



**COMPETITION COMMISSION OF INDIA**

**Case No. 47 of 2020**

**In Re:**

**Arrdy Engineering Innovations Pvt. Ltd.  
B-30, Industrial Estate  
Kalunga, near Rourkela  
Odisha- 770031**

**Informant**

**And**

- 1. Heraeus Technologies Pvt. Ltd.  
Godrej Genesis, 12<sup>th</sup> floor  
Room 1209, EP GP block  
Salt Lake, Kolkata- 700091**

**Opposite Party No. 1**
- 2. Heraeus Electro-Nite International N.V.  
Centrum- Zuid 1105  
3530 Houthalen-Helchteren  
Belgium**

**Opposite Party No. 2**
- 3. Heraeus Electro-Nite Shanghai Co. Ltd.  
6570, Zhongchun Road  
Qibao Town, Shanghai 201101**

**Opposite Party No. 3**
- 4. CPP Thermo Devices Pvt. Ltd.  
W- 46, Sector 11, Sector 11  
NOIDA, Gautam Budh Nagar-201301**

**Opposite Party No. 4**
- 5. Shree Ram Measurements Technologies Pvt. Ltd.  
69, Regal Building, 2<sup>nd</sup> Floor  
Hanuman Road Area, Connaught Place  
New Delhi – 110001**

**Opposite Party No. 5**



6. **Minco Tech (India) Private Limited**  
**1, British Indian street, 7<sup>th</sup> floor**  
**Room no. 705, Kolkata- 700001** **Opposite Party No. 6**
7. **Allied Instruments & Thermocouples**  
**C-1, Phase VI, Industrial Area**  
**Gamharia, Jamshedpur- 831001** **Opposite Party No. 7**

**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 present Information has been filed by Arrdy Engineering Innovations Pvt. Ltd. ('the Informant') under Section 19(1) (a) of the Competition Act, 2002 (the 'Act') against Heraeus Technologies Pvt. Ltd. ('Opposite Party No. 1' / 'OP-1'); Heraeus Electro-Nite International N.V. ('Opposite Party No. 2' / 'OP-2'); Heraeus Electro-Nite Shanghai Co. Ltd. ('Opposite Party No. 3' / 'OP-3'); CPP Thermo Devices Pvt. Ltd. ('Opposite Party No. 4' / 'OP-4'); Shree Ram Measurements Technologies Pvt. Ltd. ('Opposite Party No. 5' / 'OP-5'); Minco Tech (India) Private Limited ('Opposite Party No. 6' / 'OP-6') and Allied Instruments & Thermocouples ('Opposite Party No. 7' / 'OP-7') (collectively referred as 'the OPs') alleging *inter alia* contravention of the provisions of Sections 3 and 4 of the Act.



2. The Informant alleges bid rigging by the OPs through their joint participation as different entities for supplies/ services to steel industry for measurement, monitoring of temperature, oxygen activity, chemical composition *etc.*
3. The Informant is stated to be in the business of manufacturing and marketing of sensors for measurements of temperature, chemical composition *etc.* of molten metals. The Informant was earlier the distributor of Heraeus Electro-Nite International N.V. Belgium *i.e.* OP-2 in India.
4. It has been averred that in 2014, OP-2 illegally terminated its distribution agreement with the Informant and OP-2 set up its own company under the name of Heraeus Technologies Pvt Ltd. in Kolkata *i.e.* OP-1. It is stated that the bids were invited by SAIL India, wherein the Informant participated as one of the bidders besides OP-1, who won the tender for hydrogen measurement in addition to some other contracts at SAIL Plants. Thereafter, the Informant started developing its own products and was pursuing its own business activities.
5. It has been stated that in 2015, the Heraeus Group of Companies acquired a small Indian competitor *i.e.* CPP Thermo Devices Pvt. Ltd./ OP-4. Thus, both the entities together started making paper tubes; assembling imported sensor and started selling the same to the Indian customers under the name of OP-4 even though OP-1/ OP-2 had acquired 100% shareholding of OP-4. It has also been alleged that Heraeus Group registered OP-4 as an independent vendor at major steel plants, irrespective of the fact that other Group companies were or would also register themselves as a vendor with the same steel plants.
6. It is further stated that another Indian competitor *i.e.* Shree Ram Measurements Technologies Pvt. Ltd. *i.e.* OP-5 was acquired by Heraeus Group in 2018 in Durg district of Chattisgarh and they continued operating in the name of OP-5 by changing its legal constitution from a partnership to a private limited company. The Informant alleges that fully owning and controlling the company



and declaring the names and details of their foreign Directors as the new Directors of the Indian company, is indicative of their anti-trust violations by Heraeus Group in relation to tenders/ bids invited by Indian steel industry.

7. Further, it is averred that Heraeus Group along with OP-5 had submitted bids, invited by Tata Steel BSL Ltd. ('TSBSL') and they were successfully awarded entire work orders/ tenders at TSBSL, Meramandali plant in Angul District of Odisha. The Informant has alleged that the same is in violation of the provisions of Section 3(3) of the Act as TSBSL bidding process stated that vendors should be independent of each other. Similarly, the Informant has alleged that Heraeus Group also simultaneously participated in bids invited by Arcelor Mittal Nippon Steel Plant, Hazira (Gujarat) and were successfully awarded the contract/ work order.
8. It has also been alleged that Heraeus Group of Companies have been bidding and taking orders from Indian Steel Plants either as OP-1 or OP-4 or OP-5 or supplying items imported directly from Heraeus Electro-Nite Shanghai, China *i.e.* OP-3 or their other plants around the world in clear violation of the provisions of Section 3(3) of the Act. That Heraeus Group of Companies evidently attempt to adversely affect competition in India by artificially lowering the prices to an 'uneconomic level'.
9. The Informant has also stated that many Indian sensor manufacturing/ supply companies are working on behalf of International sensor manufacturing/ supplying companies that are controlled or allied with Heraeus Group of Companies either directly or indirectly. For instance, Minkon GmbH Heinrich-Hertz-Straise, Germany (controlled by Heraeus Group of Companies either directly or indirectly) is represented in bids by a Jamshedpur based Indian owned company *i.e.* M/s. Allied Instruments & Thermocouples *i.e.* OP-7. The Informant has alleged that Heraeus Group of Companies dictate the prices and products that can be sold by OP-7. Similarly, Minco Tech (India) Private Limited *i.e.* OP-6 claims to buy some sensor products from Minco (Shanghai)



