

Macromedia Digital Imaging Pvt Ltd vs Competition Commission Of India & Anr on 27 July, 2022

1

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

COMPETITION APPEAL (AT) NO.24/2022

In the matter of:

Mr. Naresh Kumar Dasari,
R/o Flat No. C-303
Trendset Sumangala,
Road No.5, Banjara Hills,
Hyderabad-34

Appellant

Vs.

Competition Commission of India,
Through its Secretary
9th Floor, Office Block-1,
Kidwai Nagar (East),
New Delhi--110023

Respondent

For Appellant: Mr.Rustum Singh Chauhan, Ms Gauri Puri, Advocates.
For Respondent: Ms Shama Nargis, Dy. Director Law CCI.
Mr Febin M Varghese, Mr Robin Ratnakar David, Mr. Samuel David,
Advocates for CCI.

WITH
COMPETITION APPEAL (AT) NO.26/2022

In the matter of:

Macromedia Digital Imaging Pvt Ltd,
147/D, IDA Phase II,
Cherlapally, Hyderabad
Telangana 500051

Appellant

Vs.

Competition Commission of India,
Through its Secretary
9th Floor, Office Block-1,
Kidwai Nagar (East),
New Delhi--110023

Mr. Naresh Kumar Dasari,
R/o Flat No. C-303

Competition Appeal (AT) No.24 and 26 of 2022

Trendset Sumangala,
Road No.5, Banjara Hills,
Hyderabad-34

Respondent

For Appellant: Ms Pavuluri, Mr Anandh Venkataramani, Advocates.
For Respondent: Ms Shama Nargis, Dy. Director Law CCI.
Mr Febin M Varghese, Mr Robin Ratnakar David, Mr. Samuel David,
Advocates for CCI.

JUDGEMENT

VIRTUAL MODE JUSTICE RAKESH KUMAR, MEMBER (JUDICIAL) The Appellant, Mr. Naresh Kumar Dasari, in Competition Appeal (AT) No.24/2022 was the Managing Director of the Appellant Company, M/s Macromedia Digital Imaging Pvt Ltd in Competition Appeal (AT) No.26/2022.

Since both the Appeals arise out of the same order dated 03.02.2022 passed in Suo Moto Case No. 2 of 2020 by the Competition Commission of India (hereinafter referred to as the 'CCI'), both the Appeals were heard together.

After conclusion of the hearing on 27.05.2022 the Judgement was reserved.

Accordingly by this common judgement both the Appeals are being disposed off.

2. Appellants in both the Appeals have assailed the order dated 03.02.2022 passed by the CCI in Suo Moto Case No.2/2020. By the said order the CCI has held the Appellant Company i.e. Macromedia Digital Imaging Pvt Ltd in Competition Appeal (AT) No.26/2022 alongwith other six company guilty of contravention of the provisions of Section 3(3)(c) and Section 3(d) read with Section 3(1) of the Competition Act, 2002 (hereinafter referred to as the 'Act'). So far as Appellant Mr. Naresh Kumar Dasari in Competition Appeal (AT) No.24/2020 is concerned he alongwith 8 other Competition Appeal (AT) No.24 and 26 of 2022 individuals were held liable for Anti-competitive conduct of their respective companies in terms of Section 48 of the Act. The CCI in terms of Section 27(a) of the Act, directed the Appellant Company alongwith other six companies and their individual concerned to desist in future from indulging in practices which have been found in the present case to be in contravention of the provisions of Section 3 of the Act. The CCI further imposed penalty of Rs.51,77,659/- on Appellant Company i.e. Macromedia Digital Imaging Pvt Ltd alongwith other six companies. The Appellant, Mr. Naresh Kumar Dasari, in Competition Appeal (AT) No.24 of 2020 was imposed penalty for an amount of Rs.46,468/-.

3. Short fact of the case is that CCI received a complaint dated 28.06.2018 with an allegation of bid-rigging and cartelisation in the tender floated by SBI Infra Management Solution Pvt Ltd (SBIIMS) for the supply and installation of new signages/replacement of existing signages for branches/offices/ATMs of SBI located at specified metro centres across India. In exercise of powers conferred under Section 19(1) of the Act the CCI on the basis of material on record has registered a

case as Suo Moto Case No.2/2020 and also on the basis of material on record noticed prima facie a case of contravention of provisions of Section 3(1) of the Act read with Section 3(3) of the Act with respect to impugned tender. Accordingly the CCI in exercise of powers under Section 26(1) of the Act directed the Director General (DG) to conduct an investigation and submit its report. It was clarified that if during the course of investigation conduct of any other entities/persons in addition to those mentioned in the complaint is noticed, the DG would be at liberty to Competition Appeal (AT) No.24 and 26 of 2022 investigate the same. During the investigation conducted by the DG involvement of both the Appellants come to fore and as such both were noticed. Both Appellants participated during the investigation. After submission of report by the DG the impugned order has been passed which has been assailed by both the Appellants. It is clarified that the CCI in its final order has held 7 companies including the Appellant Company in Competition Appeal (AT) No.26/2022 guilty of contravention of provisions of the Act and 9 individuals which includes Appellant, Mr. Naresh Kumar Dasari,

4. At the time of hearing of this Appeal Learned Counsel for the Appellant in Competition Appeal (AT) No.24/2022 has emphatically argued that since there was no involvement of his Company who is Appellant in Competition Appeal (AT) No.26/2022 the CCI has illegally held him guilty under Section 48 of the Act. He submits that without establishing the case of contravention of provisions of the Act against the company of which the Appellant was Director the order passed under Section 48 is not sustainable in the eye of law. Besides oral submissions Learned Counsel for the Appellant, Mr. Naresh Kumar Dasari, has also filed notes of written submissions. It is submitted that the finding of the CCI is ex facie illegal and based on an entirely incorrect understanding of the scope and applicability of Section 48 of the Act. It is submitted that the Officers/Directors can only be liable if the CCI were to come to the conclusion that they were the key persons who were incharge and responsible for the conduct of the business of the company. Reference has been made to the case of Monsanto Holdings Pvt Ltd V. Competition Commission of India, 2020 SCC Online Del 598. It is further submitted that the Commission can not proceed ahead against an individual, acting independently and not on behalf of a company. It has further been submitted that only clinching evidence which has come against the Appellant, are the two emails dated 02.06.2018 and 04.06.2018. The Appellant stated that he was never involved in the initial bidding process, until the failure of the reverse e-bidding in the first instance. Learned counsel for the Appellant, Mr. Naresh Kumar Dasari, submitted that in view of his vast experience in tenders particularly in respect of reverse e-auction process, which is different from the regular tender process, he was invited to guide the individuals from the respective Companies in the procedure and method in which one has to apply for such tender. He submitted that his participation was at the behest and invitation from Mr. Shamrendra Kumar, Mr. Arbind Singh from OP-4 and Mr Manish Jodhavat from OP7. In view of long term association with Mr. R.G. Venkatesh from OP1, the Appellant decided to help out the participants in the bidding process and in this connection the emails dated 02.06.2018 and 04.06.2018 were sent by the Appellant. It has been reiterated that the Appellant was not acting in the capacity of a Director and/or representative from his Company i.e. OP-6 which did not even participate in the bidding process and there was no concerted action.

5. On the point of corroboration of evidence, it is stated in the notes of written submission that in the same vein, once several individuals of other parties have deposed that the involvement of the Appellant was in his individual capacity on suggestion from OP-4 which aspect has also been noted Competition Appeal (AT) No.24 and 26 of 2022 by the Learned CCI and the DG, the Appellant cannot be proceeded against under Section 48 of the Act.

6. In its notes of written submissions the Appellant has referred some extracts of the deposition of the Appellant before the DG as noted in paragraph 48 of the impugned order. It has been highlighted that the Appellant, Mr. Naresh Kumar Dasari, has acted in his individual capacity and as such Learned CCI has committed grave error in passing the impugned order against the Appellant, Mr. Naresh Kumar Dasari.

7. In Competition Appeal (AT) No.26/2022, Learned counsel for the Appellant emphasised that there is no iota of evidence on record to suggest that the Appellant company directly or indirectly was involved in the entire case. It has been argued that only at subsequent stage on the basis of statement of one of the Member of the Association the CCI has come to the conclusion that the Appellant's company has executed some work in the State of Andhra Pradesh and Telangana. According to the Learned Counsel for the Appellant there was no material on record to establish involvement of the Appellant company in the alleged occurrence. Besides oral arguments on behalf of the Appellant company, Notes of Written Submission has also been filed which is in addition to the contents of Appeal. In its submission a question has been raised as to whether the Learned CCI has erred in holding the Appellant liable for an independent action of its Director, who facilitated bid rigging under consideration under Section 3(3)(d) of the Act. It has been reiterated that the Appellant did not participate in the cartelised tender at any stage. There is no evidence on record to suggest that the Appellant was part Competition Appeal (AT) No.24 and 26 of 2022 of an agreement as contemplated under Section 3 of the Act with the other bidders, there is no evidence on record that the Managing Director of the Appellant (Naresh Kumar Dasari) was facilitating the cartel at the behest/on behalf of the Appellant. It has further been indicated that Mr. Naresh Kumar Dasari, the Managing Director, has himself admitted to being a part of an agreement to manipulate the bids in his individual capacity. It is indicated in the written submission that in the present case a party(OP-4), Avery Dennison Pvt Ltd has filed an application under Section 46 (i.e. lesser penalty application), owing to which the CCI is in possession of all possible and necessary evidence regarding all aspects of the cartel arrangement and all parties have admitted to the existence of the agreement. In its written submissions it is indicated that the CCI has incorrectly held the Appellant company guilty on the following

a) that OP-1 (Diamond Display Solutions Pvt Ltd) stated that it got some northern region work done for this tender from its joint venture with the Appellant (MMDD) and some work in Andhra and Telangana from the Appellant;

b) that the joint venture manufactured a small portion of the works at cost, and the Appellant traded the same to OP-1 at cost;

c) that in view of the financial involvement and the critical role played by Mr. Naresh Kumar Dasara, it is difficult to accept that Mr. Naresh Kumar Dasara acted on his own and not at the behest of the Appellant.

d) that non-participation in the tender and lack of financial benefit are not relevant. Collusive conduct amongst competitors which vitiates Competition Appeal (AT) No.24 and 26 of 2022 competitive process of bidding is prohibited, and that every person involved in the manipulation of bidding can be held liable.

8. It is submitted that there are serious errors in facts and law in the above finding including that the Appellant is a competitor. It has also been highlighted that there are independent corroboration that Mr. Naresh Kumar Dasari was involved in his personal capacity and the Appellant company was not involved in any agreement. In sum and substance it has been reiterated that neither the Appellant company was directly or indirectly involved nor its Managing Director namely Mr. Naresh Kumar Dasari displayed his conduct as if he was acting on behalf of the Appellant company. However, repeatedly evidence has come that Mr. Naresh Kumar Dasari was acting in his individual capacity.

9. On the aforesaid ground the order impugned has been assailed.

10. Learned counsel for the CCI has argued that it is clear cut case of involvement of about 16 persons out of which 7 are companies and remaining are individuals connected/associated with the company. He submits that there is no error in the order rather the order of the Learned CCI is based on evidence on record.

11. Before dealing with the individual case Appellants in both the Appeals, the Tribunal is of the opinion that since it was a case of forming an association and cartelisation any material/evidence may not be considered in isolation rather in such cases entire evidence/material are to be read collectively. In such cases even on the conduct of a party an inference can be drawn regarding his involvement and as such before dealing with the submission of Competition Appeal (AT) No.24 and 26 of 2022 Learned Counsel for the Appellants it would be necessary to examine as to what stand was taken by a Member of Association involved in the case. The submission of the party has been noted precisely in para 11 to 18.5 at internal page 4 to 13 of the impugned order. It is apt to reproduce the same as follows:-

"11. The submissions of Diamond Display Solutions Private Limited (OP-1) and its individuals are briefed as under:

11.1. OP-1 admits that the findings of the DG are substantially accurate, that there was coordination amongst OPs before the bidding date and that the numbers were discussed. It does not object to the conclusion in the Investigation Report that OP-1 to OP-7 have contravened the Act. However, OP-1 objects to the conclusion insofar as it holds OP-1 and its representatives instrumental in co-ordination amongst the OPs. OP-1 submitted that OP-4, which is one of the dominant entities in the signage industry, was actually at the core of co-ordination between and amongst the OPs.

11.2. As per the Investigation report, a meeting was conducted by the OPs on 25.05.2018 with an intention to come to an understanding with regard to geographical splitting of the bid. In this regard, OP-1 submitted that, firstly, no such meeting was conducted by OP-1 to come to any kind of understanding, and secondly, submissions regarding such meeting having been conducted were made only by representatives of OP-4 and OP-2.

11.3. Mr. Naresh Kumar Dasari of OP-6 has a long-standing business relationship with OP-1, and they also have a joint-venture namely Macro Media Diamond Display Pvt Ltd. ('MMDD') formed in 2017. Mr. Naresh also attended the pre-bid meeting of SBIIMS on 07.04.2018 as an authorised representative of OP-1. Further, there were consultations regarding costing of the project, manufacturing costs and the price that should be quoted by OP-1; however, OP-1 submitted that there was no existence of anti-competitive agreements or consultations entered into between OP-1 and OP-6.

