



**COMPETITION COMMISSION OF INDIA**

**Case No.42 of 2018**

**In Re:**

**NLC India Limited  
Neyveli House, 135  
Periyar EVR High Road  
Chennai - 600010**

**Informant**

**And**

**M/s. Phoenix Conveyor Belt  
India ( P ) Limited  
Mount Chambers, 2<sup>nd</sup> floor,  
758  
Anna Selai, Chennai- 600002.**

**Opposite Party No. 1**

**M/s. Phoenix Conveyor Belt  
Systems, GmbH  
Hannoversche Strasse 88  
20179, Hamburg, Germany.**

**Opposite Party No. 2**

**M/s. IMAS SA  
P O Box 1050-38100, Volos  
Industrial Area, Volos,  
Greece.**

**Opposite Party No. 3**

**M/s. Bridgestone Engineered  
Products of Asia, Sdn, Bhd,  
Malaysia,  
L1-E-3b, Enterprise 4,  
Technology Park, Malaysia**



**Lebuhraya Puchong- Sg Besi  
57000 Bukit Jalil, Kuala  
Lumpur, Malaysia.**

**Opposite Party No. 4**

**M/s. Sumeru (India) Private  
Limited  
Jindal Towers, 21/1A/3,  
Darga Road,  
Kolkata – 700017,**

**Opposite Party No. 5**

**CORAM**

**Mr. SudhirMital  
Chairperson**

**Mr. Augustine Peter  
Member**

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

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

1. The present information has emanated from a letter received by the Commission from Central Vigilance Commission (hereinafter, “CVC”), *vide* office memo dated 16.05.2017, alleging cartelisation by 3 entities, namely M/s Phoenix Conveyer Belt India (P) Ltd (formerly known as Phoenix Yule Ltd) (“OP-1”), M/s Phoenix Conveyer Belt Systems GMBH (“OP-2), and M/s IMAS SA, (“OP-3”). The CVC letter stated that these three entities, which belonged to Phoenix Group, were participating in the tender since 2005 and cornering the order at apparently rigged prices and there was no reasonable explanation for accepting the rates of the items available in their



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file except the previous years' orders. Accordingly, CVC referred the matter to the Commission for further examination.

2. The Commission considered the communication from CVC and decided to call for all the relevant documents related to this case from CVC. NLC India Limited (hereinafter, "NLCIL") was also advised to file an Information. In pursuance of the same, the present Information was filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the "Act") by NLCIL against OP-1, OP-2, OP-3, M/s Bridgestone Engineered Products of Asia, Sdn, Bhd, Malaysia, (hereinafter, "OP-4") and M/s Sumeru (India) Private Limited (hereinafter, "OP-5").
3. NLCIL is a public sector company incorporated under the provisions of the Companies Act, 1956, engaged in the business of lignite based generation and supply of electricity.
4. The Commission observes that though the Information has been filed pursuant to the directions of the Commission, NLCIL has also stated that according to it, there is no contravention of the provisions of the Act. For ready reference, the relevant text from the information, wherein the NLCIL has denied any cartelisation is reproduced below:

*"NLCIL is not aware of any cartelisation or combination or any other contravention on the part of any of the participating or selected bidders for supply of steel cords conveyor belt to NLCIL. It is reiterated that the present information is being filed by NLCIL in pursuance to the communication dated 27.02.2018 received from the Commission with reference to the letter dated 16.05.2017 sent by the Central Vigilance Commission to the Competition Commission of India."*



