



**COMPETITION COMMISSION OF INDIA**

**Case No. 25 of 2018**

**In Re:**

**Ravi Pal  
A-415, Basement, Defence Colony,  
New Delhi – 110 024**

**Informant**

**And**

**All India Sugar Trade Association (AISTA)  
3rd Floor, South Delhi House, 12,  
Zamrudpur Community Center,  
New Delhi – 110 048**

**Opposite Party No. 1**

**Mr. Praful Jagjivandas Vithalani,  
Chairman, AISTA  
Office No. 56, Gaya Building No. 109,  
4th Floor, Yusuf Meharali Road, Mandvi,  
Mumbai, Maharashtra – 400 003**

**Opposite Party No. 2**

**CORAM**

**Mr. Ashok Kumar Gupta  
Chairperson**

**Mr. U.C. Nahta  
Member**

**Mrs. Sangeeta Verma  
Member**

**Appearance on 03.01.2019:**

For Informant

Mr. J. Sai Deepak, Advocate  
Mr. Avinash K. Sharma,  
Advocate  
Mr. Afzal Khan, Advocate



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

1. Present information has been filed by Mr. Ravi Pal (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') alleging contravention of the provisions of Section 3(3) of the Act by All India Sugar Trade Association (hereinafter, '**OP-1**') and its Chairman, Mr. Praful Jagjivandas Vithalani (hereinafter, '**OP-2**'), with other unknown persons, collectively referred to as '**Opposite Parties/OPs**'.
2. According to the Informant, OP-1 is an association comprising mostly of sugar traders, couple of millers, refiners and bulk consumers as its members. It is stated that OP-1 has been formed, *inter alia*, with the following objectives :
  - (i) Policy advocacy for orderly development of the sugar sector;
  - (ii) Providing timely update on subjects of common interest and related regulations to the members;
  - (iii) Collection, analysis and dissemination of data and market reports; and
  - (iv) Holding periodical events for knowledge sharing and networking between members
3. The Informant has alleged that OP-2 is actively running various discussion forums and chat groups with the leading sugar traders/millers/refiners and other unknown persons on a software application platform popularly known as WhatsApp, which is being used by the OPs for circulating price sensitive information like sugar prices, and forthcoming policy changes by Government in relation to sugar industry, which, as per the Informant, would have direct impact on the domestic sugar market. The Informant has stated that OP-1 has been collecting, analysing and disseminating ex-mill prices of sugar and other sensitive information from various sugar traders/millers (also members of OP-1). According to the Informant, the details in relation to the sugar



prices are collated and uploaded on the website of OP-1. This information provides the members with speculative as well as determinative sugar prices in the market prevailing during a particular period of time.

4. It has been alleged that OP-2, in addition to holding a fiduciary capacity in OP-1, is also running few trading firms in Mumbai, one of which is under the name and style "*Jagjivan Keshavji & Co.*". It has been alleged that the OPs entered into an arrangement, forming a cartel whereby they have indulged in bid rigging by way of pre-determining prices for bids through information exchange.
5. It has, further, been alleged that for the past several months, the WhatsApp group, run and operated by OP-2, was very active and was informing and sharing the lowest prices of sugar on a daily basis, which were traded in limited quantities through a daily tender process in the state of Maharashtra. It has also been alleged that information of sugar prices, shared on the said WhatsApp group, were from the last successful bid to the tender, issued prior to the date of sharing of prices on the WhatsApp group. The Informant has further alleged that access to lowest sugar prices enables all the members of this WhatsApp group to collectively fix the lowest price for their bids for the next sugar procurement tender and that, thereby, all these members controlled and fixed price at which sugar was to be bought from the millers. This process, indirectly, restricted the market for a trader who submitted its bid on the basis of a price determined by market forces and not on the basis of the lowest price that was speculated and collusively fixed by the OPs.
6. It has also been alleged that most of the members of OP-1 are leading traders from Maharashtra and are acting in collusion by illegally exchanging information about lowest sugar prices amongst themselves.



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Through these acts, they allegedly indulged in bid rigging, primarily, to influence the bidding process in order to procure sugar at lower prices on a daily basis and eliminate free play of market forces in the sugar industry. Thus, the sugar millers were forced to sell sugar at lower price to traders. These traders were then able to help them influence the resale price of the sugar in the retail market where even other traders from the states of Uttar Pradesh and Karnataka are supplying.

