

**Competition Commission of India**

**Case No. 04/2011**

22-3-2011

**Date, 2011**

**Lodestar Slotted Angles Limited.**

***Informant***

- |  |                         |
|--|-------------------------|
| (1) Rockline Construction Company              | (Opposite Party No. 1)  |
| (2) Mr. Gopi Didwania                          | (Opposite Party No. 2)  |
| (3) M/s Preeti Enterprises                     | (Opposite Party No. 3)  |
| (4) Mr. Yatindra S. Pairaikar                  | (Opposite Party No. 4)  |
| (5) Mr. Deepoo Vaswani                         | (Opposite Party No. 5)  |
| (6) Mr. Mahendra Kumar Kawad                   | (Opposite Party No. 6)  |
| (7) Geekay Exim India Limited                  | (Opposite Party No. 7)  |
| (8) Gopal Krishan Rathi                        | (Opposite Party No. 8)  |
| (9) G.K.A.K Rathi                              | (Opposite Party No. 9)  |
| (10) Oman International Bank                   | (Opposite Party No. 10) |
| (11) M/s Mulla & Mulla Craigie & Blunt & Caroe | (Opposite Party No. 11) |

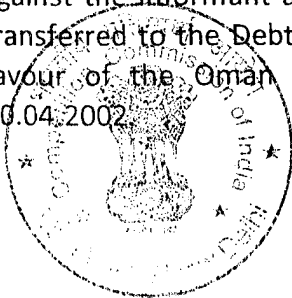
**Order under Section 26(2) of the Competition Act, 2002**

The present information has been filed under Section 19 of the Competition Act, 2002 (hereinafter referred to as "the Act") against Rockline Construction Company and Others, alleging bid rigging by Opposite Party No.1 to 5 at an auction of the property.

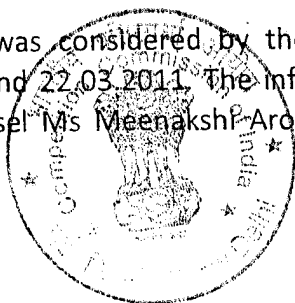
2. The facts of the case, in brief, as provided in the information are as follows:

2.1 The Lodestar Slotted Angles Ltd. (hereinafter referred to as "Informant") had taken a loan from Opposite Party No.10 by mortgaging its property and failed to repay the loan.

2.2 Opposite Party No.10, Oman International Bank filed a suit before the Mumbai High Court against the informant and related parties for recovery of dues, which was subsequently transferred to the Debts Recovery Tribunal (DRT), Mumbai. The said suit was decreed in favour of the Oman International Bank, and a recovery certificate was issued on 30.04.2002.



- 2.3 In pursuance of the recovery certificate the property was put to auction. On 11.05.2007, after a few rounds of bidding, the bid of Rs.9.56 crores placed by Rockline Construction Company, was declared successful and after the receipt of the entire bid amount, the Recovery Officer confirmed the sale in favour of Opposite Party No.1 on 16.05.2007.
- 2.4 Opposite Party No. 6, Mr. Mahendra Kumar Kawad (also known as Mahendra Jain) who had participated in the auction came to know of some cartel formation between Opposite Party Nos. 1,2,3,4 and 5, for purchase of the property for certain value. As a consideration for this, Rs. 2.5 crore was to be paid to Opposite Parties No 2 to 5. Opposite Party No. 6, Mr. Mahendra Kumar Kawad, filed an application before the Recovery Officer (DRT) seeking relief of setting aside the auction sale in favour of Opposite Party No. 1 and an inquiry into the malpractice of bidders in forming a "cartel". The Recovery Officer set aside the auction sale on the ground of bid rigging but his order was quashed in appeal by the Presiding Officer DRT Mumbai.
- 2.5 According to the Informant, on 11.05.2007, the day of rebidding, Opposite Party Nos. 1 to 5 entered into an agreement wherein Opposite Party Nos. 2 to 5 agreed to provide services of (1) Successful bidding, (2) Acquiring the Property Securely and (3) early demarcation and possession of the property. Opposite Party No. 1 agreed to pay these parties a consideration amount of 2.5 crores by describing it as (1) Brokerage, (2) Consultancy fees and (3) Compensation for services. An Escrow account was also opened in which the said amount was deposited.
- 2.6 It is noted that the four parties to whom payment was promised did not participate in the bidding. The agreement entered by Opposite Party No.1 purported to be related with compensation for services like brokerage fees, consultation fees and the demarcation of the land. The agreement, on the face of it, appears, a post bid agreement as it was executed on the day of bidding i.e. on 11.05.2007 and mentions that Opposite Party No 1 was already declared successful bidder. The Opposite Party Nos. 2 to 5 are also in the same line of business and <sup>they</sup> if wanted they could have been potential participants in the bidding held.
- 2.7 However, a perusal of the terms of the said agreement dated 11.05.2007 reveals <sup>^</sup>different picture. In the agreement there is a clause (at page no 61 of the information file) which says that the Opposite Party Nos. 2 to 5 would ensure that the bidding value would not exceed Rs. 9.66 crores. They were also to ensure issuance of sale certificate in favour of Opposite Party No 1. It is evident that such services cannot be assured by a party unrelated to the bidding process. This indicates that there was a collusion in bidding and the agreement dated 11.05.2007 was tailored to look like a post bidding agreement.
3. The matter was considered by the Commission in its meetings held on 17.02.2011, 15.03.2011 and 22.03.2011. The informant also filed written submissions on 21.03.2011 and its counsel Ms Meenakshi Arora made oral submission before the Commission on



22.03.2011. The Commission examined the matter carefully and has gone through the entire material available on record.

4. On close scrutiny of the matter, *prima facie* it can be said that there is clear indication of bid rigging but as the agreement, related to the auction of one specific property, was entered into between the parties on 11.05.2007, the same cannot be examined under section 3 of the Act because Section 3 and 4 came in force on 20th May 2009. Therefore, even if the impugned agreement can be stated to be evidence of bid rigging it cannot be enquired into by the Commission as the said conduct is not a continuing one. The Commission, therefore, is of the view that in the given facts and circumstances the matter cannot be referred to the Director General for conducting investigation into this matter under section 26 (1) of the Act and the proceedings deserve to be closed.
5. In view of the above discussion, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.
6. Secretary is directed to inform the informant accordingly.

Certified True Copy

SP  
Gahlaut  
18/4/2011  
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Office Manager  
Competition Commission of India  
Government of India  
New Delhi