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5. In view of the position communicated by NLCIL, the Commission deems it appropriate to treat the matter as a reference received from CVC under Section 19 (1) (b) of the Act and proceed accordingly.
6. On perusal of the documents filed, the Commission notes that NLCIL had floated a tender for procurement of 2400 mm steel cord belt *vide* tender number ENQ/11-12/004203/MM 02(4) issued on 02.02.2012, which was opened on 21.03.2012. OP-1, OP-2, OP-3 and OP-4 participated in the said tender. On processing of the tender, OP-4 did not meet the pre-qualification requirement of the tender which restricted offers only from firms which were in the business of manufacture of steel cord belt. Accordingly, since OP-4 did not belong to the manufacturing business, its offer was not considered. Thereafter, OP-5, the authorised representative of OP-4, *vide* letter dated 30.04.2012, made a complaint to the Chairman and Managing Director, NLCIL stating that if the bid of OP-4 is not considered, there will be no competitive bidding, since OP-1, OP-2 and OP-3 belonged to the same group, *i.e.* under the Continental Contitech group. OP-5 made a similar complaint dated 19.06.2012 with the CVC.
7. The Commission notes that the CVC referred the matter to the Commission pursuant to the said complaint filed by OP-5. The primary grievance which resulted in the initiation of the present information was that OP-1, OP-2 and OP-3 were related parties and if the bid of OP-4 was not considered, there would be no competitive bidding.
8. The Commission observes that for establishing a case of collusive bidding or bid-rigging under the provisions of Section 3 (3)(d) read with Section 3 (1) of the Act, the existence of an agreement/arrangement/understanding amongst the bidders is a *sine qua non*. As per documents available on record, it is clear that NLCIL was aware that the three participating entities were related entities. Phoenix Yule Limited, in its letter number PYL/CH/NLC/08 dated 11.12.2008, had intimated NLCIL that the three companies (OP-1 to OP-3)



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were inter-related. Thus, it was not the case that the procurer was misled by fictitious competitive bids by related entities. Rather, the OPs specifically informed the said fact to NLCIL.

9. The Commission further notes that as per NLCIL, the bid of OP-4 was not considered due to its inability/failure to meet the pre-qualification requirement which restricted offers from firms which are in the manufacturing line only. There is nothing on record to suggest that OP-4 was ousted because of the collusive understanding amongst OP-1 to OP-3 or that the bids were otherwise rigged by them. Thus, though the tender may have had only few participating entities belonging to the same group, it could not be considered as *per se* amounting to cartelisation. There is nothing on record to suggest a *prima facie* case of bid-rigging or collusive bidding by OP-1 to OP-3, within the provisions of the Act. The Commission also sought further information from CVC. However, the information so received also doesn't indicate the existence of any collusive understanding between the said OPs within the meaning of Section 3 of the Act.

10. The information on record further suggests that pursuant to the complaint by OP-5, Central Vigilance Officer (CVO) of NLCIL wrote a letter to the Secretary, Central Vigilance Commission (Letter No. CVO/NLC/1338/2014 dated 06.06.2014) wherein it was reported that during the enquiry conducted by the CVO, the tender committee furnished documents to confirm the manufacturing capability of the qualified firms and it was ascertained that all the three qualified firms were proven suppliers of conveyor belts to NLCIL for more than 15 years and in the past, the manufacturing capabilities had been ascertained based on the inspection reports by NLCIL's executives and third-party inspectors.

11. Furthermore, the Commission notes that the above-mentioned pre-qualification requirement, *vide* which OP-4 was found to be ineligible to participate, has since been modified and the revised pre-qualification



requirement, permits offers from a 100 % wholly owned subsidiary company or any of the promoters of the joint venture company even if they were not manufacturers, but subject to the condition that either the holding company or any other promoter are in the manufacturing line. The Commission observes that it is for the tenderer to specify the terms and conditions of the tender such that competition is promoted amongst bidders. In the present case, eligibility criteria has been broadened by NLCIL to ensure wide participation and which may also cover OP-4, in respect of future tenders.

12. In view of the foregoing, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the OPs and the matter is ordered to be closed in terms of the provisions of the Act.
13. The Commission reiterates its views taken in several previous cases that the procurement policy of the public sector undertaking should be in harmony with competition law principles. Though the facts, and evidence on record, in the present case do not reveal contravention of the provisions of the Act to mandate an investigation under Section 26(1) of the Act, the tender conditions appear to create entry barriers thereby restricting competition and allow related entities to participate in the tenders as independent entities without sufficient safeguards which may severely impact the competitive process and lead to inefficient procurement. Further, while the Commission respects the independence of the procurement authority in setting the pre-qualification criteria and other terms/conditions of the tenders, caution should be exercised not to set qualifying conditions in a manner which prevent legitimate suppliers from engaging in the tendering process. Thus, it is advised that NLCIL should align its policies with the tenets of competitive principles to ensure better participation by independent suppliers in order to avail best value of the goods/services procured.



14. The Secretary is directed to communicate this order to NLCIL and CVC, accordingly.

**Sd/-  
(SudhirMital)  
Chairperson**

**Sd/-  
(Augustine Peter)  
Member**

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

**New Delhi**

**Date: 09 /11/2018**