Competition Appeal (AT) No.24 and 26 of 2022 11.4. E-mails dated 02.06.2018 and 04.06.2018 were prepared and sent, by Mr. Naresh Kumar Dasari of OP-6, at the behest of OP-4, who wanted the bid to be successful at all costs, since its material was being imported and was on its way to India. Further, all other inter se communications between the OPs on the date of bidding were also happening at the behest of OP-4.

11.5. Since most of the bidders decided to follow the illustrative chart shared by Mr. Naresh Kumar of OP-6 as means of an example, prices were also discussed by the officials of the Ops.

11.6. There is no adverse impact on competition in the signage industry on account of any exchanges between and amongst the OPs. This is claimed to be evidenced from the SBIIMS's approval dated 06.06.2018, which unequivocally stated that L1 prices quoted across circles were fairly the same as market prices.

11.7. The Commission should consider mitigating factors while imposing penalty, if any, on OP-1, viz. (i) SBIIMS considering the L1 rates to be reasonable; (ii) no finding that rates were inflated; (iii) co-ordination and communication between the OPs was done at the behest of OP-4; (iv) complete absence of effects enumerated in clause (a), (b) and (c) of Section 19(3) of the Act; (v) OP-1 being a medium enterprise in terms of Micro, Small and Medium Enterprises ('MSME') Development Act, 2006; (vi) impact of COVID-19 pandemic; (vii) co-operation extended in the investigation, etc. 11.8. For an individual to be held liable under Section 48(1) of the Act, it is a pre-requisite that the company should have contravened a provision of the Act. The Commission can proceed against the officers/representatives/in-charge of a company under Section 48 only after the Commission returns a finding of contravention against the defaulting company vide an order under Section 27 of the Act. In the absence of a finding against OP-1 of having contravened any of the provisions of the Act, the Commission cannot hold Mr. R. G. Venkatesh liable under Section 48(1) of the Act and proceed against him.

Competition Appeal (AT) No.24 and 26 of 2022 OP-2 and its individuals

12. The submissions of AGX Retail Solutions Private Limited (OP-2) and its individuals are briefed as under:

12.1. OP-2 has submitted that it understands that its communications with the other OPs in respect of SBI tender have violated the provisions of the Act, and such violations may attract monetary penalty under the Act.

12.2. OP-2 commits to comply with the provisions of the Act and clarified that it had ceased to commit such acts as soon as bidding for the SBI tender was completed. It also undertook to desist from engaging in violations of the provisions of the Act in future as well.

12.3. Mr. Arjun Reddy, Managing Director of OP-2, was not aware that the interactions that the DG Report found to be anti-competitive, amounted to violations of the provisions of Act. On the contrary, Mr. Reddy was under the impression that his co-ordination with the other parties who were bidding for the tender was in the best interest of SBI.

12.4. Mr. Arjun Reddy had provided the e-mail dated 04.06.2018 to the DG during the course of his deposition and admitted that the discussions he had with functionaries of other OPs related to bid sequences and prices. The disclosures made by Mr. Reddy effectively assisted the investigation, and no attempts were made by him to distort the nature of evidence presented to him.

12.5. As per the Hon'ble Supreme Court's decision in Excel Crop Care Limited V. Competition Commission of India and Another, (2017) 8 SCC 47 ('Excel Crop Care case'), only relevant turnover of OP-2 should be considered for penalty computation. Hence, OP-2's turnover from only 'glow signboards' ought to be considered for referenced financial period for the purposes of imposition of penalty, if any.

Competition Appeal (AT) No.24 and 26 of 2022 12.6. OP-2 has put in place a competition compliance program and conducted workshops to sensitize its staff about the type of conduct that could be found foul of the Act.

12.7. Several mitigating factors should also be considered while imposing penalty, if any, upon OP-2 viz. (i) mistaken belief that the conduct was lawful; (ii) co-operation during investigation; (iii) financial hardship on account of COVID-19, (iv) minimal loss suffered by SBI due to the conduct, etc. OP-3 and its individuals

13. The submissions of Opal Signs Pvt Limited (OP-3) and its individuals are briefed as under:

13.1. OP-3 admitted that it was part of an arrangement as contemplated under Section 3(3)(c)(c) read with 3(3)(d) of the Act. OP-3 also admitted that, in addition to the assistance sought in respect of carrying out/participating in the reverse auction,

Mr. Ramesh Bharadwaj, Managing Director of OP-3, also requested Mr. Naresh Kumar Dasari of OP-6 to provide guidance and assistance in ensuring that OP-3 gets the Chennai circle.

13.2. OP-3 was interested only in the Chennai circle and had no active role apart from agreeing to bid as per the guidance provided in the e-

mail dated 04.06.2018. OP-3 had never initiated any pricing or geographical allocation discussions and it was OP-4 who had planned the splitting of the orders in the Impugned Tender. It has been further submitted that the entire arrangement was headed by OP-4 (along with OP-7) who stood to gain the most as their material would be used for executing the works under the Impugned Tender.

13.3. Theoretically, even under such circumstances, OP-3 ought to have acted independently. However, given OP-4's hold over the entire Impugned Tender and being a major materials supplier (and that OP-7 was also a materials supplier), OP-3 had little option but to participate in the co-ordination, so as to ensure that it receives the works for the Chennai circle.

Competition Appeal (AT) No.24 and 26 of 2022 13.4. OP-3 and its Managing Director Mr. Ramesh Bharadwaj were not aware that such co-ordination would be in contravention of the provisions of the Act.

13.5. Bids were at competitive market rates based on clear economic justifications, and any co-ordination in the bidding by OP-3 did not result in appreciable adverse effect on competition ('AAEC') in India. It is not the case that OP-3 had quoted any supra-competitive rates in the Impugned Tender. The quotation of OP-3 was competitive, which is evident from a comparison with quotations for other similar works.

13.6. None of the negative factors under clauses (a) to (c) of Section 19(3) of the Act are applicable in the present case which could demonstrate the existence of AAEC.

13.7. In view of the decision of the Hon'ble Supreme Court in Excel Crop Care case, penalty, if any, upon OP-3, can only be imposed on the turnover or profits of OP-3 derived from participation in the Impugned Tender. Further, upon Mr. Bharadwaj also, for imposition of penalty, Commission may consider only the salary drawn by him from OP-3 in the year when the payment from SBIIMS was made to OP-3.

13.8. Certain mitigating factors may be considered while imposition of penalty, if any, viz. (i) co-operation in the investigation (ii) OP-3's limited involvement in the arrangement; (iii) OP-3 being a small enterprise in terms of MSME Development Act, 2006, etc. 13.9. Provisions of Section 48 of the Act, a penal provision (which, in law, is to be strictly interpreted) cannot apply to a contravention under Section 3 of the Act, because if an individual is to be 'punished' (as per Section 48) for a violation of Section 3, the sanction provisions set out in Section 27 must be fundamentally intended to be applied to individuals covered under Section 48 also. However, Section 27(b) cannot be applied to individuals drawing a salary falling within the ambit of Section 48 of the Act as the

terms 'profit' and 'turnover' only are used therein.

Competition Appeal (AT) No.24 and 26 of 2022 13.10. Plain reading of Section 48 of the Act makes it amply clear that punishment mentioned therein can only be imposed after the company is found to have contravened the provisions of the Act. In the present matter, the Commission has not arrived at any finding against OP-3, much less a finding of contravention. Hence, it would be premature to proceed against an individual under Section 48 when the question of contravention by the company itself is not concluded.

OP-4 and its individuals

14. OP-4 and its individuals have provided vital disclosures in the form of information, documents and other evidence, co-operated with the DG and the Commission in a genuine, full, continuous and expeditious manner, and not concealed any information. Accordingly, they merit benefit of 100% reduction in penalty, as provided in Regulation 4 of the LPR. In addition to voluntary disclosures, certain mitigating factors also exist in the instant case. OP- 4 has implemented a rigorous competition compliance programme and continues to regularly train its staff to avoid any such instance of violation of the provisions of the Act in future. It has also been submitted that the impugned conduct did not result in any loss to SBI or any other entity due to OP-4's conduct as it withdrew from participation. It was also submitted during the oral hearing that OP-4 withdrew from the Impugned Tender as soon as its internal teams became aware of the inadvertent violation.

OP-5 and its individuals

15. The submissions of Amreesh Neon Private Limited (OP-5) and its individuals are briefed as under:

15.1. The DG has failed to prove the existence of any agreement between the OPs, and in the absence of any concrete evidence, OP-5 cannot be held liable under Section 3(3) of the Act. It is submitted that "... What appeared and alleged to be a collusion was nothing but a result of market dynamics wherein the competitors in order to survive in the said market are bound to incidentally interact in some manner or the other and more particularly because of the process of bidding (e-reverse bidding) which was new concept to the OPs the Competition Appeal (AT) No.24 and 26 of 2022 interaction was initiated by SBIIMS only." There is no agreement between OP-5 and the other OPs, and thus, no case is made out for eliminating or reducing competition for bids or adversely affecting or manipulating the process of bidding. Therefore, proceedings qua OP-5 are liable to be quashed.

15.2. SBIIMS itself disclosed the bidding price, and thereafter, the contenders were asked to bid a lesser price than that.

15.3. The e-mail received from Mr. Naresh Kumar Dasari of OP-6 was a format prepared in excel sheet, which was just an illustrator to help the bidder understand

the format of bidding and fill in the tender consulting the same. Further, prices submitted by all bidders are not exactly the same as given in the illustrator.

15.4. The price quoted by OP-5 in the bidding was based upon the cost of raw materials and expenditure, and market resources with a very small profit margin. Same was not, at any point, the basis of the e-mail sent by Mr. Manish Jodhvat of OP-7.

15.5. OP-5 also relied on certain decisions of the Hon'ble Supreme Court to assert that price parallelism by itself is not conclusive of an arrangement of bid-rigging. Owing to a single buyer, situation of oligopoly prevailed in the present matter. Thus, it was SBIIMS and not the OPs who had control and influence over price fixation.

15.6. The DG has failed to prove AAEC on account of alleged anti-

competitive conduct of OPs.

15.7. The Commission should also consider certain mitigating factors while calculating penalty, if any, such as the fact that OP-5 is not a habitual offender and it co-operated with the DG's investigation at all stages.

OP-6

16. The submissions of Macromedia Digital Imaging Pvt Limited (OP-

6) are briefed as under:

Competition Appeal (AT) No.24 and 26 of 2022 16.1. The Investigation Report wrongly finds that MMDI (OP-6) has violated the provisions of Section 3(3)(d) read with Section 3(1) of the Act. It has been further submitted that OP-6 was never any part of the agreement including the stage of the bidding and even while executing project.

16.2. OP-6 was never a part of the bidding process and Mr. Naresh Kumar Dasari, its Director, acted upon his personal indulgence and not at the behest of OP-6. Further, Mr. Naresh had attended the pre-bid meeting on 07.04.2018 as a representative of OP-1 and not OP-6.

16.3. Starting from the Expression of Interest ('EOI') in 2017 till the completion of the project, OP-6 never involved itself in any of the bidding or manufacturing processes for the project.

16.4. OP-6 and OP-1 formed a 50:50 joint-venture MMMD in 2017.

This relationship and joint venture are entirely independent of any of the activities being impugned in the present matter. MMDD has manufactured a small volume of the works allotted to OP-1 in the Impugned Tender and billed the same to OP-6, who, in turn, billed the same at the same price to OP-1. The same is only a trading transaction and no profit has been made by OP-6 in the said project.

16.5. OP-6 has also prayed the Commission to consider mitigating factors viz. MMDI being a MSME in terms of MSME Act, 2006, difficulties caused by Covid-19, cooperation in investigation, etc. to determine penalty, if any.

Mr. Naresh Kumar Dasari of OP-6

17. Mr. Naresh Kumar Dasari of OP-6 in his separate submissions has stated as under:

17.1. Mr. Naresh got involved in the bidding process only upon invitation from Mr. Shamrendra Kumar and Mr. Arbind Singh of OP-4 and Mr. Manish Jodhavat of OP-7. Owing to his vast experience in the reverse e-bidding process and his long-term association with Mr. R. G. Competition Appeal (AT) No.24 and 26 of 2022 Venkatesh of OP-1, he decided to help out the participants to succeed in the bidding process.

17.2. The role of Mr. Naresh ended with the e-mail dated 04.06.2018, and there was no further involvement of his in the entire process.

Neither Mr. Naresh nor OP-6 gained anything from the Impugned Tender. Role of Mr. Naresh is limited to only coordination and explanation of the bidding process and the same was done out of goodwill and long-standing relation with OP-4 and not for gain or any undue benefit.

17.3. The DG Report wrongly finds Mr. Naresh to have violated the provisions of Section 3(3)(d) read with Section 3(1) of the Act as Mr. Naresh was never a part of the agreement.