7. Hence, the Informant has alleged the following against the OPs in this case:
  - (i) Collecting and disseminating pre-determined purchase price of sugar amongst the cartel members through WhatsApp and SMS;
  - (ii) Restrict the market for other competitors whose bids are based on market forces;
  - (iii) Vitiating the tender process so that an enterprise floating the tender has no option but to accept the prices determined by the OPs;
  - (iv) Control the supply of sugar in the market where it is sold to wholesalers and consumers;
  - (v) Affecting players of the market in other states (Uttar Pradesh/Karnataka) who are selling/supplying sugar in the same market as the OPs because the former are compelled to lower the prices of sugar due to elimination of market forces.
8. The Informant, at the time of filing the information, had claimed confidentiality under Regulation 35(3) of Competition Commission of India (General) Regulations, 2009 on his identity. This was later withdrawn by him, vide his letter dated 04.08.2018.
9. Further, the Informant has prayed that the Commission initiates an inquiry into the matter and directs the OPs to cease and desist from such anti-competitive practices. The Informant has also sought interim relief, against the OPs under Section 33 of the Act, praying that the



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Commission may pass cease and desist order to stop the OPs from collecting and disseminating price sensitive information.

10. The Commission considered the matter on 09.08.2018 and directed the Informant to file an affidavit under Section 65B of the Indian Evidence Act, 1872, in support of certain electronic records that form part of the information. The Commission also acceded to the request of the Informant for withdrawal of confidentiality on his identity that was earlier claimed by him.
11. Thereafter, the Commission directed the Informant to appear for a preliminary conference in the matter on 11.10.2018.
12. On 11.10.2018, the learned counsel for the Informant appeared in the matter. After hearing the oral submissions of the Informant, the Commission directed the Informant to file additional information by 31.10.2018. Pursuant to the directions of the Commission, the Informant filed certain additional information. Owing to the fact that the additional submissions made by the Informant were taken on record on 06.12.2018 before the changed quorum, the Commission directed the Informant to appear for a preliminary conference on 03.01.2019.
13. During the preliminary conference on 03.01.2019, the Informant reiterated his allegations as stated in the foregoing paragraphs. After hearing the Informant, the Commission directed the Informant to file the following further information, by 25.01.2019:

*“(i) the composition of WhatsApp group (traders, sugar millers etc.); and*

*(ii) the data based on which Average S-30 (Ex-Factory Net Realisation Rs./Quintal @APMC), relied upon by the Informant, for the month of June 2016, has been arrived at;*



(iii) any other additional document to substantiate the correlation as alleged by the Informant.”

14. Pursuant to the directions of the Commission, the Informant filed certain documents on 25.01.2019. Based on the documents as well as the submissions made during the hearing, the Informant has, therefore, alleged that the OPs indulged in anti-competitive practices pertaining to the period from May, 2016 to April, 2017 (hereinafter, ‘**relevant period**’) and thereby, contravened the provisions of Section 3 (3) read with Section 3(1) of the Act.
15. The Commission considered the matter in its ordinary meeting held on 13.02.2019 and decided to pass an appropriate order in due course.
16. The Commission has carefully perused the information and the additional documents filed by the Informant forming part of record alongwith the oral submissions of the Informant.
17. Bereft of too many details, the primary allegation arising from the facts, as per the Informant, is that OP-2 during the relevant period purportedly shared ‘*price sensitive information*’ pertaining to sugar prices over the WhatsApp group which in turn were allegedly used to quote lower prices in the tenders floated by the sugar millers for sale of sugar, in the state of Maharashtra.
18. In order to buttress his argument, the Informant placed on record certain WhatsApp messages pertaining to the relevant period, allegedly for the state of Maharashtra. During the preliminary conference, the learned counsel of the Informant contended that the messages contained the sugar prices for variants of sugar, namely, S-30 and M-30 and other international future prices of sugar *etc.* Based on the same, it was argued that the price of sugar (as displayed in WhatsApp messages) was



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allegedly the price of last successful bid (bidding done on daily basis) and the same was made the basis for quoting their bids by leading traders, who were members of the WhatsApp group (mainly traders) in the subsequent tenders of millers in the state of Maharashtra.

