



## COMPETITION COMMISSION OF INDIA

Case No. 45 of 2020

### **In Re:**

**CA Subrata Maity**

Shop No. 28, Plot No. 25, Green Space Royal CHS Ltd.  
Sector 7, Kamothe,  
Navi Mumbai – 410209  
Maharashtra

**Informant**

### **And**

**Jai Gurudeo Complex Co-operative Housing Society Ltd.**

Through the Secretary, Managing Committee  
Plot No 16-19, 21-25 & 18-A  
Sector 17, Kamothe,  
Navi Mumbai – 410209  
Maharashtra

**Opposite Party**

### **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 information is filed by CA Mr. Subrata Maity (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') alleging contravention of provisions of Sections 3 and 4 of the Act by Jai Gurudeo Complex Co-operative Housing Society Ltd., through Managing Committee represented by its Secretary Mr. C.K.G. Nair (hereinafter, the '**Society**'/ '**Opposite Party**')
2. The Informant is a member of the Society which is located at Sector 17, Kamothe, Navi Mumbai. The Society has about 144 dwelling units and residents have been living there since 2009.



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**Facts and Allegations as stated in the Information**

3. The Informant states that in September 2018, the managing committee of the Society for the purpose of carrying out building repairs, waterproofing, painting and allied jobs, decided to constitute a Repair Sub-committee and directed it to submit a report in this regard. The mandate of the Repair sub-committee was to diagnose *'the cause of damages/deterioration/distress/decay to ensure durable & trust worthy repair, area of priority area, selection of effective products, specification of repair work, selection of applicator/contractor, periodical monitoring & review, post repair maintenance plan'*. One Mr. G. Dutta was selected as the convener amongst the other members of the sub-committee.
4. After carrying out descriptive assessments, the sub-committee submitted its report containing the recommendations. The Informant states that one of the recommendations contained in the report was *'to select high-graded branded product giving 8 years to 10 years'* in terms of product/paint quality/including water proofing and Algae control. Besides making the said recommendation, the report provided a comparison of product quality of three brands viz. Dr. Fixit, Asian Paints and Dulux along with their estimates.
5. A Special General Body Meeting was held on 07.04.2019. According to the minutes of the meeting, vide document dated 10.04.2019, it was stated that the sub-committee had recommended in favour of Dr. Fixit brand of products in view of specialisation in water proofing work, which, as per the Informant was contrary to the recommendation of the sub-committee. The minutes further stated that sub-committee's estimates were based upon the preliminary quotations received from three approved *'applicators'* of Dr. Fixit and that Dr. Fixit would take up the works only if the entire work was assigned to them. The Informant alleges that the representatives of the other branded products were not called for the meeting and there was no mention to this effect in the minutes. Thus, the managing committee of the Society allegedly acted contrary to the recommendations of the sub-committee and favoured a single product and thus, contravened the provisions of Section 3 and 4 of the Act.
6. Thereafter, the Society published the Notice Inviting Tender (NIT) in a local daily during November 2019. Contrary to the recommendations of the sub-committee, the



Tender documents for Building Repair, Waterproofing & Painting were finalised in two parts for inviting Technical and Commercial Bids.

7. The Informant alleged, *inter alia*, that in contravention of the Tender's terms and conditions, only the certificate issued by Dr. Fixit in a particular format alongwith requirement of higher-level certificates (Level 2/Level 3) were made the qualifying criteria by the Society. This allegedly contravened the provisions of the Act. Besides this, the Society verified the credibility of the bidders from Dr. Fixit before the opening of their commercial bids which had recommended in favour of few bidders. The Managing Committee of the Society bypassed the suggestions of Dr. Fixit and recommended for opening of commercial bids of only parties having Level 3 certificates and ignored Level 2 certificate holders as per the Tender.
8. The commercial bids of six bidders were opened. As per the available documents, the six bidders were :
  - 8.1. M/s Kalakrati Engineers & Consultants (L-1)
  - 8.2. M/s Unique Constructions (L-2)
  - 8.3. M/s Intercons Tectonic Ltd. (L-3)
  - 8.4. M/s Pyramid Techno Management (L-4)
  - 8.5. M/s Om Ajay Constructions (L-5)
  - 8.6. M/s Vasu Engineers & Contractors (L-6)
9. After the opening of commercial bids, the Society allegedly put extraneous condition upon the bidders to submit a declaration on submitting 'tripartite agreement and warranties' from Dr. Fixit. The Lowest Bidder did not agree to such condition. Thus, five bidders were invited for price negotiations and M/s Pyramid Techno Management was selected after it offered the lowest price post negotiations. M/s Pyramid Techno Management was issued the Work Order dated 07.03.2020. The work could not commence due to Covid -19 and other reasons. The Informant later learnt that *vide* letter dated 01.11.2020, work had been directed to be commenced from 16.11.2020 as per Work Order dated 07.03.2020.



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10. Based on the above, the Informant has alleged that the malicious and wrongful actions of the Managing Committee of the Society has resulted in contravention of the provisions of Section 3 and 4 of the Act. Accordingly, the Informant, *inter alia*, prayed for the orders by the Commission for quashing of the Work Order dated 07.03.2020 and commencement of work letter dated 01.11.2020 and hold the office bearers of the Society in contravention of the provisions of the Act.
11. The Informant has also prayed for interim directions under Section 33 of the Act for keeping in abeyance the Work Order dated 07.03.2020 and Commencement order dated 01.11.2020. The Informant has prayed that if interim directions are not granted then irreparable loss would occur to the Informant since he is a member of the Society and bears the expenditure arising out of the work order.
12. The Commission considered the matter on 24.11.2020 and decided to pass an appropriate order in due course.
13. The Commission has carefully perused the information, the documents filed by the Informant and the information available in public domain.
14. On perusal of the Information, the Commission notes that the Informant has alleged contravention of Section 3 and Section 4 of the Act on the basis that the Society allegedly floated the tender in respect of one brand, that is, Dr. Fixit and which was also allegedly contrary to the recommendations of the repair sub-committee constituted by the Managing Committee of the Society. Further, the Society allegedly devised such tender's terms and conditions in order to restrict competition.
15. The Commission observes from the information available in the public domain that the Opposite Party is a housing society amongst many housing societies in Navi Mumbai.<sup>1</sup> The non-adherence to the process of tendering as alleged in the information does not seem to raise any competition concern in view of the fact that a one-time repair being undertaken by the society for and on behalf of its members (about 144 dwelling units) *ex-facie* may not cause any appreciable adverse effect on competition in the market. Further, the nature of allegations relates to procurement of services for self-

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<sup>1</sup> <http://www.cidcoindia.com/CIDCOPROPERTY/>



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consumption. Thus, in totality of facts and circumstances of the case, there arises no requirement of defining a precise relevant market or assessing the market power in the present matter. From a competition perspective, the facts disclosed in the information do not raise any competition concern which could form the basis of examination under Section 3 or Section 4 of the Act.

16. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case under Section 3 or Section 4 of the Act and the information filed is directed to be closed forthwith against the Opposite Party under Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises and the same is also rejected.
17. The Secretary is directed to communicate to the Informant, accordingly.

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

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

**Sd/-**  
**(Bhagwant Singh Bishnoi)**  
**Member**

**New Delhi**  
**Date: 29/12/2020**