17.4. Mr. Naresh's involvement and the e-mails dated 02.06.2018 and 04.06.2018 were only sent at the insistence of OP-4 to assist the qualified bidders so that the second bid for the Impugned Tender would succeed, unlike the first one.

17.5. Mr. Naresh is not liable under Section 48(1) of the Act, as Mr. Naresh acted at the behest of his own personal indulgence and not at the behest of OP-6. Further, only upon finding the company guilty of having contravened the Act, an individual who was responsible for the conduct of its business can be held to be vicariously liable by virtue of Section 48. Therefore, it must be the company's conduct that must contravene the Act. However, nothing in the DG Report indicates that OP-6 committed a contravention of Section 3(3) of the Act. In this regard, it has been further averred that OP-6 has not participated in the Impugned Tender and was not directly or indirectly involved in any arrangement in relation to the said tender. The investigation report, on the other hand, finds a role of Mr. Naresh, and does not point towards any specific role of conduct of OP-6 in the coordination in relation to the Impugned Tender. In such circumstances, Mr. Naresh cannot be

implicated under Section 48(1) of the Act.

17.6. During the oral hearing, the learned counsel appearing for Mr. Dasari submitted that he has learnt his lesson and apologises for his Competition Appeal (AT) No.24 and 26 of 2022 conduct. It was further submitted that he had no intention to facilitate a cartel and was only helping others with no benefits flowing to him.

17.7. Mr. Naresh Kumar Dasari has also prayed that the Commission should consider various factors, viz., full cooperation with the investigation, first allegation of anti-competitive conduct, etc., and impose a token or low penalty as a deterrent.

OP-7 and its individuals

18. The submissions of Hith Impex Pvt Limited (OP-7) and its individuals are briefed as under:

18.1. The present proceedings are non-maintainable as there is no agreement for the purposes of distributing signage products of OP-4 to SBIIMS. The findings in the investigation report are based on hearsay evidence and there is no documentary evidence that shows the involvement of OP-7 in the subject matter of the investigation. The e-

mail dated 04.06.2018 is also not marked to OP-7 or Mr. Manish Jodhavat of OP-7.

18.2. OP-7 had no arrangement with any of the OPs in any manner apart from being a distributor of flex and vinyl products of OP-4. Further, OP-7 is not an exclusive distributor of OP-4 in the market.

18.3. OP-7 is not concerned with the bidding process of supply and installation of signages of SBI at specified locations as alleged and it never participated in the bidding process. OP-7 did not had any knowledge of working of OP-1 to Op-6, as alleged in the Investigation Report.

18.4. OP-7 has been implicated in the matter based on alleged 'inputs' given to Mr.Naresh Kumar Dasari of OP-6 by Mr. Manish Jodhavat of OP-7. A perusal of the investigation report reveals that the only 'input' given by Mr. Manish relates to reduction of the price of flex and vinyl of OP-4 to be supplied for the Impugned Tender. Even assuming without admitting the said input, the reduction of prices mentioned was only Competition Appeal (AT) No.24 and 26 of 2022 beneficial to SBIIMS, and the same does not amount to contravention of any provisions of the Act.

18.5. OP-7 denied that it had submitted dummy bids in SBI's EOI of December 2017 and SBIIMS's EOI of February 2018 to gain access to the information of all the participants in the EOI. It submitted that various participants had submitted such bids to qualify for tender participation.

12. On examination of the submissions of the parties the Learned CCI analysed the submissions as well as emails and incorporated and reproduced emails also in its analysis which has been dealt with in para 19 to 101. It would be appropriate to reproduce the same:

"19. The Commission has perused the Investigation Report, suggestions/objections and arguments thereto filed by the Parties, and other material available on record, including the lesser penalty application filed by OP-4. The Commission has also heard the oral arguments advanced by the Parties.

20. Before proceeding to examine the evidence collected by the DG, the Commission deems it appropriate to note the background of the present matter.

21. SBI had issued an EOI on 07.12.2017 for pre-qualification of signage solution providers for replacing/providing external signages. However, the said EOI could not be carried forward due to lack of adequate response from the vendors complying prescribed pre-qualification criteria, and as such, the process could not reach the bidding stage. After scrapping the EOI dated 07.12.2017, SBI directed SBIIMS (a wholly owned subsidiary of SBI for taking care of premises and estate-related matters), to take necessary action regarding the roll-out of SBI's refreshed brand identity and standardization of the bank's signage boards at branches/ATMs. Consequently, SBIIMS issued another EOI on 08.02.2018. In response to the said EOI, SBIIMS received 44 applications. The same were scrutinized by a committee Competition Appeal (AT) No.24 and 26 of 2022 formed for such purpose, and 9 vendors were recommended to be pre-qualified for the signage project work which included OP-1 to OP-5.

22. Subsequently, SBIIMS issued a tender on 28.03.2018 to these 9 vendors for the supply and installation of SBI's new LED back-lit signage/replacement of existing signages for branches/offices/ATMs located at specified metro centers of various circles of SBI across India, using specified and approved flex & vinyl with cut & paste method. In this regard, a pre-bid meeting of vendors was scheduled on 07.04.2018, which was attended by Mr. Naresh Kumar Dasari (on behalf of OP-1), Mr. K. Shrujan (OP-2), Mr. Ramesh Bharadwaj (OP-3), Mr. Suhas Bhatia (OP-4), Mr. Arvind Sharma (OP-5), and Mr. Gandhar Trihan (Design Dialogues) and Mr. Sauvik Chakravarty (Graffiti Signgraphics). Thereafter, 5 vendors qualified in the technical bid evaluation, and they were invited to submit their price bids for the project work. However, the e-reverse auction held on 03.05.2018 could not succeed due to lack of responses.

23. Accordingly, SBIIMS held a meeting with the prospective bidders on 23.05.2018 to deliberate upon various issues pertaining to the e-reverse auction mode of tendering and difficulties faced by the bidders in the process, and to give necessary clarifications on the same. The said meeting was attended by Mr. R. G. Venkatesh (OP-1), Mr. Arjun Reddy and Mr. Ritanshu Mohan (OP-2), Mr. Ramesh Bharadwaj (OP-3), Mr. Shamrendra Kumar and Mr. Arbind Singh (OP-4) and Mr. Manish Thakkar (OP-5). In the said meeting, it was decided that SBIIMS would conduct fresh circle-wise e-reverse bidding for all 13 circles with certain changes. The vendors were also informed that the work would be allotted on a 50:30:20 basis in terms of the

number of branches/offices/ATMs of the circle, irrespective of the quantities/area of signages. All the pre-qualified vendors agreed to the said changes and submitted their written concurrences.

24. Subsequently, fresh e-reverse bidding was conducted on 04.06.2018 and 05.06.2018 for 12 out of 13 circles (excluding Ahmedabad) with start bid price of 8,750 per sq. mt., decremental value of 100 per sq. mt. and freezing the rate of timer switch at 4,750 Competition Appeal (AT) No.24 and 26 of 2022 per sq. mt. All 5 qualified vendors/ OPs (i.e., OP-1 to OP-5) participated and submitted their bids in the e-reverse auction. After completion of the e-reverse bidding process, circle-wise quotes (excluding GST) received from L-1, L-2 and L-3 bidders stood as under:

(In per sq. mt.)	L-1	L-2	L-3	Sl. No.	Name of Circle	Rate Quoted	Rate Quoted	Rate Quoted	Vendor
1	OP-4	OP-1	OP-2	2	Amaravati	7850	7950	8050	Vendor Quoted
2	OP-1	OP-2	OP-4	3	Bangalore	7850	7950	8150	Vendor Quoted
3	OP-1	OP-2	OP-4	4	Bhopal	7850	7950	8050	Vendor Quoted
4	OP-1	OP-2	OP-4	5	Chandigarh	8150	8250	8350	Vendor Quoted
5	OP-1	OP-2	OP-4	6	Chennai	7850	7950	8050	Vendor Quoted
6	OP-1	OP-2	OP-4	7	Delhi	7850	7950	8050	Vendor Quoted
7	OP-1	OP-2	OP-4	8	Hyderabad	7850	7950	8050	Vendor Quoted
8	OP-1	OP-2	OP-4	9	Jaipur	7850	7950	8050	Vendor Quoted
9	OP-1	OP-2	OP-4	10	Kolkata	7850	7950	8050	Vendor Quoted
10	OP-1	OP-2	OP-4	11	Lucknow	7850	7950	8050	Vendor Quoted
11	OP-1	OP-2	OP-4	12	Mumbai	7850	7950	8050	Vendor Quoted
12	OP-1	OP-2	OP-4	13	Patna	7850	7950	8050	Vendor Quoted

25. The above rates were accepted by SBIIMS, and further, in terms of the tender conditions, it was decided to distribute the work amongst L-1, L-2 and L-3 bidders in the proportion of 50:30:20 on L-1 rates, considering that, in view of number of branches/offices/ATMs of the circles, a single vendor may not be in a Competition Appeal (AT) No.24 and 26 of 2022 position to complete the job within the prescribed time line. A Letter of Intent was also issued by SBIIMS to the winning bidders on 06.06.2018, and the work order was placed on 13.06.2018.

26. As per the deposition of the official of OP-4, though OP-4 had participated in the said tender, it had planned to get the work done by sub-contracting to its converters (i.e., OP-1 and OP-2). Accordingly, vide letter dated 30.07.2018, OP-4 sought the permission of SBI to sublet certain parts of the project, which was however, denied by SBI.

Thereafter, OP-4 communicated its withdrawal from the project vide letter dated 01.08.2018 to the SBI. Consequent upon OP-4's decision to withdraw from the Impugned Tender, as per the provisions laid down in the tender, OP-4's Earnest Money Deposit ('EMD') was forfeited, and its work was distributed amongst the other bidders in the pre-declared proportion by SBIIMS.

27. Against this backdrop, the Commission now proceeds to analyze the evidence collected by the DG.

28. The DG has unearthed two crucial e-mail communications dated 02.06.2018 and 04.06.2018 exchanged between the OPs in relation to the Impugned Tender.

E-mail dated 02.06.2018

29. E-mail dated 02.06.2018 was sent by Mr. Naresh Kumar Dasari of OP-6 to Mr. R. G. Venkatesh of OP-1, Mr. Arjun Reddy of OP-2, OP-3, Mr. Arbind Singh of OP-4 and Mr. Manish Thakkar of OP-5. The same is reproduced hereunder:

From: Naresh Kumar Dasari naresh@mmdi.in Subject: BBI-Way Forward Dated: 2 June 2018 at 7.40 PM To Venkatesh R.g. rgv@ddspl.in, Arjun arjun@agdpl.com, apalvinyl@gmail.com, Arbind Singh arbind.singh@ap.averydennison.com, ameesh.manish@gmail.com Dear Friends Greetings Competition Appeal (AT) No.24 and 26 of 2022 I have attached an Excel Sheet and please have a look at it. The Excel Sheet contains Several Worksheets. The first work sheet is "Nut Shell" which is what we have broadly agreed before the bidding started on the previous occasions. I have made no changes in that Auction sequence wise I have listed the Circles where in the "auction Sequence" has been illustrated.

As you all know the opening bid is 8750.

I have categorized the circles in to 3 types Type 1: Bangalore, Chennai, Hyderabad, Mumbai, Delhi. Type 2: Patna, Bhopal, Lucknow.

Type 3: Jaipur, Chandigarh and Kolkata The cut off price/per sq mtr is:

Rs.7950 (Rs.738.85 per sq ft) for Type 1 Rs.8050 (Rs.748.15 per sq ft)for Type 2 Rs.8150 (Rs.757.45 per Sq ft) for Type 3 Logic for it is : @ Type 1, bidders have their own manufacturing bases.

@Type 2: bidders need to transport signages which involves additional costs.

@Type 3, geographically difficult territories i.e. @ Jaipur branch density is low, @ Chandigarh, involves Kashmir and @ Kolkata involves North East.

I have deliberately not mentioned OPAL in Jaipur and Patna circles -with a logic-that they don't have local alignments and difficult region to work for a Chennai based vendor.

For any further clarifications, please reach out to me @ anytime.

I am travelling to Europe on Monday morning and hence won't be able to co-ordinate on the D-day. RGV will take the lead so that there is no confusion while the actual process is going on.

Competition Appeal (AT) No.24 and 26 of 2022 The pricing logic might change based upon further inputs from MJ(he is currently not reachable I believe) We shall incorporate them in the same excfel sheet as and when such inputs are given/we all agree on those inputs.

I wish you all the very best and let's make this a success.

Regards Naresh Kumar D Sd/-

Bbi-Bid-4June1

30. The above e-mail and its contents are self-explanatory and pretty detailed. The e-mail contains an excel workbook attachment named "Bbi_Bid_4June18.xlsx" comprising of several worksheets in relation to the Impugned Tender. The first worksheet titled 'nut hell' is a summary of the agreement between the OPs in relation to the bidding process, and the other worksheets contain 'Auction Sequence' for each of the circles. Mr. Dasari has categorized various circles in three types based on the location of the manufacturing base of the bidders, transportation cost and geographically difficult territories. It is also mentioned that Mr. R. G. Venkatesh of OP-1 will be leading the operation during the absence of Mr. Naresh Kumar Dasari of OP-6.

