



**COMPETITION COMMISSION OF INDIA**

*Suo Motu Case No. 04 of 2016*

**In re: Cartelization in Tender No. 59 of 2014 of Pune Municipal Corporation  
for Solid Waste Processing**

- 1. Lahs Green India Private Limited**  
B-508, 5<sup>th</sup> Floor, Palash Upvan Gowand Baug  
Pokharan Road No. 2, Thane West  
Maharashtra-400610  
**Opposite Party No. 1**
  
- 2. Ecoman Enviro Solutions Private Limited**  
Flat No. G-1002, MSR Queens Town  
Survey No. 3876, Udyog Nagar, Chinchwad  
Pune- 411033.  
**Opposite Party No. 2**
  
- 3. Fortified Security Solutions**  
A-10 Shreyas Apartments, Opp. E-Square  
Shivaji Nagar  
Pune- 411016.  
**Opposite Party No. 3**
  
- 4. Raghunath Industry Private Limited**  
3, Pushpanjali Apartment, Plot No. 1162/4A  
Shivaji Nagar  
Pune-411005  
**Opposite Party No. 4**



**CORAM**

**Mr. Devender Kumar Sikri**  
**Chairperson**

**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

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

**Appearances:**

*For Opposite Party No. 1 and Shri Saiprasad Sharadchandra Prabhukhanolkar*      *Mr. Irfan Ahmed, Advocate*

*For Opposite Party No. 2 and Shri Bipin Vijay Salunke*      *Mr. Vikas Mishra, Advocate*

*For Opposite Party No. 2 and Shri Bipin Vijay Salunke*      *Mr. Vikas Mishra, Advocate*

*For Opposite Party No. 4 and Shri Vijay Raghunath Salunke*      *Mr. Vikas Mishra, Advocate*



## **ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002**

### **Introduction:**

1. This *suo motu* case originated from the information received by the Commission in Case No. 50 of 2015 disclosing co-ordination amongst Lahs Green India Private Limited, Pune (hereinafter, 'OP-1'), Ecoman Enviro Solutions Private Limited, Pune (hereinafter, 'OP-2'), Fortified Security Solutions, Pune (hereinafter, 'OP-3') and Raghunath Industry Private Limited (hereinafter, 'OP-4') to rig the Tender no. 59 of 2014, which was not being investigated as part of Case no. 50 of 2015, floated by Pune Municipal Corporation (hereinafter, 'PMC') for Design, Supply, Installation, Commissioning, Operation and Maintenance of Municipal Organic and Inorganic Solid Waste Processing Plant(s) (hereinafter, 'Tender no. 59 of 2014') in contravention of the provisions of Section 3(1) read with Section 3(3) of the Competition Act, 2002 (hereinafter, the 'Act'). Hereinafter OP-1, OP-2, OP-3 and OP-4 referred to as 'OPs'.
2. In Case No. 50 of 2015, OP-1 *i.e.* Lahs Green India Private Limited filed an application under Section 46 of the Act read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 (hereinafter, the 'Lesser Penalty Regulations') on 04.08.2016 at 04:18 p.m. Further, OP-2 and OP-4 also filed an application under Section 46 of the Act read with Regulation 5 of the Lesser penalty Regulations in Case No. 50 of 2015 on 05.08.2016 at 12:40 p.m. and 02:32 p.m. respectively. In their applications, these OPs disclosed cartelisation not only in tenders that were subject matter of investigation in Case No. 50 of 2015, but also in Tender no. 59 of 2014.
3. With respect to Tender no. 59 of 2014, it was disclosed that with an objective to increase the probability of OP-2 winning this tender, Shri Bipin Vijay Salunke,



Director of OP-2, made an arrangement whereby cover bids were to be placed by OP-1 (in which his close friend Shri Saiprasad Saradchandra Prabhukhanolkar is a Director) and OP-3 (of which he is the Sole Proprietor). Further, since OP-3 was not engaged in manufacturing of composting machines at the time the tenders were issued by PMC, Shri Bipin Vijay Salunke had requested his father Shri Vijay Raghunath Salunke, a director of OP-4, to appoint OP-3 as an authorized distributor of OP-4 in order to make it eligible to bid in the aforesaid tender.

4. After perusing the information, the Commission was of the opinion that *prima facie* the OPs appeared to have engaged in practices which directly or indirectly resulted in bid rigging or collusive bidding in Tender no. 59 of 2014 in contravention of the provisions of Section 3(3)(d) of the Act. Accordingly, the DG was directed to carry out investigation *vide* order dated 11.08.2016.
5. Subsequently, on 20.09.2016 at 03:00 P.M., OP-3 filed an application under Section 46 of the Act read with Regulation 5 of the Lesser Penalty Regulations accepting that it had submitted cover bid in Tender no. 59 of 2014 and provided documents in support thereof.

**Profile of the parties:**

6. 'Lahs Green India Private Limited' *i.e.* OP-1, is a private limited company registered under the Companies Act, 1956 with three directors, namely; Shri Saiprasad S. Prabhukhanolkar, Shri Saili Prabhukhanolkar and Shri Gulab Pandurang Jadhav. It is engaged in the supply of solar water heating, lighting and water purifying solutions and equipment for residential and commercial applications. It also specialises in zero waste management, in which wet and dry garbage is treated which results in zero dumping.



