



COMPETITION COMMISSION OF INDIA

Case No. 52 of 2017

In Re:

**Maharashtra Electrical Engineers Association
Through its Authorised Signatory
Shri Patil S. Ganesh**

Having its Office at:

**Sashana Heights, Subash Road
Sneh Nagar, Beed - 431122**

Informant

And

- 1. Maharashtra Industrial Development Corporation
Through its Superintendent Engineer (E & M)**

Having its Office at:

**MIDC, Jog Centre, Old Mumbai Pune Highway
Wakdewadi Pune - 411003**

Opposite Party No. 1

- 2. Royal Power Trunkey Implements Private Ltd.
Through its Authorised Signatory**

Having its Office at:

**Shop No. 3, Maha Commercial Complex,
Near YCM Hospital, Sant Tukaram Nagar
Pimpri, Tal. Haveli, Dist. Pune**

Opposite Party No. 2



CORAM

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. Justice G. P. Mittal
Member

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

1. The present information has been filed by Maharashtra Electrical Engineers Association ('the Informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Maharashtra Industrial Development Corporation ('the Opposite Party No. 1'/ OP-1/ MIDC) and Royal Power Trunkey Implements Private Limited ('the Opposite Party No. 2'/ OP-2) (collectively, 'OPs') alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. The Informant - Maharashtra Electrical Engineers Association - is a registered association of electrical contractors under the Labour Association Act, 1926. It is stated to be established to safeguard the interests of its members who provide infrastructural facilities in the layout of Special Economic Zones by providing, erecting and commissioning of transformers, sub-stations *etc.*
3. It is averred that the member contractors of the Informant association are working for and registered with MIDC *i.e.* OP-1 which is a government enterprise, entrusted with development of industries, industrial areas, Special Economic Zone *etc.* in the State of Maharashtra. OP-2 is a company registered under the Companies Act, 1956 and is engaged in business of electrical



turnkey contracts, erecting and commissioning of transformers, sub-stations and other electrical equipments *etc.*

4. It is stated in the information that on 23.01.2014, OP-1 issued a Circular No. R-6 of 2014 specifying Post-Qualification of contractors and opening of tender conditions including the technical norms to be followed before awarding of contract in favour of a tenderer. However, in a bid invited by OP-1 on 03.04.2017 with respect to the tender pertaining to installation, erection, commissioning and operation of lift in Aurangabad Industrial Area (for construction of Class I, II & Class III & IV quarters and for providing internal & external electrification, lifts, firefighting arrangement and other miscellaneous works), OP-1 granted the tender arbitrarily to OP-2 who did not even hold a valid license issued by the concerned authorities to be able to perform the contract/ tender.
5. Based on an e-mail dated 11.05.2017 of Chief Electrical Inspector, it was stated that as per the Maharashtra Lift Rules 1953, the works for erection, commissioning and operation of a lift can only be carried out by a contractor who is an authorized lift contractor approved by Chief Electrical Inspector, Mumbai.
6. It is alleged that OP-1 allowed the registered electrical contractor (OP-2) to submit its bid and carry out the works relating to erection of lift despite the fact that the said contractor (OP-2) did not possess any license issued by the competent authority under the Lifts Act and not having been approved by Electrical Inspector.
7. Similarly, it is stated that on 30.05.2017, OP-1 issued a tender for Annual Maintenance Contract (Comprehensive) for 2 years of KONE make lifts in office complex building. It is, however, alleged that without considering the eligibility criteria stated in the said tender, OP-1 allowed OP-2 to participate in



the tender process, when admittedly, OP-2 was not even manufacturer/ authorized dealer of KONE make lifts.

8. The Informant has also pointed out that the Hon'ble High Court of Bombay (Bench at Aurangabad) *vide* its order dated 16.06.2014 passed in Writ Petition No. 4754 of 2014 had quashed a tender awarded in favour of OP-2 for providing infrastructural facilities for Special Economic Zone.
9. It is alleged that OP-1 is not following the tender conditions laid down by it and is giving undue favour to OP-2 by allowing it to submit its bids. It is also alleged that the conditions in the tenders are completely one-sided which have been incorporated to benefit OP-2. Accordingly, the Informant has alleged contravention of the provisions of Section 4(2)(a), (c) & (d) of the Act. It is further alleged that the tender documents/conditions are also anti-competitive within the meaning of Section 3 of the Act. The Informant has averred that the above stated illegal and unlawful actions on part of OP-1 have caused an appreciable adverse effect on competition in the market and must be discontinued.
10. The Informant has also sought an interim relief in terms of the provisions of Section 33 of the Act by way of an *ad interim ex parte* stay to restrain OP-1 from allotting/ awarding any further tender in favour of OP-2 till the adjudication of the instant information.
11. The Commission has perused the information and the documents filed therewith.
12. The Informant which is an association of electrical contractors under the Labour Association Act, 1926 has filed the instant information against MIDC (OP-1) alleging that it is favouring OP-2 in award of tenders to the exclusion of the members of the association. The Informant has essentially argued that



OP-1 is not adhering to its own circular which provided for the qualification of the contractors and also the laid down conditions for the tender.

13. In support of the allegations, the Informant has pointed out a few instances where tenders have been awarded by OP-1 to OP-2 even though OP-2 was not allegedly eligible as detailed in the information. The Informant has alleged that such conduct of OP-1 is in contravention of the provisions of Section 3 and 4 of the Act.
14. On a careful perusal of the information and the documents filed therewith, the Commission is of opinion that the instant information does not disclose any material which may attract the provisions of Section 3 or Section 4 of the Act.
15. It may be observed that under the scheme of the Act, the Commission may examine the agreements which cause or are likely to cause appreciable adverse effect on competition within India in terms of the provisions contained in Section 3 of the Act. Similarly, the Commission may also examine the abusive conduct indulged in by a dominant enterprise in the relevant market as provided under Section 4 of the Act.
16. As narrated earlier, the allegations made by the Informant at best indicate non-observance of the tender conditions/ circulars by OP-1 in award of its contracts in favour of OP-2. The Informant has not placed any agreement which can be examined under Section 3 of the Act. Similarly, no term of any tender has been pointed out which can be examined under Section 4 of the Act. Rather, the grievance of the Informant emanates out of the alleged non-adherence to tender conditions and circulars by OP-1. The information has been filed making generalized allegations against MIDC in respect of award of contracts in favour of OP-2. The Informant has to avail its remedies in respect of its grievances highlighted herein in respect of the tendering process elsewhere. Without commenting upon the merits of such allegations, the



Commission is of opinion that the entire thrust of the information does not reveal any competition issue whatsoever.

17. In view of the above, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the Opposite Party and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
18. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Date: 09/10/2017