.

Email dated 04.06.2018

31. E-mail dated 04.06.2018 was also sent by Mr. Naresh Kumar Dasari of OP-6 to Mr. R.G. Venkatesh of OP-1, Mr. Arjun Reddy and Mr. Ritanshu Mohan of OP-2, OP-3, Mr. Arbind Singh of OP-4 and Mr. Manish Thakkar of OP-5. The same is reproduce hereunder:

From: Naresh Kumar Dasari naresh@mmdi.in Subject: Re:BBI-Way Forward Date: 4 June 2018 at 4.20 AM Competition Appeal (AT) No.24 and 26 of 2022 To Venkatesh R.g. rgv@ddspl.in, Arjun arjun@agdpl.com, apalvinyl@gmail.com, Arbind Singh arbind.singh@ap.averydennison.com, ameesh.manish@gmail.com Dear Friends Greetings As you all know, we have been talking to MJ for further inputs. Based on MJ's inputs and our own assessment of the situation, I have attached revised workings and process sequence. I have categorized the circles in to 4 types now (instead of earlier 3) Type 1: Bangalore, Chennai, Mumbai, Delhi. Type 2: Hyderabad, Lucknow, Bhopal.

Type 3: Patna, Jaipur.

Type 4: Chandigarh, Kolkata.

The cut-off price/per Sq Mtr is Rs.7850 (Rs.729.55 per Sq Ft) for Type 1.

Rs.7950(Rs.738.85 per Sq Ft) for Type 2 Rs.8050 (Rs.748.15 per Sq Ft) for Type 3 Rs.8150 (Rs.757.45 per Sq Ft) for Type 4 Logic for it is: @ Type 1, bidders have their own manufacturing bases @Type 2 & 3, bidders need to transport signages which involves additional cost.

@ Type 4, geographically difficult territories i.e. , @ Chandigarh, involves Kashmir and @ Kolkata involves North East.

I have deliberately not mentioned OPAL in Chandigarh, Jaipur, Patna circles-with a logic- that they don't have local alignments and difficult region to work for a Chennai based vendor.

Similarly, I have taken out Amresh Neon from Kolkata circle. I would like to clarify that: MJ wanted us to quote less than I have mentioned in this Revised Sheet. I deliberately haven't done that because there might be a table top negotiations post auction and at that point of time, whether we like it or not- we need to come down on our prices a bit. If we quote as per MJ during the auction-the n we will end Competition Appeal (AT) No.24 and 26 of 2022 up going down than the cut-off price, which will result in lower margins on the project (which is not advisable).

I wish you all the very best and let's make this a success. Regards, Naresh Kumar D

32. Mr. Naresh Kumar Dasari of OP-6 had mentioned in his e-mail dated 02.06.2018 that the pricing logic given in the said e-mail might change based on inputs from one 'MJ', who was later confirmed to be Mr. Manish Jodhavat of OP-7 by Mr. Dasari in his deposition. Mr. Manish Jodhavat, i.e., OP-7, is a distributor of flex & vinyl material of OP-4. Accordingly, it is evident from the above e-mail that upon receipt of 'inputs' from Mr. Manish Jodhavat of OP-7, Mr. Naresh Kumar Dasari of OP-6 revised the workings and process sequence of the e-reverse auction which was scheduled for 04 and 05.06.2018. Mr. Naresh Kumar Dasari thus, shared the final 'agreed upon' bidding sequences and bid figures for 11 circles to all 5 bidding OPs in the morning of 04.06.2018, when the e-reverse bidding of SBIIMS tender was scheduled for 04.06.2018 and 05.06.2018.

Price Comparison

33. A circle-wise comparison of the bidding sequence and bid figures sent by Mr. Naresh Kumar Dasari through his e-mail dated 04.06.2018 with the actual sequence and figures of e-reverse auction conducted on 04.06.2018 and 05.06.2018, is given below:

Bangalore Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual bidding on 04.06.2018 8750 Amreesh Neon (OP-5) 8650 Diamond Display (OP-1) 8650 Diamond Display (OP-1) 8550 AGX (OP-2) 8550 Avery Dennison (OP-4) 8450 Avery Dennison (OP-4) 8350 Opal (OP-3) 8350 Opal (OP-3) 8250 Amreesh Neon (OP-5) 8250 Diamond Display (OP-1) 8150 Opal (OP-3) 8150 Avery Dennison (OP-4) Competition Appeal (AT) No.24 and 26 of 2022 8050 Avery Dennison (OP-4) 8050

AGX (OP-2) 7950 AGX (OP-2) 7950 AGX (OP-2) 7850 Diamond Display (OP-1) 7850 Diamond Display (OP-1) Bhopal Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual bidding on 04.06.2018 8750 AGX (OP-2) 8750 AGX (OP-2) 8650 Avery Dennison (OP-4) 8650 Avery Dennison (OP-4) 8550 Opal (OP-3) 8550 Opal (OP-3) 8450 Amreesh Neon (OP-5) 8450 Amreesh Neon (OP-5) 8350 Diamond Display (OP-1) 8350 Diamond Display (OP-1) 8250 AGX (OP-2) 8250 AGX (OP-2) 8150 Amreesh Neon (OP-5) 8150 Amreesh Neon (OP-5) 8050 Avery Dennison (OP-4) 8050 Avery Dennison (OP-4) 7950 AGX (OP-2) 7950 AGX (OP-2) Chandigarh Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual bidding on 04.06.2018 8750 Avery Dennison (OP-4) 8750 Avery Dennison (OP-4) 8650 AGX (OP-2) 8650 AGX (OP-2) 8550 Diamond Display (OP-1) 8550 Diamond Display (OP-1) 8450 Amreesh Neon (OP-5) 8450 Amreesh Neon (OP-5) 8350 Avery Dennison (OP-4) 8350 Avery Dennison (OP-4) 8250 AGX (OP-2) 8250 AGX (OP-2) 8150 Diamond Display (OP-1) 8150 Diamond Display (OP-1) Chennai Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual bidding on 04.06.2018 8750 Diamond Display (OP-1) 8750 Diamond Display (OP-1) 8650 Amreesh Neon (OP-5) 8650 Amreesh Neon (OP-5) 8550 Avery Dennison (OP-4) 8550 Avery Dennison (OP-4) 8450 AGX (OP-2) 8450 AGX (OP-2) Competition Appeal (AT) No.24 and 26 of 2022 8350 Opal (OP-3) 8350 Opal (OP-3) 8250 Avery Dennison (OP-4) 8250 Avery Dennison (OP-4) 8150 Opal (OP-3) 8150 Opal (OP-3) 8050 AGX (OP-2) 8050 AGX (OP-2) 7950 Diamond Display (OP-1) 7950 Diamond Display (OP-1) 7850 Opal (OP-3) 7850 Opal (OP-3) Delhi Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual bidding on 04.06.2018 8750 AGX (OP-2) 8750 AGX (OP-2) 8650 Opal (OP-3) 8650 Opal (OP-3) 8550 Diamond Display (OP-1) 8550 Diamond Display (OP-1) 8450 Amreesh Neon (OP-5) 8450 Amreesh Neon (OP-5) 8350 Avery Dennison (OP-4) 8350 Avery Dennison (OP-4) 8250 Diamond Display (OP-1) 8250 Diamond Display (OP-1) 8150 Avery Dennison (OP-4) 8150 Avery Dennison (OP-4) 8050 AGX (OP-2) 8050 AGX (OP-2) 7950 Avery Dennison (OP-4) 7950 Avery Dennison (OP-4) 7850 Diamond Display (OP-1) 7850 Diamond Display (OP-1) Hyderabad Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual bidding on 04.06.2018 8750 Amreesh Neon (OP-5) 8750 Amreesh Neon (OP-5) 8650 Opal (OP-3) 8650 Opal (OP-3) 8550 Diamond Display (OP-1) 8550 Diamond Display (OP-1) 8450 AGX (OP-2) 8450 AGX (OP-2) 8350 Avery Dennison (OP-4) 8350 Avery Dennison (OP-4) 8250 Diamond Display (OP-1) 8250 Diamond Display (OP-1) 8150 AGX (OP-2) 8150 AGX (OP-2) 8050 Avery Dennison (OP-4) 8050 Avery Dennison (OP-4) 7950 Diamond Display (OP-1) 7950 Diamond Display (OP-1) Competition Appeal (AT) No.24 and 26 of 2022 Jaipur Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual bidding on 05.06.2018 8750 AGX (OP-2) 8750 AGX (OP-2) 8650 Amreesh Neon (OP-5) 8650 Diamond Display (OP-1) 8550 Diamond Display (OP-1) 8550 AGX (OP-2) 8450 AGX (OP-2) 8450 Amreesh Neon (OP-5) 8350 Avery Dennison (OP-4) 8350 Avery Dennison (OP-4) 8250 Diamond Display (OP-1) 8250 Diamond Display (OP-1) 8150 Avery Dennison (OP-4) 8150 Avery Dennison (OP-4) 8050 AGX (OP-2) 8050 AGX (OP-2) Kolkata Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual

bidding on 05.06.2018 8750 Opal (OP-3) 8750 Opal (OP-3) 8650 Avery Dennison (OP-4) 8650 Avery Dennison (OP-4) 8550 AGX (OP-2) 8450 AGX (OP-2) 8450 Diamond Display (OP-1) 8350 Diamond Display (OP-1) 8350 Avery Dennison (OP-4) 8150 Avery Dennison (OP-4) 8250 Diamond Display (OP-1) 7950 Diamond Display (OP-1) 8150 AGX (OP-2) 7850 AGX (OP-2) Lucknow Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual bidding on 05.06.2018 8750 Opal (OP-3) 8750 Opal (OP-3) 8650 Diamond Display (OP-1) 8550 Diamond Display (OP-1) 8550 Amreesh Neon (OP-5) 8450 Amreesh Neon (OP-5) 8450 AGX (OP-2) 8350 AGX (OP-2) 8350 Avery Dennison (OP-4) 8250 Avery Dennison (OP-4) 8250 Diamond Display (OP-1) 8150 Diamond Display (OP-1) 8150 Avery Dennison (OP-4) 8050 Avery Dennison (OP-4) 8050 AGX (OP-2) 7950 AGX (OP-2) 7950 Diamond Display (OP-1) 7850 Diamond Display (OP-1) Competition Appeal (AT) No.24 and 26 of 2022 Mumbai Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual bidding on 05.06.2018 8750 Avery Dennison (OP-4) 8750 Avery Dennison (OP-4) 8650 Amreesh Neon (OP-5) 8650 Amreesh Neon (OP-5) 8550 Opal (OP-3) 8550 Opal (OP-3) 8450 AGX (OP-2) 8450 AGX (OP-2) 8350 Diamond Display (OP-1) 8350 Diamond Display (OP-1) 8250 Amreesh Neon (OP-5) 8250 Amreesh Neon (OP-5) 8150 Avery Dennison (OP-4) 8150 Avery Dennison (OP-4) 8050 Diamond Display (OP-1) 8050 Diamond Display (OP-1) 7950 AGX (OP-2) 7950 AGX (OP-2) 7850 Amreesh Neon (OP-5) 7850 Amreesh Neon (OP-5) Patna Circle Sequence (In per sq. mt.) As per e-mail of 04.06.2018 Actual bidding on 05.06.2018 8750 Amreesh Neon (OP-5) 8750 Amreesh Neon (OP-5) 8650 Diamond Display (OP-1) 8550 Diamond Display (OP-1) 8550 Avery Dennison (OP-4) 8450 Avery Dennison (OP-4) 8450 AGX (OP-2) 8350 AGX (OP-2) 8350 Avery Dennison (OP-4) 8250 Avery Dennison (OP-4) 8250 AGX (OP-2) 8150 Diamond Display (OP-1) 8150 Avery Dennison (OP-4) 8050 Avery Dennison (OP-4) 8050 AGX (OP-2) 7950 AGX (OP-2)

34. From the above comparison, following emerges:

34.1. for 6 circles, i.e., Bhopal, Chandigarh, Chennai, Delhi, Hyderabad and Mumbai, the bidding sequence as well as bid figures match exactly.

34.2. for 2 circles, i.e., Bangalore and Jaipur, there are a few differences in the bidding sequence and the bid amounts; however, the final L-1 bid was submitted as planned. In other words, both the party Competition Appeal (AT) No.24 and 26 of 2022 submitting L-1 bid as well as L-1 rate tallies with the Excel sheet attached with the e-mail dated 04.06.2018 34.3. for 3 circles, i.e., Kolkata, Lucknow and Patna, though the initial quotes were made as planned, the subsequent decremental bids were lower than the planned figures (though the bidding sequence remained the same, except for L-3 bid for Patna). The L-1 rates were a bit lower than the agreed upon rates, but the party submitting the L-1 bid was as per the e-mail dated 04.06.2018.