7. 'Ecoman Enviro Solutions Private Limited' *i.e.* OP-2, is a private limited company registered under the Companies Act, 1956 with two directors, namely, Shri. Bipin Vijay Salunke and Smt. Sulabha Vijay Salunke. It is stated to be a leading company in the field of decentralized solid waste management having an advanced technology in composting. Furthermore, it claims to have developed a unique solution for decentralised solid waste management by its composting machine named 'Foodie' which converts organic waste into compost in 24 hours.
8. 'Fortified Security Systems' *i.e.* OP-3, is a registered shop and a proprietary concern of Shri Bipin Kumar Salunke established under the Bombay Shops and Establishment Act, 1948. It is engaged in the business of sales and services of electronic security systems, health and medical equipment *etc.*
9. 'Raghunath Industry Private Limited' *i.e.* OP-4, is a private limited company registered under the Companies Act, 1956 with two directors namely, Ms. Sonali Sahasrabudhe and Shri Vijay Raghunath Salunke. It is engaged in field of solid waste management and manufacturing of composting machines since June 2013.

**DG's Investigation:**

10. The DG examined cartelisation and bid-rigging/collusive bidding by OP-1, OP-2, OP-3 and OP-4 in Tender no. 59 of 2014.
11. To investigate the above, the DG collected evidence from various sources by issuing probe letters to the parties and third parties including telecom operators, banks and PMC and also recorded the statements on oath.
12. With respect to Tender no. 59 of 2014 the DG noted that three entities *i.e.* OP-1, OP-2 and OP-3 participated in the tender and OP-2 emerged as L1 bidder with



the lowest bid of Rs. 58,70,500/-. However, the documents submitted by PMC showed that even though the tendering process was completed, the L1 bidder was decided and due approvals taken from the competent authority; the final work order was never issued.

*Address and Contact Details*

13. On examination of the documents of OP-2 and OP-3 submitted with PMC for the tender, the DG found that even though OP-2 and OP-3 were separate legal entities and had bid as competitors, they had a common place of business. Also, both were being managed by a common person *i.e.* Shri Bipin Vijay Salunke.
14. Further, the online filing of tender required the contact details of a person for the bid. On examination of these details, it was found that the phone number specified in the tender document for OP-1 and OP-3 belonged to Shri Bipin Vijay Salunke Director of OP-2 and Shri Parimal Salunke, an Executive Director of OP-2, respectively. The fact that OP-1 and OP-3 had quoted phone number of another competitor or a person working in the competitor concern as its contact person showed that they were likely to have knowledge of each other's bid and indicated existence of an agreement amongst the bidders.

*Demand Drafts for Earnest Money Deposit*

15. The DG found that the Demand Drafts (hereinafter, 'DD') of OP-1 and OP-2 for Earnest Money Deposit (hereinafter, 'EMD') were prepared from the same bank *i.e.* Bank of Maharashtra, Pune main branch on the same date *i.e.* 18.02.2015. Further, the DDs furnished by OP-1 and OP-2 were consecutively numbered.
16. It was noted that the bank accounts of parents of Shri Bipin Vijay Salunke were used for preparing DDs for EMD amount of OP-1, OP-2 and OP-3 for this tender. While the bank account of Shri Vijay Raghunath Salunke held with Bank of



Maharashtra was used for preparing DDs for OP-1 and OP-2, the bank account of Smt. Sulabha Vijay Salunke, mother of Shri Bipin Vijay Salunke, held with Bank of India was used for preparing DD for OP-3.

*Internet Protocol Address used for Uploading Tender Documents:*

17. It was further observed that all the three bidders: OP-1, OP-2 and OP-3 had used the same IP address for uploading the documents for the tender. It was found that this IP address was registered in the name of Shri Bipin Vijay Salunke, Director of OP-2.

*Call Data Records:*

18. From the call data records of Shri Bipin Vijay Salunke, Shri Parimal Salunke and Shri Saiprasad Saradchandra Prabhukhanolkar, the DG found that they had exchanged more than 100 calls during the period of submission of bids. Thus, the investigation revealed that the directors/ proprietor of the OP-1, OP-2 and OP-3 were not only known to each other, but were also frequently in communication with each other.
19. Based on foregoing evidence, the DG was of the view that the OPs were hand-in-glove with each other and had engaged in bid rigging/cartelisation in Tender no. 59 of 2014 of PMC.
20. Apart from collecting the above evidences, the DG also confronted the same and recorded statements of key officer(s)/ person(s) of the OPs while conducting the investigation. These statements were recorded after the submission of application under Section 46 of the Act by the various OPs. The observations of the DG from the statements of OPs are summarised in succeeding paragraphs.



Statement of Shri Saiprasad S. Prabhukhanolkar, Director of OP-1:

- i. On being confronted with various evidences in the matter, Shri Saiprasad S. Prabhukhanolkar, in his statement on oath, admitted that OP-1 was a part of the cartel. He indicated the *modus operandi* and revealed that OP-1 had submitted a proxy bid to ensure that there were at least three eligible bidders in the first round of bidding itself.
- ii. He disclosed that all this was done at the behest of Shri Bipin Vijay Salunke, who had requested him to provide documents required for the bid in the tenders, which were sent by OP-1 *vide* e-mail dated 18.12.2014.
- iii. He submitted that he only provided the relevant documents for filing of the tender and Shri Bipin Vijay Salunke did all other work including preparation of DDs for EMD, filing of price bids and uploading of the documents, without his knowledge.
- iv. Further, Shri Saiprasad S. Prabhukhanolkar in his statement also stated that he did not receive any consideration or benefit for participation in the tender and it was solely done for the purpose of benefiting Shri Bipin Salunke,
- v. With regard to calls exchanged between him and Shri Bipin Vijay Salunke, he stated that since they had a dealership for 'Foodie', a product of OP-2, they used to talk frequently about clients and also about the concerned tender.