Metallurgical Co. Ltd. which is owned and controlled by Heraeus Group of Companies. Thus, in light of the foregoing, the Informant has alleged that Heraeus Group directly or indirectly control the price, supply *etc.* of sensors (used in various measurements of molten metal) to be sold to the Indian steel plants in violation of the provisions of the Act.

10. The Informant has also stated that the companies which are not directly under the control of Heraeus Group such as OP-6 and OP-7 are being supported by Heraeus Group by placing orders for their items so as to eliminate the competition in the market and indirectly controlling OP-6 and OP-7.
11. The Informant has also alleged that Heraeus Group had supplied Hydrogen measurement instruments to SAIL's Bhilai Steel Plant and thereafter, restricted SAIL from buying the spares and consumables from any other vendors by dictating that such instrument shall only be used with their own spare products or else they will not service the instruments. Resultantly, SAIL's Bhilai Steel Plant was forced to buy the spares parts at inflated prices. Thus, the Informant has alleged that the same amounts to the violation of the provisions of Section 4 of the Act.
12. Lastly, the Informant has stated that similar anti-competitive acts of Heraeus Group of Companies took place in regard to USA's Steel Industries, wherein it started acquiring its competitors. The same led to Department of Justice, USA filing an antitrust case in the District Court of Columbia, wherein, the Court passed an order against Heraeus Group directing them to divest the assets it had acquired in the competing company *i.e.* Midwest Instrument Company/Minco, besides penalising them for such activities.<sup>1</sup>

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<sup>1</sup> <https://www.justice.gov/atr/case-document/file/498631/download>



13. In light of the aforesaid, the Informant has *inter alia* prayed the Commission to:
- i. Adjudge and decree that the OPs have violated the provisions of Sections 3 and 4 of the Act;
  - ii. Direct OP-1 and OP-2 to divest all its acquisitions made in various competitor companies; and;
  - iii. Grant other reliefs as the Commission may deem fit and necessary.
14. The Commission has perused the Information and the documents annexed therewith. The Informant is stated to be in the business of providing and supplying diverse products/ services to various Steel Plants of different players. The distribution agreement of the Informant with OP-2 was stated to be illegally terminated by OP-2 in 2014. OP-2 is a Belgium based company and is operating in India through other OPs, which, it is alleged, are controlled directly or indirectly or otherwise supported through OP-2 (described by the Informant as Heraeus Group). On perusal of the Information and the averments made therein, it is observed that the Informant has alleged violation of the provisions of Sections 3 and 4 of the Act.
15. As far as the allegations pertaining to violation of Section 3 are concerned, it is observed that the Informant has made allegations based on OPs being part of Heraeus Group, acquisitions made by Heraeus Group and as also on the basis of some alleged indirect control exerted on some of the OPs. In this connection, it is observed that mere business linkages and common directorships *simpliciter* in themselves are not sufficient to base a finding of *prima facie* violation of Section 3(3) of the Act in the absence of any material indicating concerted action. In this regard, it is also pertinent to note the gravamen of the of the Information which allege quoting of ‘artificially’ lower ‘prices’ by the OPs in response to the tenders floated by various Steel Plants. No specific details of products/ services or tenders or procurers has been provided except making patchy and bald allegations.



16. So far as allegations pertaining to contravention of provisions of Section 4 of the Act are concerned, it is observed that some of the OPs are stated to be acquired by OP-2 but as far as the remaining OPs *i.e.* OP Nos. 6 and 7 are concerned, the only allegation is that they are being ‘supported’ by Heraeus Group. This does not *prima facie* make all OPs as part of a same group. Moreover, no specific product/ service has been identified to define the relevant market. Neither has the Informant itself proposed or suggested any relevant market. The Informant has also not highlighted any specific abusive behaviour by OPs which can be said to violate the provisions of Section 4(2) of the Act.
17. In this regard, the Commission notes that quoting of lower prices in different tenders/ bidding process by itself cannot be taken as predation when the Informant itself has not alleged predatory pricing or otherwise placed on record any relevant pricing data wherefrom such conclusion can be drawn even at a *prima facie* level. In any event, in the absence of any material to show all OPs as part of Group and dominance of such Group in any relevant market, it is unnecessary to examine the alleged abuse. The allegations that Heraeus Group has started acquiring its local Indian rivals manufacturing/ distributing single use sensors, instrument used to measure and monitor the temperature and chemical composition of molten steel *etc.* is beyond the scope of present proceedings.
18. In the result, the allegations made by the Informant remain unsubstantiated to base any *prima facie* conclusion as to the violation of the provisions of the Act and the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act. Needless to add, the Informant is at liberty to take out its remedies before the appropriate forum for alleged violations of tender conditions, as alleged in the Information and nothing stated in this order shall tantamount to an expression of opinion on the merits of such allegations.



19. 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: 11/12/2020**