



COMPETITION COMMISSION OF INDIA

Ref. Case No. 05 of 2019

In Re:

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

Informant

And

**M/s AVR Enterprises,
D-23, Panki Industrial Estate, Site No 1,
Kanpur- 208022**

Opposite Party No. 1

**M/s Shiva Industries,
C-26, Panki Industrial Estate,
Site No. 1, Kanpur -208022**

Opposite Party No. 2

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

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

1. The instant reference has been filed by CP Cell, Directorate General Ordnance Service, Master General of Ordnance Service (“**Informant**”) under Section 19(1)(b) of the Competition Act, 2002 (“**Act**”) against M/s Shiva Industries (“**SI**”) and M/s AVR Enterprises (“**AVRE**”) alleging contravention of the provisions of Section 3 of the Act.



2. The Informant in the present case had issued RFP for procurement of Cloth Cotton Pagdi for quantity of 7,42,426 Mtrs and Mattress MK-II (Improved Version), quantity 57,761 (in numbers). The Informant has stated that out of 04 firms which participated, only 03 firms could qualify for opening of commercial bids for Cloth Cotton Pagdi and out of 10 firms only 04 could qualify for opening of commercial bid for mattress. The tender for procurement of Cotton Pagdi was floated on 22.10.2018, and for Mattress was floated on 08.11.2018, respectively.
3. The Informant has averred that Commercial Negotiation Committee ('CNC') observed that the rates may have been quoted after collusion by the said two firms. As submitted by the Informant, details of the bid are reproduced in the table below:

Table 1: Details of Bid related to procurement of Cotton Pagdi

S.No	Firm Name	Basic Rate (in Rs)	Status
i	M/s AVR Enterprises, Kanpur (AVRE)	38.50	L-1
ii	M/s Shiva Industries, Kanpur (SI)	38.50	L-1

Table 2: Details of Bidders for Mattress

S. No.	Firm Name	Basic Rate (in Rs)	Status
i	M/s AVR Enterprises, Kanpur (AVRE)	1190	L-1
ii	M/s Shiva Industries, Kanpur (SI)	1190	L-1

4. The Informant has prayed before the Commission that the Director General ("DG") may be directed to conduct an investigation into the matter under Section 26(1) of the Act to examine if there is any contravention of the provisions of Section 3 of the Act, so that further action may be taken.



5. The Commission considered the matter in its ordinary meeting held on 12.12.2019, and decided to seek additional information from the Informant for further analysis of the case. Informant was accordingly directed to provide information on certain points latest by 10.01.2020. As directed by the Commission, the Informant has provided the additional submissions on 09.01.2020.
6. The additional information mainly provides detail of tender for procurement of Mattress. The minutes of Commercial Negotiation Committee (CNC) meeting dated 03.09.2019, with regard to tender for procurement of Mattress, ranked the bidding firms as under:

Table 3: Details of Bidders for Mattress

No	Firm Name	Basic (in Rs)	IGST	CGST	SGST/UTGST	Total rate incl. GST (in Rs)	Ranking as per basic rate
(a)	M/s Shiva Industries, Kanpur	1,190.00	18%	-	-	1,404.20	L1
(b)	M/s AVR Enterprises, Kanpur	1,190.00	-	9%	9%	1,413.84	L1
(c)	M/s Shilpa Agencies, Kanpur	1,220.00	18%	-	-	1,439.60	L2
(d)	M/s Radnik Auto Exports, Noida	1,244.00	-	9%	9%	1,478.00	L3

7. The said CNC minutes also brought information regarding past conduct of the OPs in the recent procurement of Cotton Pagdi, wherein the said firms were ranked as under:



Table 4: Details of Bid related to procurement of Cotton Pagdi

S. No.	Firm Name	Basic	IGST	CGST	SGST/UTGST	Total rate incl. GST (Rs)	Ranking as per basic rate
(b)	M/s AVR Enterprises, Kanpur	38.50	5 %	-	-	40.43	L1
(a)	M/s Shiva Industries, Kanpur	38.50	-	2.50 %	2.50 %	40.43	L1

8. As per the information, 03 firms qualified for opening of commercial bids for tender of Cotton Pagdi. However, the information provides detail of only two bidders.
9. The Informant has also submitted a copy of the minutes of the CNC held on 03.09.2019, in respect of procurement of Mattress. As per the said minutes, CNC unanimously recommended the following:
 - a) Retendering of the case due to pool rate/ cartel formation.
 - b) Debarment of M/s Shiva Industries, Kanpur and M/s AVR Enterprises, Kanpur from further participation in any tender for period of two years due to cartel formation/collusive bidding.
10. The Commission has perused the information and the additional information/documents filed in the matter.
11. The Commission notes that bid rigging is defined in explanation to Section 3(3)(d) of the Act as any agreement between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding. The Commission observes that bid rigging or collusive bidding in a tender can be done in various ways, which includes any agreement by bidders to submit identical bids, or as to who shall submit lowest bid, or not bid, and even includes



designation of bid winners in advance by rotation amongst bidders or through allocation on geographical basis or customer allocation basis. Any such agreement can be said to be in contravention of Section 3(3)(d) read with Section 3(1) of the Act.

12. The Commission observes that a suspicion of bid rigging may arise if there is any visible pattern or anything unusual said or done by any bidder(s). Bid-rigging conspiracies can take many forms, all of which impede the efforts of purchasers, frequently national and local governments, to obtain goods and services at the lowest possible price. In exercise of powers vested under Section 19 of the Act, the Commission may inquire into any alleged contravention under Section 3(3)(d) of the Act that proscribes bid rigging.
13. Coming to the facts of the present case, the Commission notes that there are two allegations of bid rigging in procurement of cotton cloth for Pagri and Mattress, respectively. As per the information, total 04 bids were submitted for tender of Pagri, out of which 03 were qualified by the CNC. As regards the Mattress, there were 10 bidders out of which only 04 could qualify for opening of the commercial bids.
14. The Commission notes that though in the tenders for both the items, SE and AVRE quoted identical basic rates, yet, in the absence of any material having been brought on record by the Informant in the Information or in the additional information/documents suggesting or indicating concert among these parties to submit such bids, the Commission is unable to find such conduct to be in contravention of the Act. Price parallelism, in the absence of other evidence, in itself, may not be sufficient to launch a full fledged investigation.
15. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case and the information filed is closed herewith under Section 26(2) of the Act.



16. The Secretary is directed to inform the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 21.02.2020