Statement of Shri Vijay Raghunath Salunke, Director of OP-4

- i. In his statement on oath, Shri Vijay\_Raghunath Salunke, accepted that OP-4 had authorized OP-3 as its authorized distributor of composting machines so as to enable it to participate in tender.
- ii. He admitted that the DDs for EMD for OP-1 and OP-2 were prepared by debiting his bank account on request of his son Shri Bipin Vijay Salunke.
- iii. However, Shri Vijay Raghunath Salunke denied being aware of details of the cartel and also denied being offered any consideration for the same. He claimed that he had given authorization to OP-2 at the behest of Shri Bipin Vijay Salunke. Further he stated that OP-4 had given authorization to OP-3



at the behest of Shri Bipin Vijay Salunke so as to ensure that at least three eligible bids are placed for the tenders.

Statement of Shri Bipin Vijay Salunke, Director of OP-2 and Proprietor of OP-3

- i. When Shri Bipin Vijay Salunke was confronted with all the above evidences and his statement was recorded, he admitted the existence of cartel and that Tender no. 59 of 2014 was infact rigged.
- ii. He also accepted that the DDs for EMD for the bidders were prepared by Shri Parimal Salunke on his instructions by debiting the account held by Shri Vijay Raghunath Salunke and Smt. Sulabha Vijay Salunke for OP-1 and OP-2 and account held by Smt. Sulabha Vijay Salunke for OP-3.
- iii. Further, he disclosed that the IP address was same for various bidders because the technical and price bid were scanned and uploaded by Shri Parimal Salunke from the office of OP-2 and the price bids of other bidders were determined by him.
- iv. Shri Bipin Salunke also accepted that requests were made to OP-1 to place cover bid so that there were at least three eligible bidders and tender was considered by the PMC.
- v. He corroborated the statement of Shri Saiprasad Saradchandra Prabhukhanolkar and accepted that the facts stated therein were correct.
- vi. Additionally, it was submitted that the role of his father, Shri Vijay Raghunath Salunke was limited to issuing of various authorization certificates and facilitating the preparation of DDs. Further, he stated that no help was taken from the officials of PMC in the above cartel.

Affidavit of Shri Parimal Salunke, Executive Director of OP-2

The DG also took into consideration the affidavit of Shri Parimal Salunke, an Executive Director of OP-2 dated 20.12.2016, in which Shri Parimal Salunke accepted in totality the relevant portions of the statement of Shri Bipin and his role in the cartel.



21. Thus, from the evidences gathered during the investigation and the statements of person(s)/ officer(s) of the OPs, the DG concluded that there was bid rigging/ collusive bidding in the Tender no. 59 of 2014. There was meeting of minds and co-ordination between various individuals which included the proprietor/ director of OP-1, OP-2, OP-3 and OP-4.
22. The Commission considered the investigation report of the DG on 30.08.2017 and decided to forward the same to the OPs and also to the person(s)/ officer(s) found to be liable under Section 48 of the Act by the DG *i.e.* (i) Shri Saiprasad Saradchandra Prabhukhanolkar (for OP-1); (ii) Shri Bipin Vijay Salunke (for OP-2); and (iii) Shri Vijay Raghunath Salunke (for OP-4), for filing their objections/ suggestions thereof and to appear for hearing before the Commission. On 16.11.2017, the Commission heard the matter. The submissions of the OPs are summarised below.

### **Submissions of the OPs**

#### *OP-1 and Shri Saiprasad S. Prabhukhanolkar (Director of OP-1)*

23. OP-1 and Shri Saiprasad S. Prabhukhanolkar in their combined written submission, while accepting the findings of the DG and their role in the same, have contended that the case in hand is an aberration and they have never been involved in any kind of cartelisation, bid rigging, proxy bidding or any such activity ever before. Further, they undertake not to indulge in any such activity in future.
24. OP-1 has stated that it filed a Lesser Penalty Application, pursuant to which it fully cooperated with the investigation, made full and complete disclosures and provided all information and documents in its possession. In fact, in addition to providing disclosure regarding bid rigging in Tender nos. 34, 35 and 44 of 2014,



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it also disclosed attempted bid rigging *qua* Tender no. 59 of 2014, an information that was not in the knowledge of the Commission.

25. OP-1 has submitted that it provided *modus operandi* of the cartel *qua* proxy bidding and bid rigging in the name of OP-1. It also disclosed the names, relevant e-mail id, phone numbers, *etc.* and made valuable contribution in establishing factum of cartelisation. Further, it made full and complete disclosure regarding the facts and documents within its knowledge including telephonic conversations for the period when Shri Bipin Vijay Salunke had requested for the documents, which was used by the DG to confront other OPs.
26. Further, OP-1 has stated that no monetary benefit was derived by it out of the entire process. All this was done only as a friendly gesture to Shri Bipin Vijay Salunke, who assured him that his name was included merely for completing the qualifying number of bidders in order to avoid any cancellation of such bids for want of minimum number of bidders.
27. Further, OP-1 has averred that despite making application under Lesser Penalty Regulations, it was denied the right of confidentiality and the information and documents provided by it were disclosed to the other parties and through them to public at large. It is argued that as a result of such breach of confidentiality its image and that of its director, was tarnished and they already stand gravely penalised in respect of their reputation and business prospects even before the verdict of the Commission.
28. Therefore, in view of the foregoing, OP-1 has prayed that a lenient view be taken and OP-1 be considered for lesser penalty in terms of Lesser Penalty Regulations.