35. In this relation, it is noted that it is not necessary that the bidding sequence and bid price should match with each other as any exchange of commercially sensitive information between competitors is captured by the prohibition imposed by Section 3(3) read with Section 3(1) of the Act, as provided therein, and thus such conduct is presumed to have an appreciable adverse effect on competition. This is abundantly clear from a bare reading of the provisions of Section 3(1) of the Act, which make it evident that these provisions not only proscribe the agreements which cause AAEC but also forbid the agreements which are likely to cause AAEC. Thus, the issue whether the actual conduct matched up with the agreed anti-competitive conduct is irrelevant.

Moreover, in the present case, not only was commercially sensitive information exchanged between competitors, the same was also followed by the OPs. It is evident from the above that the L-1 rates and winning bidder for each circle was pre-decided amongst the OPs, and the actual L-1 rates and winning bidder matches with the excel sheet attachment sent by Mr. Naresh Kumar Dasari on 04.06.2018, except for Kolkata, Lucknow and Patna circles, where the winning bids were lower than the 'agreed upon' rates but at par with other circles.

36. Further, it is noted that the final sheet attached to the e-mail dated 04.06.2018 gives in 'nut shell' the circle allocation made by Mr. Naresh Kumar Dasari while sending the bidding sequences and bid figures to all the OPs. Though there was a reduction in final winning bid figures for Kolkata, Lucknow and Patna circles, the L-1, L-2, L-3, L-4 and L-5 bidders were as per the 'nut shell' sheet. For the other 8 circles as given in the said sheet, the final bid position and even the final bid figures Competition Appeal (AT) No.24 and 26 of 2022 exactly match the ones provided in the sheet prepared by Mr. Naresh Kumar Dasari.

37. The Commission is of the view that such striking similarity in the outcome projected in the e-mail dated 04.06.2018 sent by Mr. Naresh Kumar Dasari and the actual outcome of reverse auction cannot be a mere co-incidence, and the same indicates meeting of minds between the OPs to fix prices, geographically allocate the market, and rig the bids in the Impugned Tender.

38. Further, it is noted that as per the SBIIMS minutes dated 06.06.2018, Avery Dennison (OP-4) was L-1 in the Amaravati circle, L- 2 in Bhopal, Delhi, Hyderabad, Jaipur and Patna circles and L-3 in Bangalore, Chandigarh, Kolkata and Lucknow circles. However, as already stated, SBI had rejected the request of OP-4 to sublet parts of the project to OP-1 and OP-2, and accordingly, OP-4 communicated its withdrawal from the project vide letter dated 01.08.2018.

39. Against this backdrop, it is noted that the worksheet titled 'Total Size of the PIE = 1300 (i.e. 100 points per circle x 13 circles)' attached with the e-mail dated 04.06.2018 was prepared by Mr. Naresh Kumar Dasari of OP-6 while taking into account the planned withdrawal of OP- 4 from the Impugned Tender, and the share of its work was apportioned amongst the other OPs, even though the tender was not finalized till that date. In fact, the said table was prepared taking into account the inter se sharing/allocation of work amongst the OPs, as agreed between them, considering their local presence and manufacturing bases in various circles/cities.

40. From these e-mails, the Commission also notes that though only OP-1 to OP-5 participated in the e-reverse auction in the Impugned Tender, Mr. Naresh Kumar Dasari of OP-6 and Mr. Manish Jodhavat of OP-7 also played an active role in orchestrating the entire operation. The words 'we had broadly agreed', 'before the bidding started' and 'co-ordinate on the D-day' used in the e-mail dated 02.06.2018 lends significance to the fact that bid-rigging of the Impugned Tender was a concerted effort and was done before the bidding even started, thereby underlining the anti-competitive nature of the actions.

Competition Appeal (AT) No.24 and 26 of 2022

41. When the investigation confronted the afore-extracted e-mails to the representatives of the OPs, Mr. R. G. Venkatesh of OP-1, during his deposition, did not contest the contents of the e-mails.

42. Further, Mr. Arjun Reddy of OP-2 also shared the e-mail dated 04.06.2018 with the investigation (with its trail e-mail of 02.06.2018). During his deposition, Mr. Arjun Reddy stated that:

"Yes, I verify that the email is identical, and so are the attachments. This email was sent by Mr. Naresh for better understanding of the bidding for all the bidders, as suggested by one of the bidders..."

Note: on being asked who was 'one of the bidders', the deponent replied 'representative of Avery Dennison'.

As per Mr. Arjun Reddy, the said e-mail was sent on the directions of Mr. Shamrendra Kumar of Avery Dennison (OP-4). Although, during his deposition, Mr. Arjun Reddy tried to downplay the said e-mail by stating that the OPs had a choice as regards the bid figures, he also accepted that OP-2's bid figures matched exactly with the 'guidance mail' in 7 out of 13 circles.

43. Mr. Ramesh Bharadwaj of OP-3, during his deposition was also confronted with the e-mail dated 02.06.2018. The relevant extracts of his deposition in this regard are reproduced hereunder:

"...Yes, this mail communication I had received. As I had requested Mr. Naresh to understand the procedure, he had sent the figures to help me out. But the tender did not exactly happen as per the figures. There was some modification of the values. The mail sent by Naresh was like a tutorial. I understood this tutorial and jotted down the figures to retain the Chennai circle. The values in the bidding were decreased, as per the tutorial it was Rs. 100, but the actual bidding decreased by around Rs. 75/-..."

The Commission notes that Mr. Ramesh Bharadwaj has also tried to colour the e-mail as a tutorial. However, if the purpose of the e-mail was to 'understand the procedure', why did Mr. Bharadwaj have to jot down Competition Appeal (AT) No.24 and 26 of 2022 the figures to retain the Chennai circle. In fact, in his deposition, Mr. Bharadwaj accepted that he agreed to do the work in the Chennai circle only.

44. In relation to the e-mail dated 04.06.2018, Mr. Bharadwaj stated that:

"To provide the best price to customer, I have requested Mr. Naresh Kumar Dasari to help me to take Chennai circle. Likewise, depending upon the bases of other people, he has given the allocation. I followed this"

From the above, the Commission notes that Mr. Bharadwaj of OP-3 admitted that he had requested Mr. Naresh Kumar Dasari of OP-6 to get the business for Chennai Circle. In the opinion of the Commission, this is a very important admission, since Mr Bharadwaj has confirmed that he had followed the bidding sequence and bid figures provided by Mr. Dasari with his e-mail dated 04.06.2018 and accordingly, OP-3 was L-1 for Chennai circle and L-4 or L-5 for other circles.

45. Mr. Arbind Singh of OP-4, when confronted with the said e-mails, stated as under:

"Yes, I confirm that I had received that email from Mr. Naresh Kumar Dasari on 02.06.2018. The said mail primarily outlined the logic based on which the converters had agreed to share the circles among themselves, which included the reasons like geographical presence and manufacturing presence of the converters, logistical constraints like transportation, and difficult / remote areas..."

46. In relation to the e-mail dated 04.06.2018, Mr. Arbind Singh stated that:

"This mail elaborates on the categorisation of the regions based on the logic of presence of manufacturing facilities of converters, logistical constraints and geographical remote / difficult areas, so that every converter can get a major share of business in the location where they had their base."

It has been explained by Mr. Singh that the revised categorization in the e-mail dated 04.06.2018 was made on the logic of presence of Competition Appeal (AT) No.24 and 26 of 2022 manufacturing facilities and other factors, and the aim was to get major share of business for every converter in their base location. He was one of the key persons of OP-4 who, along with Mr. Shamrendra Kumar, guided Mr. Naresh Kumar Dasari of OP-6 to work out the 'cut-off prices' for each circle that the OPs would bid in the e-reverse auction, and he was also instrumental in ensuring that the actual bidding was as agreed upon by the OPs.

47. In relation to e-mail dated 02.06.2018, Mr. Manish Thakkar of OP- 5, during his deposition on oath, replied as under:

"This email is from Mr. Naresh Kumar Dasari. On 25th or 26th May, 2018, the SBIIMS officials explained the tender procedure to all the bidders, and asked them to bid in the specified format correctly. We were called to understand the procedures. The next day, Mr. Shamrendra Kumar, Business Head of Avery Dennison, called me up and asked me if I had understood correctly the day before. So, I said that if somebody can explain me in a better way, so he said that he would ask his distributor

who would be able to make me understand. I got a call from Avery Dennison's distributor, Hith Impex's owner Mr. Manish Jodhavat, and he said that he would send me a format so that we do not commit any mistake. May be he talked to Mr. Naresh Kumar Dasari after this, as Mr. Manish Jodhavat was not there in the pre-bid meeting and did not know the tender procedures correctly. Mr. Naresh is experienced in bidding in Govt. tenders, so he prepared a format in excel sheets, which he mailed to all the bidders. This helped us in understanding the whole procedure and we understood the excel sheets sent by Mr. Naresh Kumar."

It is noted from the above-extracted deposition of Mr. Manish Thakkar that the e-mail dated 02.06.2018 was sent with the combined efforts of OP-4, OP-6 and OP-7. He accepted that the price given in the e-mails matched with the actual bids, which clearly indicates meeting of minds between the OPs.

Competition Appeal (AT) No.24 and 26 of 2022

48. The investigation also confronted the e-mail dated 02.06.2018 to Mr. Naresh Kumar Dasari of OP-6, during his deposition. His reply is reproduced hereunder:

"I have discussed the pricing of signage with Diamond Display because we needed to quote for a pre-tender price. So the basic costing of signage has been discussed between myself and Mr. Venkatesh. During this whole process of tender, I have 'interacted' on this subject with Mr. Venkatesh, also Mr. Shamrendra Kumar of Avery Dennison. Along with Shamrendra, Mr. Arbind Singh of Avery Dennison, and their dealer Mr. Manish Jodhavat ...

After SBIIMS gave instruction to the bidders, post this incident Avery Dennison's distributor Mr. Manish Jodhavat called me and asked me if I could help explaining the reverse auction process to the bidders. He informed me Mr. Shamrendra Kumar of Avery Dennison came up with this idea as I have considerable experience in reverse auction participation process. So, I consulted Mr. Venkatesh of Diamond Display Solutions and we agreed that I should help in the best interest of the tendering process. So I wrote an email in consultation with Mr. Venkatesh of Diamond Display explaining the process of reverse auction with an illustrative excel sheet. During this formulation of illustration of excel sheet I have also been told by Manish Jodhavat a certain quantity of Avery Dennison's material should be taken into consideration. I have incorporated the same detail in the excel sheet."

From the above, it is noted that Mr. Naresh Kumar Dasari of OP-6 admits that for arriving at the pricing figures, he had discussions with Mr. Shamrendra Kumar of OP-4, Mr. Manish Jodhavat of OP-7 and Mr. R. G. Venkatesh of OP-1. The role of Mr. Shamrendra Kumar of OP-4 clearly comes to the fore, as it was him on whose nudging Mr. Manish Jodhavat had asked Mr. Naresh Kumar Dasari to prepare the Excel sheet, giving the bidding sequence and bid figures to be submitted by the OPs in the e-reverse auction conducted by SBIIMS.

49. Further, in relation to e-mail dated 04.06.2018, it is also important to note the following part of deposition of Mr. Dasari:

Competition Appeal (AT) No.24 and 26 of 2022 "Q.37. Please explain how and why in the 4th June email you have revised the 'illustration'. Why did you need to modify an 'illustration' if the only aim you had was to explain once bidding process, and also the cut-off prices are matching so closely? Ans. I have been told by Mr. RG Venkatesh to change the numbers in the excel sheet as folks from Avery Dennison wanted him to do that, and I merely done what I have been asked to do."

From the above, the Commission notes that Mr. Dasari, in his deposition, also admitted that the winning prices in almost all the circles exactly match the figures provided by him. In his e-mail, Mr. Dasari had designated Mr. R. G. Venkatesh of OP-1 as the person who would be coordinating with the OPs at the time of actual bidding in his absence. This shows that Mr. Dasari was supposed to be the lead person guiding the OPs at the time of actual bidding and ensuring that the whole e- reverse bidding process was as per the 'agreement' amongst the OPs.

50. It is further noted that Mr. Manish Jodhvat of OP-7 also admitted to having provided inputs to OP-1 as a distributor of OP-4, though he claimed that he was not a participant in the Impugned Tender. The role of OP-7 in the entire sequence of events has been discussed separately in this order.

51. From the depositions noted above, it is seen that the OPs have tried to label the Excel Sheets as tutorials to understand the e-reverse auction process. However, if this was the situation, a single hypothetical bidding sequence would have sufficed to explain the process. While holding so, it is made clear that it should not be construed that such "tutorials" amongst competitors are being permitted in any manner whatsoever. Be that as it may, such explanation/tutorial should have been done by the tendering authority, and not by the competitors between themselves. In the present case, not only was the so called 'tutorial' prepared by Mr. Naresh Kumar Dasari of OP-6 for all the circles separately, but he also categorized the circles, prepared a summary of the projected final outcome of the bidding process and revised the Excel workbook based on the inputs received from Mr. Manish Jodhvat of OP-7. If the purpose of preparing the excel worksheets was to only make the OPs understand the process, there was no reason to revise the same based on the further inputs received from Manish Jodhvat. Further, Mr. Dasari clarified in Competition Appeal (AT) No.24 and 26 of 2022 the e-mail dated 04.06.2018 that Mr. Manish Jodhvat had wanted to quote less than what he had mentioned in the revised sheet, which indicates that the e-mail was not an 'illustrator', which is the word all the OPs have tried to use to skirt the issue. It is noted that these arguments of the OPs are nothing but 'afterthoughts' to find a cover for their collusion.