19. During the preliminary conference, the Informant attempted to establish the link between sugar prices (of S-30/M-30) circulated to the WhatsApp group and the average ex-factory S-30 and M-30 net prices at Agricultural Produce Market Committee ('APMC'). For the same, the Informant referred to the prices of sugar, mainly for the month of June 2016, purportedly published by Maharashtra Rajya Sahakari Karkhana Sangh Ltd., Mumbai. Based on the alleged link, it was contended by the Informant that the average ex-factory price of sugar was lower than the '*price sensitive information*' circulated on the WhatsApp group and thereby, indicated that there was collusion amongst traders in the procurement of sugar in subsequent bids. The Commission, on the basis of examination of the documents submitted by the Informant, does not agree with the contention of the Informant. As such a pattern cannot be said to be emerging so as to warrant an investigation in the matter. Further, the basis of arriving at average S-30/M-30 sugar prices (ex-factory net realisation at APMC) as published by Maharashtra Rajya Sahakari Karkhana Sangh Ltd., Mumbai, could not be gathered from the documents submitted by the Informant.
20. Moreover, when the Commission inquired from the counsel of the Informant about the basis for alleging the 'price sensitivity' of data by the Informant, the same could not be addressed by the Informant. It was stated by the Informant that the average prices at APMC were lower than the prices on WhatsApp messages and hence, the same could only be as a result of collusion. The Commission does not find any merit in this argument, as the Informant himself has explained, in the information filed by him, the process followed in the daily tenders and has stated that



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the sugar prices circulated were on the basis of last successful bids. This means that such information was already available in public domain post the award of the tender by the sugar mills and the circulation of the same, *per se*, does not imply that it would become sensitive information. Further, with regard to the information purportedly exchanged on WhatsApp group, the Commission observes that it is not clear from the records as to how such alleged acts can be said to have affected free play of the market forces with respect to prices of sugar. Further, the Informant has enlisted the objectives of OP-1, wherein collection of information and dissemination of information is one of the primary objectives. Therefore, unless it is indicated by the Informant, based on cogent evidence, that there was any meeting of minds amongst the OPs for placement of bids for tenders or with respect to prices to be quoted in such bids, it is not possible to form a *prima facie* view in the matter under Section 26(1) of the Act, warranting an investigation.

21. The Commission notes that the members of the WhatsApp group also comprise millers (two). There does not seem to be any rationale as to how millers (as sellers) who have an interest in getting higher prices of sugar, as against that of traders, who want to procure at lower prices, would be agreeable to sell the sugar at lower prices. As noted above, no material has been placed on record related to tenders floated by the millers during the relevant period and the bid details *etc.* The information is lacking in material particulars as to how there had been bid rigging or collusive bidding in any specific tender, rather the averments made are general in nature. Therefore, on account of lack of credible material and information, the Commission does not find any merit in the allegations posited by the Informant.
22. The Commission further notes that certain documents which were filed by the Informant (*vide* index dated 31.10.2018) indicating the rate at which sugar was purchased after the tender. Though the documents were



not explained by the Informant during the preliminary conference, however, after perusal, it is apparent that the documents were not for the relevant period (the same are in respect of certain months of 2014 and 2015) and are, thus, inconclusive in the light of allegations raised by the Informant in respect of the relevant period.

23. Furthermore, the sugar commodity is subject to the provisions under the Essential Commodities Act, 1955 and orders issued thereunder and, thus, the final market price of sugar is dependent upon numerous factors. Therefore, the allegation of the Informant that the alleged practices affected the market price in the absence of any evidence is without merit and does not warrant any investigation.
24. After appreciation of the allegations of the Informant and documents submitted including the oral submissions made by the Informant, the Commission is of the view that no evidence has been provided by the Informant to show that there was any meeting of minds between the OPs to establish correlation between bids submitted in any specific tender with the alleged sugar prices circulated over the WhatsApp group. Presumptive inference and analysis provided by the Informant cannot be the basis for forming a *prima facie* opinion as to order investigation in the matter. Therefore, the Commission observes that, based on the facts stated in the information and the evidence adduced by the Informant, a *prima facie* case under Section 26(1) of the Act is not made out against the OPs.
25. In view of the foregoing, the Commission finds no case of contravention of the provisions of Section 3(3) read with Section 3(1) of the Act against the OPs. Consequently, no case arises for consideration of interim relief claimed by the Informant under Section 33 of the Act.
26. The matter is, therefore, ordered to be closed in terms of the provisions of Section 26(2) of the Act.



27. Secretary is directed to communicate the order to the Informant.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(U.C. Nahta)**  
**Member**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**New Delhi**  
**Date: 22/03/2019**