OP-2 and Shri Bipin Vijay Salunke (Director of OP-2)

29. OP-2 and Shri Bipin Vijay Salunke in their combined written submission submitted that they have already admitted to their role in the acts investigated by the DG and have no objection to the conclusion arrived at in the DG report. Further, they co-operated fully with the DG in the investigation and disclosed their own role and that of its officers in the alleged bid rigging of Tender no. 59 of 2014. Also, they have not carried out similar anti-competitive activities in any tender subsequent to the tenders that are subject matter of Case no. 50 of 2015 and Tender no. 59 of 2014. Moreover, they undertake not to carry out such activities in future.
30. In their reply, OP-2 and Shri Bipin Vijay Salunke have submitted that their present reply relates to two broad aspects (i) entitlement to lesser penalty and (ii) procedural and substantive errors in the investigation report of the DG.
31. With respect to the first aspect it is submitted that a bare reading of the investigation report would show that virtually no investigation by the DG was required as all the facts and evidence were provided in the Lesser Penalty Application. The DG had only *prima facie* evidence of cartelisation/ bid rigging. OP-2's application made detailed disclosure of precise *modus operandi* adopted by it to coordinate between various OPs bidding for the tender. Further, details of alleged cartelisation including names of persons who participated, nature of their relationship with OP-2 and its officers and dates when concerted actions were done was given by OP-2. Also the documentary evidences such as bank statement of Smt. Sulabha Salunke (Director of OP-2) indicating preparation of DDs, copies of documents of OP-1 and OP-2 including Affidavits, DDs and authorization letters, a box containing actual digital keys/pendrives obtained by Shri Parimal Salunke from PMC for all cover bidders were submitted to the DG, which were crucial in understanding the cartel among OPs.



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32. OP-2 has further submitted that the objective of alleged cartelization was to ensure that the tender period was not extended by PMC and the bid placed by OP-2 was considered without extension. OP-2 has stated that it was unaware of provisions of Competition Act, and thus, inadvertently contravened the same by setting up other OPs as bidders. It is averred that this was done *bonafide* as it is a matter of record that apart from OP-2 no other eligible bidder participated in PMC tender between 2013 to 2015, despite extension of period of bidding. Therefore, as such, no actual loss was caused to PMC, nor did OP-2 foreclose the market to other competitors.
33. With respect to the other aspect of procedural and substantive errors in the investigation report, OP-2 has alleged that certain lapses occurred in course of investigation and preparation of investigation report by the DG which adversely affected the reputation of OP-2 and its officers as well as their rights under the Act. It is averred that inclusion of entire, non-redacted statement of Shri Bipin Vijay Salunke in the investigation report of the DG amounted to gross violation of confidentiality of OP-2 and Shri Bipin Vijay Salunke in terms of Regulation 6 of the Lesser Penalty Regulations. It is alleged that this resulted in actual harm as the report and the statement were quoted in local newspapers of Pune, which caused embarrassment to Shri Bipin Vijay Salunke and his family members. OP-2 has requested that the harm already caused to Ecoman and Shri Bipin Vijay Salunke be also considered as a factor while evaluating any reduction in penalty.
34. Further, OP-2 has contended that the manner in which the investigation report is drafted appears to ignore the fact that Lesser Penalty Application was filed by OP-2 and instead gives an impression that the entire investigation was carried out solely by the efforts of the DG. OP-2 has submitted that it was incumbent upon the DG to prepare two versions of the investigation report *i.e.* confidential and public version. In the confidential version of the report he should have indicated precisely how much assistance was obtained from its disclosures.



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35. Thus, OP-2 has prayed that on account of substantial value addition done by it by way of its Lesser Penalty Application and oral statements, as well as considering the prejudice caused to it on account of the flaws in the DG report, maximum reduction of penalty permissible in law should be granted to it in accordance with its priority status.

OP-3 and Shri Bipin Vijay Salunke (Proprietor of OP-3)

36. OP-3 and Shri Bipin Vijay Salunke have submitted that they have already admitted to their role in the acts investigated by the D.G. and have no objection to the conclusion arrived at in the investigation report of the DG. Accordingly, their present reply relates only to two broad aspects *i.e.* entitlement to lesser penalty and procedural and substantive errors in the investigation report of DG.
37. OP-3 has contended that even though summons issued to it by the DG pertained only to Case no. 50 of 2015, Shri Bipin Vijay Salunke co-operated with the DG and answered all questions relating to the present *suo motu* case without demur. Moreover, bare reading of the investigation report shows that practically no *de novo* investigation was required to be done into the particular facts and circumstances of the tender covered by the instant case, possibly because the disclosures in the Lesser Penalty Application of OP-3 were so comprehensive that they sufficed to establish violations of provisions of the Act.
38. OP-3 has stated that in its Lesser Penalty Application as well as the oral statements, that it gave a detailed description of how the alleged cartelisation was carried out along with other OPs, including giving names of persons who participated, nature of their relationship with Ecoman and its officers and dates of when various concerted actions were done. It is averred that these precise facts were not within the knowledge of the DG at that stage. In addition to disclosing the *modus operandi* of the cartel, OP-3 also provided documentary evidence



such as bank statements, emails, Affidavits, authorization letters and physical digital keys/ pen drives obtained from Pune Municipal Corporation. In view of foregoing, it is contended the disclosures made by OP-3 in the Lesser Penalty Application and oral statements added significant value to the investigation.