52. Another important point noted from Mr. Dasari's testimony is when he stated "then we will end up going down than the cut-off price, which will result in lower margins on the project..." The Commission is of the view that if the whole exercise was just an 'illustrator' or a 'tutorial', there was no need for the OPs to discuss and protect the margin. As such, it is clearly established that the OPs

had meticulously planned the whole exercise and resorted to concerted actions to fix the bidding price, geographically allocate the market and rig the bids in the Impugned Tender.

Meeting dated 25.05.2018

53. Avery Dennison (OP-4) also submitted that its representatives attended a meeting on 25.05.2018 with some of the OPs. The relevant extract of the reply of OP-4 in this regard is reproduced hereunder:

"...However, Avery Dennison's representatives attended only two physical meetings on 25 May 2018 and 4 June 2018. These meetings were at Diamond Display's office in Bengaluru and were attended by Mr. Arbind Singh, an Avery Dennison official stationed in Bengaluru. Some of the officials present were Mr. R.G. Venkatesh, Mr. Naresh Dasari and Mr. Arjun Reddy."

54. While giving his deposition, Mr. Arbind Singh of OP-4 also confirmed the factum of the said meeting along with the agenda of the meeting. When the investigation asked Mr. Singh about the occurrence of any meeting regarding OP-4's co-ordination with its competitors in relation to the Impugned Tender, he stated as under:

"... Subsequently, another meeting was held on 25.05.2018 at the office of Diamond Display in Bengaluru. The meeting had Mr. RG Ventakesh (...) from Diamond Display, Mr. Naresh Kumar Dasari (...) from Macromedia Digital Imaging Pvt. Ltd. (I understand they were investors in Diamond Display and that is why they were Competition Appeal (AT) No.24 and 26 of 2022 interested in the said tender), Mr. Arjun Reddy (...) from Autostriping India Pvt. Ltd. and myself. The convertors had already decided about the geographical circles they would want for their own. Though I was not informed about how that arrangement was reached, but I was informed about the said arrangement so that we could align our business in that respect. They also informed me that they would work out the pricing arrangement and inform us at appropriate time ..."

55. Mr. Arjun Reddy of OP-2, during his deposition, when asked whether he attended the meeting dated 25.05.2018, stated as under:

"Yes, we met. Avery Dennison, Autostriping India Pvt. Ltd. / AGX Retail Solutions Pvt. Ltd, Mr. Venkatesh of Diamond Display, I think Mr. Manish of Amreesh Neon Pvt. Ltd. This happened before the pre-bid meeting. I don't know the date. We just met and had no major discussion."

56. When Mr. R. G. Venkatesh of OP-1 was asked about the aforesaid meeting with other OPs during his deposition, he replied as under:

" I remember that we met for lunch, and then went for the pre-bid meeting. I don't remember what was discussed during the lunch meeting.

I can't remember the dates. I remember going for lunch before the SBIIMS meeting."

57. From the above, it is noted that some of the OPs did have a meeting on 25.05.2018, i.e., before the bidding process, which lends credence to the other evidence that indicates that the OPs had joined hands to collude in relation to the Impugned Tender.

Call Data Records (CDRs)

58. The investigation also collected the CDRs of the key persons of the OPs. From the analysis of the CDRs, it is found that the OPs were in constant touch with each other prior to, during, and post the e-reverse bidding process of the Impugned Tender. In a few cases, the timing of the actual bid submissions closely match the telephonic calls made between the OPs. It is noted that since the OPs were placed in different cities Competition Appeal (AT) No.24 and 26 of 2022 across the country (with only OP-1 and OP-2 based in Bengaluru), telephonic calls formed a convenient channel for communication between them to co-ordinate the bid submission during the e-reverse auction conducted by SBIIMS on 04.06.2018 and 05.06.2018.

59. As mentioned in the e-mail dated 02.06.2018 that when Mr. Naresh Kumar Dasari of OP-6 would be unavailable, Mr. R. G. Venkatesh of OP- 1 would be taking the lead to co-ordinate with the other OPs; Mr. Venkatesh took the lead in guiding the other OPs in submitting their bids in the SBIIMS e-reverse auction. The analysis of the CDRs of the mobile number belonging to Mr. R. G. Venkatesh of OP-1 shows that, from early morning on 04.06.2018, the OPs were in constant touch with him, and he was coordinating the submission of bids by each of them.

60. Mr. Arbind Singh of OP-4, during his deposition, also stated that he was present at OP-1's office on 04.06.2018 "... to ensure that that the bidding was done as planned" and that he was in constant touch with his subordinate, Mr. Suhas Bhatia, who was at the Mumbai office, and "... informing him when and what figure to bid." Mr. R. G. Venkatesh also confirmed that Mr. Arbind Singh was present in his office while the bidding was going on.

61. During his deposition, when Mr. R. G. Venkatesh was questioned about his telephonic calls with Mr. Manish Thakkar of OP-5, he stated that:

"...Yes, we discussed the price. Sometimes Manish asked me what price should we quote. I would see the chart and tell him, though he had already got the chart. We were following the sequence and prices in the chart. In my place, I quoted my own price."

62. When it was pointed out to him that the calls exchanged on 04.06.2018 and 05.06.2018 with Mr. Ramesh Bharadwaj of OP-3 coincided with the timing of submissions of bids in e-reverse auction of SBIIMS, he replied as under:

"To all the Call Data Records, my answer is the same. We were following the sequence and the bid prices suggested by Naresh. We were following what was there in the email Exhibit No.2 shown to me." "... on the day and time of bidding in the CDR pertains to Competition Appeal (AT) No.24 and 26 of 2022 following the sequence. Other times, had nothing to do with the bidding."

63. In regard to his telephonic call exchanges with Mr. Arbind Singh of OP-4, Mr. Venkatesh's reply was as under:

"Mr. Arbind Singh being a material supplier, we discussed a lot on material details, and during the bid submission, he was sitting with me in my office on 4th June, 2018. I don't remember whether he was in my office on 5th June, 2018 also. May be he was there or not."

64. When Mr. Manish Thakkar of OP-5 was confronted with an extract of CDR of Mr. R.G. Venkatesh of OP-1 showing his telephonic call exchanges with him, his reply was as under:

"...Out of this data shown to me, I might have talked to him regarding the bidding which whenever started. That why the bidding has started as per the illustrator given to us."

65. In his statement recorded on 12.01.2021, Mr. Ramesh Bharadwaj of OP-3 also confirmed that he talked to Mr. R. G. Venkatesh of OP-1 during the e-reverse auction held on 04.06.2018 and 05.06.2018. His reply is reproduced hereunder:

"I was discussing with Mr. R.G. Venkatesh about the reverse auction. He assisted me to help me to take the tender."

66. Mr. Arjun Reddy and Mr. Ritanshu Singh of OP-2 were in constant touch with Mr. R.G. Venkatesh of OP-1 on 04.06.2018 and 05.06.2018. When Mr. Arjun Reddy was confronted with the CDR extracts of his telephonic call exchanges with Mr. R. G. Venkatesh of OP-1, his reply was as under:

"We discussed during the bidding, the log in and log out, our bids, our position...may be who is L-1 or L-2."

67. From the above-extracted statements of the key persons of the OPs, it is noted that they have all confirmed having talked to Mr. R.G. Venkatesh of OP-1 to co-ordinate their bidding sequence and bid figures.

Competition Appeal (AT) No.24 and 26 of 2022 Further, as already stated, most of the bidding sequences and final bid figures matched with the Excel sheet prepared by Mr. Naresh Kumar Dasari of OP-6 which was circulated to the other OPs via e-mails.

68. OP-5 has contended that CDR relied upon by the DG were not supported by a certificate under Section 65B of the Evidence Act and the provisions of Information Technology Act, 2000 and thus could not be relied upon as evidence against answering Respondent. In this regard, it is noted that OP-5 has neither denied nor disputed calls between Mr. R. G. Venkatesh of OP-1 and Mr. Manish Thakkar of OP-5. In these circumstances, the plea raised is thoroughly misdirected.

69. Therefore, in view of the evidence discussed above, including depositions of the representatives of the OPs and price comparisons, co- ordination between OP-1 to OP-5 who received the work contracts in the Impugned Tender stands well established. As such, the Commission finds OP-1 to OP-5 guilty of contravention of the provisions of Section 3(3)(c) read with Section 3(3)(d) read with Section 3(1) of the Act.

Role of OP-6

70. As already demonstrated above, the bidding sequence and bid figures of the OPs were finalized by Mr. Naresh Kumar Dasari of OP-6 and were sent to OP-1 to OP-5 through e-mail dated 02.06.2018, which were further revised through e-mail dated 04.06.2018. Additionally, Mr. Naresh Kumar Dasari of OP-6 had also attended the pre-bid meeting held by SBIIMS on 07.04.2018 in Mumbai, though as a representative of OP-

1. During his deposition, Mr. Naresh Kumar Dasari had stated that OP-1 and OP-6 have formed a joint venture named MMDD in 2017, with 50% ownership each. He had further stated that neither OP-6 nor MMDD directly participated in either of the two EOIs floated by SBI and SBIIMS, or the SBIIMS' signage tender of March 2018. OP-6 has emphasized that it was never a part of the bidding process in the Impugned Tender and Mr. Naresh Kumar Dasari, one of the Directors of OP-6, had acted on his own personal indulgence and not at the behest of OP-6.

71. In this regard, it is noted from the submissions of OP-4 that:

"...MMDI and Diamond Display have entered into a JV called Macromedia Diamond Display Pvt. Ltd. to manufacture high-end Competition Appeal (AT) No.24 and 26 of 2022 shop front and in-store signages and have aligned interests, owing to which the coordination process was being undertaken by Mr. Dasari in spite of MMDI not being a participant in the SBI Phase 1 Tender..."

72. On being asked why Mr. Naresh Kumar Dasari of OP-6 was taking the lead in forging a collusion, Mr. Arbind Singh of OP-4, in his deposition, has stated that:

"I cannot say with certainty why Naresh Kumar Dasari took the lead. As far as I know, MMDI has invested in Diamond Display. So, he is a major stakeholder, and being an industry veteran he wanted to get a major share of the business and that's why he took the lead and decided upon the pricing and sequence of bidding in the tender process."

73. Further, Mr. R. G. Venkatesh of OP-1 in his deposition, while explaining his association with OP-6 and Mr. Naresh Kumar Dasari, has stated that:

"Yes. From the beginning of the tender request as he is my partner in MMDD. Diamond Display got the work order for SBIIMS tender of 28.03.2018, and MMDD did the Northern Region work for my company, and MMDI did the work in Andhra and Telangana. ... We discussed the costing of the project in great detail, what would be the manufacturing cost, and what we should quote to SBIIMS."

(Emphasis added) Further, when asked about Mr. Naresh Kumar Dasari's role in the bidding in the Impugned Tender, Mr. R. G. Venkatesh replied as under:

"Naresh is my partner. And his interest was that if Diamond Display succeeds, then MMDI would also succeed."

74. From the aforesaid, it is noted that, after the award of work to OP-1, OP-6 executed the work in Andhra Pradesh and Telangana in respect of the Impugned Tender and the JV company, i.e., MMDD, executed the work in Northern India. OP-6 admittedly also submitted that MMDD manufactured a small volume of the works allotted to OP-1 in the Competition Appeal (AT) No.24 and 26 of 2022 Impugned Tender and billed the same to OP-6 who, in turn, billed the same at the same price to OP-1.

75. The aforesaid financial involvement of OP-6 in the Impugned Tender, when seen in the context of critical role played by Mr. Naresh Kumar Dasari in the bid-rigging conduct, as detailed supra, who was the Managing Director of OP-6, makes it difficult to accept the contention of OP-6 that Mr. Dasari acted on his own and not at the behest of OP-6.

76. It has also been contended that OP-6 did not participate in the Impugned Tender and therefore, it cannot be found liable for bid-rigging or that it did not gain any financial benefit from the involvement of Mr. Dasari. In this regard, it is noted that actual participation in the tender is not a sine qua non for a finding of bid rigging in terms of Section 3(3)(d) of the Act. Similarly, financial gains resulting from the collusive activities is also not required to be demonstrated. Accepting such arguments would defeat the purposes of the Act forbidding anti-competitive agreements including cartels. Any collusive or concerted conduct amongst competitors which vitiates the competitive process of bidding or manipulates the bidding process in any manner, stands squarely covered within the prohibition imposed by virtue of provisions of Section 3(1) of the Act read with Section 3(3) thereof. Thus, every person who was involved in the manipulation of the bidding process can be held liable in terms of the provisions of Section 3 of the Act. In the present case, in view of involvement of OP-6 in the Impugned Tender, as detailed supra, it cannot escape liability under the Act. Thus, the Commission finds OP-6 to be guilty of contravention of the provisions of Section 3(3)(c) read with Section 3(3)(d) read with Section 3(1) of the Act along with other OPs.

