Penalty would thus have to be computed on the average total turnover of the OPs, which as per the submissions of the OPs would severely impact their functioning. In addition, the OPs have submitted that they are MSMEs and have been supplying products to the armed forces for the past several decades.

64. After taking a holistic and cumulative view of the matter, the Commission deems it appropriate, in the interest of justice, not to levy any monetary penalty on the OPs or their respective individuals as the primary objective of the Act is to prevent and rectify market distortions and to regulate the conduct of market participants.

65. In view of the foregoing, the Commission observes that in the facts of the case, issuing a cease and desist order on the OPs will achieve the objective of ensuring that the contravening entities and individuals do not violate the provisions of the Act in future and will also meet the ends of justice.

### **ORDER**

66. The OPs and their individuals are found in contravention of Section 3(3)(d) read with Section 3(1) of the Act. Accordingly, the Commission in terms of Section



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27(a) of the Act, directs the OPs to cease and desist in future from indulging in any practice/conduct/activity that has been found in the present order to be in contravention of the provisions of Section 3 of the Act. The individuals of the OPs are also directed not to indulge in any such conduct in future.

67. It may, however, be noted that any continuation or recurrence of such conduct by the OPs would be construed as recidivism with attendant aggravated consequences not only for the OPs but their individuals in their personal capacity.
68. Before parting with the order, the Commission deems it appropriate to deal with the confidentiality over certain documents/information in terms of Regulation 36 of the Competition Commission of India (General) Regulations, 2024. It is made clear that nothing used in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same has been used for the purposes of the Act, in terms of provisions contained in Section 57 thereof.
69. The Secretary is directed to forward copies of this order to the concerned parties and their individuals, forthwith.

**SD/-  
(Ravneet Kaur)  
Chairperson**

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

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

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

**New Delhi  
Date:02.01.2026**