39. Further, OP-3 has alleged that some procedural/ substantive errors were committed in the investigation by the DG, which adversely affected its rights and reputation at large. It has contended that the DG while preparing the investigation report has breached the confidentiality under Regulation 6 of the Lesser Penalty Regulations by appending entire statement of Shri Bipin Vijay Salunke, in the public version of the investigation report and incorrectly stating that no confidentiality was claimed. Regulation 6 of the Lesser Penalty Regulation accords confidentiality to both the identity of the informant as well as to the 'information' provided by it. OP-3 has contended that the term 'information' must be taken to cover both the written application as well as any subsequent oral statement made to the DG as any other interpretation would mean that a fact assured confidentiality in the written application would not be entitled to confidentiality if stated during oral examination by the DG.
40. In view of above, OP-3 has prayed for grant of maximum reduction of penalty permissible in law for OP-3 on account of providing a substantial value addition by disclosing the new facts and documents in lesser penalty application and oral statements, as well as on account of the flaws in the DG report.

OP-4 and Shri Vijay Raghunath Salunke (Director of OP-4)

41. OP-4 and Shri Vijay Raghunath Salunke in their combined written submission submitted that they have no objection to the conclusion arrived at in the investigation report of the DG and has already admitted to its role in the acts investigated by the DG. Further, OP-4 has cooperated genuinely, fully and continuously with the investigation and disclosed its entire role and that of its



officers in the alleged bid rigging of tenders by way of written submissions and oral statements and ceased the anti-competitive activities.

42. OP-4 has contented that on account of the disclosures made by it practically no *de novo* investigation was required to be done by the DG into the instant *Suo Motu* Case. It disclosed not only the objectives of the alleged cartelization but also made comprehensive disclosure about the *modus operandi* of the cartel, the manner in which OP-4 assisted the cartel and provided evidences such as bank statements, Affidavits, authorization letters *etc.*, which are vital pieces of evidences establishing cartelization /bid rigging that could not have been obtained without cooperation of OP-4.
43. OP-4 has submitted that only a manufacturer of the composting machines or an authorized distributor of the said manufacturer was eligible to participate in PMC tenders, and since OP-3 did not qualify this condition, Shri Vijay Raghunath Salunke, Director of OP-4, a manufacturer of composting machines, on the insistence of his son, Shri Bipin Salunke agreed to provide authorization to it as authorized distributor of the Applicant to help it to qualify for PMC tenders. OP-4 has contended that this was done with *bona fide* intent, as apart from Ecoman no other eligible competitor or bidder participated in PMC tenders between 2013-2015 despite extension of period of bidding. It is averred that neither any consideration was offered nor received by OP-4 for this purpose. The assistance was provided merely due to personal relationship with OP-2 and Shri Bipin Vijay Salunke, who is the son of Shri Vijay Raghunath Salunke. Moreover, no actual loss was caused to PMC due to inadvertent acts of OP-4, nor did such acts foreclose the market to other competitors.
44. Additionally, OP-4 has pointed out some procedural and substantive errors in the investigation report of the DG. It has stated that the DG by submitting only one public version of the report, which appended the entire non-redacted



statement of Shri Vijay Raghunath Salunke, acted in complete breach of confidentiality of OP-4. Further, the DG report did not provide sufficient guidance to Commission to decide lesser penalty application as it completely ignores the fact that application for lesser penalty was filed by OP-4.

45. In view of the foregoing, OP-4 has prayed that on holistic evaluation of the value addition due to facts and documents disclosed by OP-4 in the Lesser Penalty Application and oral statements, as well as the prejudice cause to it on account of the flaws in the DG Report, maximum reduction of penalty permissible in law be granted to it.

**Analysis:**

46. Before proceeding to decide the case on merits, the Commission notes that OPs have raised certain procedural issues such as breach of confidentiality by the DG/ Commission and incompleteness of the investigation report of the DG as it does not reveal the fact that Lesser Penalty Applications had been filed by various OPs in the matter or the value addition provided by such applications. In this regard, it is observed that these issues have already been dealt with by the Commission in Case no. 50 of 2015 (Nagrik Chetna Manch v Fortified Security Solutions and Ors.). The observations of the Commission are reproduced here for completeness of this order.

Procedural Issues:

A. *Breach of confidentiality by the DG/ Commission*

47. It is noted that one objection that almost all OPs have taken is the issue of breach of confidentiality by the DG/ Commission. The OPs have claimed that DG, by disclosing the contents of their statements made before it in the investigation report as non-confidential information, has in effect disclosed the contents of their respective Lesser Penalty Application in breach of confidentiality accorded



in terms of the Lesser Penalty Regulations. Further, the Commission by forwarding such report to the OPs has aided the breach of confidentiality.