Role of OP-7

77. As already demonstrated above, in his e-mails of 02.06.2018 and 04.06.2018, Mr. Naresh Kumar Dasari of OP-6 had stated that he was basing his pricing logic on 'inputs' from 'MJ'. In his deposition on oath, Mr. Naresh Kumar Dasari has clarified that 'MJ' refers to Mr. Manish Jodhavat of OP-7, which is a flex & vinyl dealer of OP-4. The OPs have also stated in their depositions that 'MJ' referred to in Mr. Naresh Kumar Competition Appeal (AT) No.24 and 26 of 2022 Dasari's e-mail is Mr. Manish Jodhavat of OP-7, which company is a flex & vinyl material dealer.

78. OP-7, in its submissions, has, inter alia, asserted that the findings in the Investigation Report are based on hearsay evidence and there is no documentary evidence which shows the involvement of OP-7 in the subject-matter of the investigation. It has also submitted that the e-mail dated 04.06.2018 is not marked to OP-7 or Mr. Manish Jodhavat.

79. In this regard, it is noted that Mr. Naresh Kumar Dasari of OP-6 has categorically emphasized the role of Mr. Manish Jodhavat of OP-7 in providing inputs for arriving at rigged pricing. Though Mr. Jodhavat is not a recipient of the e-mails dated 02.06.2018 and 04.06.2018, his name appears in both the e-mails. Mr. Dasari has written in his e-mail dated 02.06.2018 that the pricing logic might change based upon inputs from Mr. Manish Jodhavat.

80. The role of Mr. Manish Jodhavat is also gauged from the e-mail dated 04.06.2018, reproduced supra, wherein, based on the inputs (amongst other things) received from Mr. Jodhavat, Mr. Dasari revised the workings and the process sequence. Mr. Dasari, in his deposition, has also stated that OP-4 offered a certain discount on its product, which was communicated by Mr. Manish Jodhavat to Mr. R. G. Venkatesh of OP-1 who, in turn, communicated the same to Mr. Dasari. This indicates the importance of 'inputs' provided by Mr. Manish Jodhavat in deciding the final bid sequences and bid figures. The said inputs also made Mr. Naresh Kumar Dasari re-categorize the circles and decide upon a revised 'cut-off price' for the four categories.

81. Further, as per the deposition of Mr. Naresh Kumar Dasari, as reproduced supra, it was Mr. Manish Jodhavat who called Mr. Dasari and sought help in explaining the reverse auction process to the bidders. Mr. Jodhavat also told Mr. Dasari that Mr. Shamrendra Kumar of OP-4 came up with this idea. Mr. Dasari further stated that Mr. Manish Jodhavat also told him to include a certain quantity of OP-4's material in the working of Excel worksheets.

82. This is corroborated from the submissions of OP-1 wherein it has been submitted that, Competition Appeal (AT) No.24 and 26 of 2022 "...after SBIIMS held its meeting with pre-qualified bidders on 23.05.2018, to explain to them about the tender process, officials of Avery Dennison i.e. OP-4 approached the Managing Director of OP-5 to enquire if he had understood the process explained by SBIIMS correctly. When he said that he would prefer a better explanation, upon which representative of Hith Impex, which is a distributor of OP-4, called to suggest that he would share with Mr Manish Thakkar a format so that no mistakes were committed...."

(Emphasis added)

83. Further, when Mr. R. G. Venkatesh of OP-1 was asked during his deposition as to how Mr. Manish Jodhavat was in a position to provide 'inputs' for the bidding despite not participating in the Impugned Tender, his reply was as under:

"Manish Jodhavat was a flex and vinyl supplier. Avery Dennison approached him as he is a distributor, and he approached us to buy the material."

84. When the same question was put to Mr. Manish Thakkar of OP-5 during his deposition, his reply was as under:

"Mr. Manish Jodhavat is one of the owner of Hith Impex, which is a distributor of Avery. I was told by Mr. Shamrendra that Mr. Jodhavat is a distributor and takes part in number of tenders, and he would know about the tender procedures. I got a call from Shamrendra that you would get a call from our distributor Mr. Manish Jodhavat, and try to help you out to understand the procedure. When Mr. Manish Jodhavat called me, he told me that even he did not understand the SBIIMS tender procedure and he would ask Mr. Naresh Kumar Dasari to explain the things."

"Mr. Dasari ..has written in this mail dated 2nd June, 2018, in which he has said the illustrator for the pricing format that if Mr. Manish Jodhavat decreased the price of the raw material, then that much discount has to be given in your pricing format."

(Emphasis added)

85. Though OP-7 has averred that it was not concerned with the bidding process of supply and installation of signages at specified locations of Competition Appeal (AT) No.24 and 26 of 2022 SBI as alleged, and it never participated in the bidding process, it is noted from the documents submitted by SBIIMS that OP-7 submitted its application in response to the EOI published by SBIIMS in February 2018 as well as the EOI published by SBI in December 2017, seeking pre-qualification as a signage solution provider for installation of signages at branches/ATMs/offices of SBI. The same has not been disputed by OP- 7 before the Commission.

86. When Mr. Manish Jodhavat was asked why OP-7 submitted technical bid in SBIIMS' EOI of February 2018, he replied as under:

"We took a chance that we could have succeeded if SBIIMS had taken our total work orders together, though we did not fulfil the individual work criteria. We fill lot of tenders and take our chance. Sometimes we get selected and sometimes not."

Mr. Manish Jodhavat, in his deposition, also stated that:

"We have worked with Avery Dennison as a distributor since 2016 and we also convert some project. For last one year, we are doing only conversion now, because distribution margin, stocking, bad debts have forced us to move to conversion part."

87. Based on the above, it is noted that OP-7 works not only as a distributor of OP-4 but also as a converter, placing it horizontally with the other OPs in the matter. Further, OP-7 not only operated as a supplier of material in the Impugned Tender, but also tried to directly participate as one of the bidders in the Impugned Tender.

88. OP-7 in its written submissions also stated that ".....Opposite Party No. 7 was following the instructions given by the Opposite Party No. 4 Avery Dennison and acted in any manner beyond the same in the entire tender". Thus, OP-7 admitted that he was acting as per the instructions of OP-4. This corroborates the submission of other OPs (viz. Mr. Naresh Kumar Dasari of OP-6 and Mr. Manish Thakkar of OP-5, as reproduced supra) that Mr. Manish Jodhavat of OP-7 was instrumental in involving Mr. Dasari in writing the e-mails which led to manipulation of the bidding process.

Competition Appeal (AT) No.24 and 26 of 2022

89. Thus, it is noted that Mr. Manish Jodhavat, and consequently, OP-7, was instrumental in providing costing details of flex & vinyl and LED modules to Mr. Naresh Kumar Dasari of OP-6 to enable him to work out the bid prices for each of the OPs in the e- reverse auction conducted by SBIIMS on 04.06.2018 and 05.06.2018. Further, as per the details available on record, it is noted that OP-7 also supplied flex and vinyl to two OPs in relation to the execution of the Impugned Tender.

90. In view of the foregoing, the Commission is of the view that the assertions made by OP-7 noted supra are liable to be rejected and it was very much a part of the overall arrangement between the OPs to geographically allocate the market and rig the bids in the Impugned Tender. This conduct falls squarely within the ambit of Section 3(1) read with Section 3(3) of the Act.

91. Hence, the Commission also finds OP-7 guilty of contravention of the provisions of Section 3(3)(c) read with Section 3(3)(d) read with Section 3(1) of the Act along with OP-1 to OP-6.

92. In relation to OP-4, the DG has noted that though OP-4 had given project specific authorisation letters (PSALs) to its converters to participate in the SBIIMS signage tender of March-2018, it itself participated in the tender offering complete signage solution to SBIIMS, i.e., as a converter, which was not its core business activity. The DG has also noted that OP-4 had already decided to sub-contract the work awarded under the Impugned Tender to its converters and its sole intention of participation was to get firsthand information regarding the said tender and bidding by the converters. Based on the same as well as evidence as discussed above, it appears that OP-4 played a crucial role in the organizing and facilitating collusion between the OPs.

Conclusion

93. The definition of an 'agreement' as given in Section 2(b) of the Act, requires, inter alia, any arrangement or understanding or action in concert, whether or not formal or in writing or intended to be enforceable by legal proceedings. The definition, being inclusive and not exhaustive, is a wide one. Such understanding may be tacit, and the definition under Section 2(b) of the Act covers even

those situations where the Competition Appeal (AT) No.24 and 26 of 2022 parties act on the basis of a nod or a wink. There is rarely direct evidence of action in concert, and in such situations, the Commission has to determine whether those involved in such dealings had some form of understanding and were acting in co-operation with each other. In light of the definition of the term 'agreement', the Commission has to assess the evidence on the basis of preponderance of probabilities.

94. Further, since the prohibition on participating in anti-competitive agreements and bid rigging and the penalties which the infringers may incur are well-known, it is normal for such practices and agreements to take place in a clandestine fashion, for meetings to be held in secret and for associated documentation to be reduced to a minimum. The Commission in this regard notes that, in respect of cases concerning cartels which are hidden or secret, there is little or no documentary evidence, and evidence may be quite fragmentary. The evidence may also be wholly circumstantial. It is therefore, often necessary to reconstitute certain details by deduction. In most cases, the existence of an anti-competitive practice or agreement must be inferred from a number of co-incidences and indicia which taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules.

95. In the present case, based on a holistic assessment of the evidence discussed supra, the Commission concludes that OP-1 to OP-7 had entered into an agreement resulting in geographical market allocation as well as bid-rigging in the Impugned Tender.

96. Thus, once an 'agreement' is established in terms of the definition of this term as given in Section 2(b) of the Act, and further, such agreement is found to be established in respect of the specified clauses of Section 3(3) of the Act, then, by virtue of the statutory presumption provided thereunder, such agreement is presumed to have an AAEC within India. No doubt, such presumption is rebuttable, and the parties are at liberty to rebut such presumption by adducing evidence to that effect.

97. The Commission notes that cartelisation, including bid-rigging, is a pernicious form of competition law contravention. Any party willing to advance justification for such conduct has to give proper reasoning with clear and cogent evidence for the same. Vague assertions would not help Competition Appeal (AT) No.24 and 26 of 2022 such parties evade the responsibility cast upon them under the provisions of Section 3 of the Act.

98. It has been contended by the OPs that their conduct has not resulted in the any AAEC. In this regard, it is noted that the collusion to fix prices by rigging the bids in the Impugned Tender would have had an adverse impact on the competitive price discovery process. Reliance placed on the internal note dated 06.06.2018 of SBIIMS is of no consequence to assert the absence of any AAEC. The assertion by some of the OPs that SBIIMS has not suffered any loss due to the alleged conduct is also misplaced as the same is not a criteria for determining AAEC. Any manipulation in the competitive price discovery process, in this case e-reverse auction system, would affect the final price to be paid by the tendering authority.

99. As pointed out previously, a bare reading of the provisions of Section 3(1) of the Act, would make it evident that these provisions not only proscribe the agreements which cause AAEC but the same also forbid the agreements which are likely to cause AAEC. Thus, any collusive or concerted conduct amongst competitors by way of exchange of commercial information resulting in inter alia determining price or geographical allocation of provision of services etc., itself stands captured within the prohibition imposed and is presumed to have AAEC, by virtue of provisions of Section 3(1) of the Act read with Section 3(3) thereof. Hence, the contentions of the OPs concerning absence of AAEC seem to hold no water and are thus, rejected by the Commission.

100. The Commission also notes that rebuttal of the presumption of AAEC can be made by the parties taking recourse to all or any of the factors provided under Section 19(3) of the Act. In the present matter, none of the parties has been able to demonstrate as to how their impugned conduct resulted in any (i) accrual of benefits to consumers; (ii) improvement in production or distribution of goods or provision of services; or (iii) promotion of technical, scientific, and economic development by means of production or distribution of goods or provision of services.

101. In view of the above, the Commission holds that the parties have been unable to rebut the statutory presumption of AAEC in the present matter and thus, OP-1 to OP-7 are held to be in contravention of the Competition Appeal (AT) No.24 and 26 of 2022 provisions of Section 3(3)(c) and Section 3(3)(d) read with Section 3(1) of the Act."

13. On examination of the entire material on record, the Learned CCI has passed the impugned order. The liability of the parties has been discussed by the CCI even before imposing monetary penalty. Detailed discussions has been made by the CCI both on company as well as individual.