48. The Commission, on careful consideration, finds this contention of the OPs to be misconceived. It is noted that application by an Applicant under Lesser Penalty Regulations and statements of the OPs before the DG, are separate set of evidence. The application under Section 46 of Act is filed before the Commission in terms of the Lesser Penalty Regulations. The confidentiality on such an application is governed in terms of the said Regulations. The confidential treatment granted under Lesser Penalty Regulations does not extend to evidence obtained or collected by the DG, even if such an evidence is obtained from a Lesser Penalty Applicant. Therefore, statements of the OPs recorded by DG are an independent evidence. These may or may not contain the information submitted in the Lesser Penalty Regulations. The confidentiality on such an evidence can only be in terms of Regulation 35 of the General Regulations, for which the tests laid down in Regulation 35(3) and 35(9) of the General Regulations have to be satisfied. There is nothing on record to show that the OPs sought confidential treatment on their statements or the same was granted by the DG under those Regulations. It goes without saying that if confidential treatment is neither sought nor granted on any evidence, same shall be treated as non-confidential for the purposes of the case. In such a scenario, including this material evidence in the investigation report is essential to enable the parties to the case to exercise their right of defence.

49. At the same time, it is pertinent to note that even in the case of information submitted under the Lesser Penalty Regulations, where confidentiality granted to information is over and above that granted under Regulation 35 of the General Regulations, confidentiality will remain subject to the provisions of Section 57 of the Act under which the Commission can disclose such information for the purposes of the Act.



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50. Be that as it may, in the instant case, it is noted that OPs are claiming reputational harm not because of disclosure of confidential information in the investigation report of the DG but because of disclosure of such information to the public at large. In this regard, the Commission observes that it is well recognized fact that the investigation report is not a public document and is not to be shared with public. This aspect is enshrined in Regulation 47 of the Competition Commission of India (General) Regulations, 2009 (hereinafter, 'General Regulations'), which clearly provides that the proceedings before the Commission are not open to public, except where the Commission so directs. In the instant case, there being no direction to make proceedings open to public, there was no question of sharing of the investigation report of the DG with anyone other than the OPs.
51. It seems that the contention of the OPs regarding sharing of investigation report in the instant case emanates from an incident in Case no. 50 of 2015 wherein the Informant had shared the investigation report with the media. The OPs have merely made similar contention of breach of confidentiality in this case also without placing on record any evidence to show that the contents of investigation report in this case were also disclosed in public domain. The instant case being taken up *suo motu*, the investigation report was not shared with anyone other than the OPs. Since the OPs were themselves involved in the conduct, they were well aware of each other's conduct and disclosure of their statements to each other cannot be considered to cause any reputational harm.
52. In view of the foregoing, contention of the OPs that reputational harm has been caused due to action/ omission of the DG/ Commission appears to be misplaced. Such harm, if any, has been caused due to OPs own acts of collusion in contravention of the provisions of the Act. The allegation against the DG/ Commission is nothing more than a ruse to get reduction or discharge from



imposition of penalty under the Act.

*B. The Investigation report of the DG does not reveal the fact that Lesser Penalty Applications had been filed by various OPs in the matter or the value addition provided by such Applications:*

53. Some OPs have contended that the investigation report did not adequately deal with and distinguish between the evidences/ information that had been gathered by the DG on its own *vis-à-vis* those that had been furnished by the Lesser Penalty Applicants. Further, it is averred that by excluding the fact that OPs had filed Lesser Penalty Applications and the value addition that was provided by their information, the investigation report has remained incomplete.
54. In this regard, the Commission observes that what OPs have referred to as incompleteness, in fact protects the identity of the Lesser Penalty Applicants. If the investigation report was to identify the evidences furnished by the Lesser Penalty Applicant(s), it would not only disclose the identity of such Applicant(s) but also the contents of Lesser Penalty Application, on which OPs have themselves vehemently claimed confidentiality. Further, the decision on significant value addition by the Lesser Penalty Applicant and consequent reduction in penalty to the Applicant is something which only the Commission can decide and not the DG. Such a decision would be made looking into the contents of the Lesser Penalty Application, documents/ additional evidence obtained during investigation by the DG, investigation report of the DG and submissions of the OPs thereon. The observation in this regard would form part of the order of the Commission and not the investigation report of the DG. Hence, the Commission finds no inconsistency or incompleteness in the investigation report of the DG.



#### Establishment of Violation:

55. The Commission has perused the facts of the case, the investigation report of DG, submissions made in Lesser Penalty Applications and submissions of the OPs thereon. On consideration of the same, it is observed that the evidence adduced by the DG during investigation and the admissions of OPs under Section 46 of the Act categorically establishes cartelisation and bid rigging in Tender no. 59 of 2014.
56. The investigation into the matter reveals that lead role in the cartel was played by Shri Bipin Vijay Salunke, a director in OP-2 and also the sole proprietor of OP-3. The motive of cartelisation and bid rigging was to ensure that OP-2 emerged as L1 and won the tenders issued by PMC. To achieve this, Shri Bipin Vijay Salunke ensured that there were minimum three eligible bidders for the tender as the tender process guidelines laid down a minimum of three technically qualified bidders. For this, Shri Bipin Vijay Salunke approached the Director of OP-1 *i.e.* Lahs Green India Pvt. Ltd. to bid as proxy bidder and file documents in Tender no. 59 of 2014. He also propped up OP-3 as proxy bidder in the tender.
57. To enable the participation of OP-3, which did not have any experience or background in solid waste management, Shri Bipin Vijay Salunke arranged for the authorisation certificate for OP-3 from OP-4 in which his father Shri Vijay Raghunath Salunke was a Director, thus projecting it as an authorized distributor of composting machine, which it was not. Further, Shri Bipin Vijay Salunke prepared the DDs for EMD for the proxy bidders. Also, for participation in Tender no. 59 of 2014, he obtained the relevant documents from OP-1 and uploaded the same on its behalf for the online tender. All of this was orchestrated by Shri Bipin Vijay Salunke so that OP-2 emerged as L1 bidder.
58. There is, thus, no doubt that there was meeting of mind and collusion amongst



OP-1, OP-2 and OP-3 to rig Tender no. 59 of 2014 floated by PMC.

59. As regards the role of OP-4, it is observed that it authorised OP-3 as distributor of its composting machines to participate in the tender. Not only that, the bank account of Shri Vijay Raghunath Salunke and Smt. Sulabha Raghunath Salunke were debited for preparing the DDs for OP-1 and OP-2; and OP 3. These evidences show that OP-4 not only aided OP-3 to bid for tender but also played a pivotal role in the operation of the cartel. Strangely, despite having the requisite experience, OP-4 did not participate in the tender itself, which further assisted OP-2 to win the tenders. Thus, the Commission finds that contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act is made out in the instant case not only against OP-1, OP-2 and OP-3 but also against OP-4.
60. Additionally, the Commission notes that some of the OPs have averred that no appreciable adverse effect on competition in India has been caused by way of any meeting of minds in this case, as the entry was not restricted in any manner due to agreement/ cartel and no actual loss was caused to PMC. Moreover, no consideration was derived from OP-2 by other bidders for submitting their bids, therefore, the latter did not even benefit from bid rigging.
61. In this regard, the Commission observes that under the provisions of Section 3(3)(d) of the Act, bid rigging shall be presumed to have adverse effect on competition independent of duration or purpose and, also, whether benefit was actually derived or not from the cartel.
62. In terms of the provisions contained in Section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Section 3(2) of the Act



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declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. Further, by virtue of the presumption contained in subsection (3), any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which - (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

63. Thus, in case of agreements listed under Section 3(3) of the Act, once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition and the onus to rebut the presumption would lie upon the OPs.
64. In the present case, the OPs have neither been able to rebut the said presumption nor been able to show how the impugned conduct resulted into accrual of benefits to consumers or made improvements in production or distribution of goods in question.
65. Further, with respect to the averment of the OPs that since bid rigging has not restricted entry there is no appreciable adverse effect on competition and hence no contravention of the provisions of Section 3(3) of the Act, the Commission observes that mere possibility that other bidders could have bid for the tender cannot absolve the colluding OPs from their conduct of bid rigging. Explanation



to Section 3(3) of the Act makes it clear that bid rigging even includes an agreement that has the effect of reducing competition for bids or adversely affecting or manipulating the process of bidding. Therefore, even if a subset of bidders collude amongst themselves to rig or manipulate bidding process, it would be a violation of Section 3(3)(d) of the Act.

66. So far as the role and liability of officials of OP-1, OP-2, OP-3 and OP-4, the Commission notes that the DG has identified Shri Saiprasad S. Prabhukhanolkar (OP-1), Shri Bipin Vijay Salunke (OP-2 and OP-3), Shri Parimal Salunke (OP-2) and Shri Vijay Raghunath Salunke (OP-4) as the key persons involved in the cartel under Section 48(2) of the Act.
67. The Commission is in agreement with the findings of the DG on the role and liability of the person(s)/ officer(s) of the OPs under Section 48(2) of the Act. However, the Commission notes that under Section 48 separate liability arises against the officer(s)/ person(s) of the contravening company including partnership firms but not proprietorship firms. In the Explanation to Section 48 of the Act, the word 'Company' is defined to include body corporate or firms or association of firms but not proprietorship firms. Thus, the Commission is of the view that provisions of this section would not apply to proprietorship firms. Accordingly, since OP-3 is a proprietorship firm in the present case, the Commission decides not to hold its person(s)/ officer(s) separately liable under Section 48 of the Act. However, person(s)/ officer(s) who are the director/ executive director/ partners of OP-1, OP-2 and OP-4, would be liable. The role and liability of these individuals is discussed below:

a. Role of key persons in OP-1:

For OP-1, Shri Saiprasad S. Prabhukhanolkar was the key person involved in the cartel. In his statement of oath, he stated that he was the managing director of OP-1 and handled overall management of the company. He



admitted that the cartelisation in Tender no. 59 of 2014 was done at the behest of Shri Bipin Vijay Salunke, who requested him to provide the relevant documents to bid as proxy bidder. Further, the DDs for EMD were prepared by OP-2 directly without the knowledge of OP-1. No money either in cash or cheque nor any other consideration was given for the said purpose. Shri Saiprasad S. Prabhukhanolkar accepted his role in the cartel, which was corroborated by Shri Bipin Vijay Salunke who accepted that Shri Saiprasad S. Prabhukhanolkar was contacted by him to act as proxy/ dummy bidder. Thus, the DG found that Shri Saiprasad S. Prabhukhanolkar was the key person of OP-4 who coordinated with Shri Bipin Vijay Salunke in the cartel.