14. The evidence/material which has been discussed by the Learned CCI if examined collectively there is no room for doubt that both the Appellants were not involved in the present case. It is a case in which Mr. Naresh Kumar Dasari, the Appellant in Competition Appeal (AT) No.24/2022 was the Managing Director of Company i.e. Appellant in Competition Appeal (AT) No.26/2022. If a Managing Director of a Company himself admits regarding his involvement in the Association and Cartel showing appreciable adverse effect on competition, the company cannot take a plea that such act was done by the Managing Director in his individual capacity. Even the evidence/material which has been discussed above categorically makes it clear that the Appellant Company had executed work in relation to the same tender within the area of Andhra Pradesh and Telangana. Besides this one of the associates i.e. OP No.4, Avery Dennison Pvt Ltd, accepting the involvement has prayed for lesser penalty under Section 46 of the Act, meaning thereby that OP No.4 before the CCI admitted his involvement with other associates which includes both the Appellants. In a case of forming such association and cartel act of one person becomes the act of others. In such situation even one cannot take a plea that during initial period he was not involved but at later stage some material has come to show that the Appellant Company had Competition Appeal (AT) No.24 and 26 of 2022 executed work in Andhra Pradesh and Telangana. On examination of the submissions made by all the parties before the Commission which have been noted hereinabove it has come that the Appellant Company has also formed joint venture with one of the beneficiary who was involved in the present case and as such there can be no doubt on involvement of the Appellant Company.

On examination of evidence in totality the Court is of the considered opinion that Learned CCI has rightly passed the impugned order. The Appellant, Mr. Naresh Kumar Dasari being Managing Director of Appellant company in Competition Appeal (AT) No.26/2022 and Appellant in Competition Appeal (AT) No.24/2022 may not be exonerated from the application of Section 48 of the Act. The liability under Section 48 of the Act was discussed in detail by the CCI in paras 102 to 112 which are reproduced hereinbelow.

"102. The DG has found several individuals of OP-1 to OP-7 to be liable for the anti-competitive conduct of their respective companies, in terms of Section 48 of the Act. However, some of the OPs have contended that the Commission cannot proceed against the officers/representatives/in-charge of companies under Section 48 of the Act unless the Commission returns a finding of contravention against the defaulting company first vide an order passed under Section 27 of the Act.

103. In this regard, the Commission notes that it is no longer *res integra* that the Commission can simultaneously proceed against individuals of a company under Section 48 of the Act along with the company and this issue has already been well settled by various judicial authorities.

104. The Hon'ble Delhi High Court (Single Bench), in *Pran Mehra v. Competition Commission of India and Another* (Writ Petitions No. 6258/ 2014, 6259/ 2014 and 6669/ 2014 decided on 26.02.2015), has held that there cannot be two separate proceedings, one in respect of the company VeriFone India Sales Private Limited and other against its key persons. Relying on the Hon'ble Supreme Court's judgment in *Aneeta Competition Appeal (AT) No.24 and 26 of 2022 Hada v. Godfather Travels and Tours Private Limited*, (2012) 5 SCC 661 which was with respect to a similar provision under the Negotiable Instruments Act, 1881, the Hon'ble Delhi High Court held as under:

"6.... I am in agreement with the submissions of Mr. Chandhiok that there cannot be two separate proceedings in respect of the company (i.e. VeriFone) and the key-persons as the scheme of the Act, to my mind, does not contemplate such a procedure. The procedure suggested by Mr. Ramji Srinivasan is both inefficacious and inexpedient. As in every such matter, including the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (in short N.I. Act), a procedure of the kind suggested is not contemplated. The judgment of the Supreme Court in the case *Aneeta Hada* dealt with proceedings under Section 138 of the N.I. Act. The judgment does not deal with issue at hand, which is whether adjudication in two parts, as contended by Mr. Ramji Srinivasan, is permissible. The judgment, in my opinion is distinguishable.

7. It is no doubt true that the petitioners can only be held liable if, the CCI, were to come to a conclusion that they were the key- persons, who were in-charge and responsible for the conduct of the business of the company. In the course of the

proceedings qua a company, it would be open to the key-persons to contend that the contravention, if any, was not committed by them, and that, they had in any event employed due diligence to prevent the contravention. These arguments can easily be advanced by keypersons without prejudice to the main issue, as to whether or not the company had contravened, in the first place, the provisions of the Act, as alleged by the D.G.I., in a given case."

105. A Division Bench of the Hon'ble Delhi High Court, in *Cadila Healthcare Ltd. and Others v. Competition Commission of India and Others*, 252 (2018) DLT 647, also reiterated the above ruling in *Pran Mehra* (supra).

106. In the present matter, the Commission has already given its findings against the OPs as detailed supra. Therefore, it can now proceed to give its findings in relation to the various individuals of the OPs, who have been identified by the DG to be liable in terms of Section 48 of the Act.

Competition Appeal (AT) No.24 and 26 of 2022

107. It has also been inter alia averred by Mr. Ramesh Bharadwaj of OP- 3 that the provisions of Section 48 of the Act cannot apply to a contravention under Section 3 of the Act. It has been submitted that Section 27(b) of the Act mandates that the penalty so imposed "... shall be not more than ten per cent of the average of turnover for the last three preceding financial years..." The use of the word 'turnover', the specific connotation whereof is the value of sale of goods and services, can only be applied to a company or, at best, to a sole proprietorship or partnership. Thus, the said term cannot include persons who are/were salaried employees.

108. In order to examine the issue raised by Mr. Bharadwaj, it is important to note the provisions of Section 48 of the Act which are reproduced below:

"Section 48. Contravention by companies (1) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction

issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention Competition Appeal (AT) No.24 and 26 of 2022 and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

109. It is noted that Section 48(1) of the Act is a deeming provision, which implies that when contravention of any provision of the Act (say Section

3) is committed by a company, then, an individual(s) who was in-charge of and responsible to the company for the conduct of its business at the time of contravention, shall be deemed to be guilty of such contravention. The object behind making such persons liable is that the company, being a juristic person, having no independent mind of its own, must act through somebody, and therefore, various statutes contain *pari materia* provisions so as to make the persons behind the acts of the company, liable to suffer punishment when an offence is committed by the company. Thus, in addition to the liability of the company itself for the violation of the provisions of the Act, the individuals responsible for its business affairs can also be held liable for the same violation. Similarly, under Section 48(2) of the Act, all individuals that play an active role in the illegal conduct of a company, are made liable in addition to the company. Both sub-sections (1) and (2) of Section 48 of the Act use the phrase "...proceeded against and punished accordingly."

A bare perusal of the phrase would make it abundantly clear that the individuals proceeded against would be liable to be punished "accordingly" i.e., in terms of provisions under which company has been Competition Appeal (AT) No.24 and 26 of 2022 penalised (Section 27). In this scenario, as far as computation of penalty under Section 27 of the Act is concerned, in the case of individuals, the annual income of the individual is to be considered by the Commission. Hence, there is no merit in the contention raised by Mr. Bharadwaj of OP- 3, and the said contention is therefore, rejected.

110. The DG has identified the following individuals of the OPs to be liable in terms Section 48 of the Act. The role played by each of the below- mentioned individuals has been elaborated in detail supra, and the same is not being repeated here for the sake of brevity:

Individuals' liable u/s OP 48(1) of the Act OP-1
Mr. R.G. Venkatesh, Managing Director OP-2 Mr Arjun Reddy Mr. Ritanshu Mohan
Managing Director OP-3 Mr.Ramesh Bharadwaj -

Managing Director

OP-4	Mr. Shamrendra Kr Formerly Business Head Graphics (India)	Mr Arbind Singh Commercial Manager Graphics(India)- South & West
OP-5	Mr. Manish Thakkar, Managing Director	
OP-6	Mr. Naresh Kumar Dasari, Managing Director	
OP-7	Mr. Manish Jodhavat, Managing Director	

111. It is noted that none of the above identified individuals liable under Section 48(1) of the Act, have been able to prove that the Competition Appeal (AT) No.24 and 26 of 2022 contravention committed by their respective companies was without their knowledge or that they had exercised all due diligence to prevent the commission of such contravention by the company. Further, the role of two individuals identified to be liable under Section 48(2) of the Act has already been discussed in this order. The individuals have not been able to rebut or deny before the Commission the roles played by them in cartelisation, for which the DG has gathered cogent and sufficient evidence.

112. Therefore, the Commission finds the above identified individuals of the OPs liable in terms of the provisions contained in Section 48(1) as well as Section 48(2) of the Act."

15. The imposition of monetary penalty in respect of Appellant Company and six others has been discussed in para 117 of the impugned order which is reproduced as under:-

"117. As regards the impositions of monetary penalty in terms of the provisions

contained in Section 27 of the Act, the Commission has given its thoughtful consideration on the issue and has examined the matter carefully. In the present matter, one party has filed lesser penalty application besides cooperating during investigation as well as inquiry process. The Commission has also noted that most of the OPs are MSMEs. Further, some of them have even acknowledged their conduct during the inquiry. Accordingly, the Commission has taken a considerate view while levying monetary penalties upon MSMEs during the ongoing pandemic. The Commission has also examined the financial statements submitted by the parties, besides considering the value and size of the Impugned Tender. In this backdrop, on a careful and holistic consideration of the matter, the Commission takes a lenient view and decides to impose the penalty upon the OPs @ 1% of the average of their relevant turnover for the three financial years i.e., 2015-16 to 2017-18. Accordingly, the computation of penalty imposed on each of the OPs is as follows:

(In)

Competition Appeal (AT) No.24 and 26 of 2022

OP	Relevant Turnover				Penalty
	FY2015-16	FY216-17	FY2017-18	Average	Imposed @ 1
OP-1	24,37,43,557	20,22,79,840	27,00,03,029	23,86,85,475	23,86,755
OP-2	59,46,000	60,35,000	17,78,15,000	6,32,65,333	6,32,653
OP-3	2,23,81,251	2,43,31,612	4,77,09,622	3,14,74,162	3,14,742
OP-4	11,97,10,000	13,29,80,000	12,36,10,000	12,54,33,333	12,54,333
OP-5	28,68,20,406	27,67,23,020	40,11,95,173	32,15,79,533	32,15,795
OP-6	56,26,79,159	53,36,93,807	45,69,24,724	51,77,65,897	51,77,659
OP-7	7,91,17,515	3,86,70,361	6,05,97,897	5,94,61,924	5,94,619

16. The monetary penalty in respect of Appellant and other individuals has been dealt with in para 120 of the impugned order which is as under:-

S.No.	OP	Individual	Year	Income
			2015-16	1,34,12,132
			2016-17	1,79,17,390
			2017-18	1,83,15,068
1.	OP-1	R.G. Venkatesh	Total	4,96,44,590
			Average	1,65,48,197
			Penalty @ 1%	1,65,482
			Penalty Payable	1,65,482
			2015-16	1,86,38,099
			2016-17	2,78,64,510

Competition Appeal (AT) No.24 and 26 of 2022

			2017-18	2,68,45,743
2.	OP-2	Arjun Reddy	Total	7,33,48,352
			Average	2,44,49,451
			Penalty @ 1%	2,44,495
			Penalty Payable	2,44,495
			2015-16	13,05,711
			2016-17	25,31,725
			2017-18	27,82,619
3.	OP-2	Ritanshu Mohan	Total	66,20,055
			Average	22,06,685
			Penalty @ 1%	22,067
			Penalty Payable	22,067

			2015-16	7,24,553
			2016-17	9,18,910
			2017-18	15,28,777
4.	OP-2	Ramesh Bharadwaj	Total	31,72,240
			Average	10,57,413
			Penalty @ 1%	10,574
			Penalty Payable	10,574
			2015-16	43,38,420
			2016-17	51,77,783
			2017-18	55,67,822
5.	OP-4	Shamrendra Kumar	Total	1,50,84,025
			Average	50,28,008

Competition Appeal (AT) No.24 and 26 of 2022

			Penalty @ 1%	50,280
			Penalty Payable	5,028
			2015-16	20,48,298
			2016-17	22,06,613
			2017-18	25,69,494
6.	OP-4	Arbind Singh	Total	68,24,405
			Average	22,74,802
			Penalty @ 1%	22,748
			Penalty Payable	2,275
			2015-16	8,70,358
			2016-17	25,40,543
			2017-18	59,49,139

7.	OP-5	Manish Thakkar	Total	93,60,040
			Average	31,20,013
			Penalty @ 1%	31,200
			Penalty Payable	31,200
			2015-16	38,90,890
			2016-17	50,61,549
			2017-18	49,87,995
8.	OP-6	Naresh Kumar	Total	1,39,40,434
		Dasari	Average	46,46,811
			Penalty @ 1%	46,468
			Penalty Payable	46,468
			2015-16	12,38,987

Competition Appeal (AT) No.24 and 26 of 2022

			2016-17	13,92,459
			2017-18	12,45,503
9.	OP-7	Manish Jodhavat	Total	38,76,949
			Average	12,92,316
			Penalty @ 1%	12,923
			Penalty Payable	12,923

17. In view of the detailed reason assigned by the CCI in its impugned order which have been incorporated hereinabove above the Tribunal is of the view that CCI has committed no error in passing the impugned order. The order passed by the CCI is reasoned one dealing with each and every aspect which requires no interference. Both the Appeals are dismissed without costs.

(Justice Rakesh Kumar) Member (Judicial) (Dr. Ashok Kumar Mishra) Member (Technical) Dated: 27th July, 2022 Bm Competition Appeal (AT) No.24 and 26 of 2022