*b. Role of key persons in OP-2:*

*Shri Bipin Vijay Salunke, Director of OP-2*

- i. OP-2, a private limited company registered under the Companies Act, 1956, has two directors, namely, Shri Bipin Vijay Salunke and Smt. Sulabha Vijay Salunke. For OP-2, Shri Bipin Vijay Salunke managed the overall operations and business activity while the role of Smt. Sulabha Vijay Salunke was limited to being the signing authority for compliance of any legal documents. In the cartel, the role of Smt. Sulabha Vijay Salunke was limited to providing assistance to OP-3 as the DD for EMD for OP-3 was prepared from the bank account of Smt. Sulabha Vijay Salunke.
- ii. Shri Bipin Vijay Salunke admitted to having formed a cartel to rig the bid. In his statement on oath, he admitted that he personally knew all the competitors bidding in Tender no. 59 of 2014. He stated that Shri Saiprasad S. Prabhukhanolkar (Managing Director of OP-4) was his good friend and gave the documents for submitting cover bid on behalf of OP-1, based on their friendship and relationship.



- iii. Further, he admitted that he sent Shri Parimal Salunke to the PMC for purchasing/ procuring the digital key for OP-1 and OP-3 by submitting all the relevant documents and registered his mobile number for telephonic verification by the PMC.
- iv. Shri Bipin Vijay Salunke also admitted that DDs for EMD for various bidders in various tenders were prepared by Shri Parimal Salunke on his instructions from the bank accounts of Shri Vijay Raghunath Salunke and Smt. Sulabha Salunke (parents of Shri Bipin Vijay Salunke). He also admitted that technical and price bids for various bidders in the above said tenders were scanned and uploaded by Shri Parimal Salunke from the office of OP-2 and hence, the same IP addresses.
- v. Further, the statement on oath of Saiprasad S. Prabhukhanolkar also corroborated that Shri Bipin Vijay Salunke requested that OP-1 act as proxy/ dummy bidder in Tender no. 59 of 2014.
- vi. Thus, Shri Bipin Vijay Salunke is the main person behind the cartel activity who was responsible for the bid rigging, which is apparent from the evidences gathered and corroborative statements of the officials of other OPs.

*Shri Parimal Salunke, Executive Director of OP-2*

- vii. The evidences gathered during the course of investigation and the statement on oath of Shri Bipin Vijay Salunke show that apart from Shri Bipin Vijay Salunke, Shri Parimal Salunke who was Executive Director of OP-2 and cousin of Shri Bipin Vijay Salunke also played an important role in the cartel.



- viii. Shri Parimal Salunke procured the digital keys for OP-1 and OP-3 by submitting all the relevant documents in the Pune Municipal Corporation office. Also, DDs for EMD for the bidders were prepared by Shri Parimal Salunke on the instructions of Shri Bipin Vijay Salunke. Furthermore, relevant documents and the technical and price bids for various bidders in the impugned tenders were scanned and uploaded by Shri Parimal Salunke from the office of OP-2, resulting in uploading of documents from the same IP address.
- ix. Shri Parimal Salunke when confronted with the statement of Shri Bipin Vijay Salunke describing his role in the cartel, accepted his role in the bid-rigging/cartel in the manner as described above. Thus, Shri Parimal Salunke aided and assisted Shri Bipin Vijay Salunke to carry out activity of cartelisation and coordination with other bidders.
- c. Role of key persons in OP-3:  
For OP-3, Shri Bipin Vijay Salunke, proprietor of OP-3, was the key person involved in the cartel. In his statement on oath, he stated that OP-3 submitted bid for Tender no. 59 of 2014 even though it did not have any expertise in the area of solid waste management. He admitted that he knew the competitors for these tenders as he himself roped them in and requested them to place proxy bids. He admitted that he was involved in collusive bidding in Tender no. 59 of 2014, which was also corroborated by various evidences gathered during the investigation.
- d. Role of key persons in OP-4:  
For OP-4, Shri Vijay Raghunath Salunke, Director of OP-4 and father of Shri Bipin Vijay Salunke, was the key person involved in the cartel. In his statement on oath, he accepted that authorisation letter was given to OP-3



by OP-4 as its distributor for participating in the tender, despite not having any background of solid waste management. He submitted that the authorization letters/ certificates given to OP-3 were signed by a former director – Smt. Smita Avinash Shirolkar. He also accepted that his personal bank account was used for preparing the DDs for EMD for Tender no. 59 of 214 for OP-1 and OP-2. He stated that Shri Bipin Vijay Salunke had requested him to prepare DDs for EMD for OP-1 and OP-2 which were arranged from his personal bank account with Bank of Maharashtra. Thus, this clearly shows that Shri Vijay Raghunath Salunke was aware of the cartel activity being carried out by his son, Shri Bipin Vijay Salunke and establishes his complicity in the cartel.

### **ORDER**

68. In view of the finding of contravention against OP-1, OP-2, OP-3 and OP-4, the Commission directs them to cease and desist from indulging in such anti-competitive conduct in future.
69. As regards the penalty to be imposed under Section 27 of the Act, the Commission finds that OP-1, OP-2, OP-3 and OP-4 entered into an arrangement to rig Tender no. 59 of 2014 floated by Pune Municipal Corporation, as brought out hereinabove. Further, all the four OPs accepted that they had an understanding/ arrangement with each other to rig/ manipulate the above mentioned tender. Consequently, all the OPs are responsible for infringement of the provisions of the Act and, hence, are liable for penalty. However, the Commission observes that Tender no. 59 of 2014, which is subject matter of this case pertains to the same period to which the tenders in Case no 50 of 5015 belonged. Considering that, penalty has already been levied on the OPs in Case no. 50 of 2015, Commission decides not to again impose penalty on the OPs for



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the same period. For the same reason, Commission also decides not to impose penalty on the individuals of the OPs as well.

70. The Secretary is directed to inform the parties accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

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

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

**New Delhi**

**Dated: 31.05.2018**