**COMPETITION COMMISSION OF INDIA**

**Case No. 30 of 2024**

***In Re*:**

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| **Kuldeepsinh Mahendrasinh Jadeja**<br>S/o Shri Mahendrasinh Jadeja<br>R/o Near Khodiyar Temple, Lakhtar,<br>Surendranagar, Gujarat – 382 775. | **Informant** |

**And**

| | |
|---|---|
| 1. **Pragyawan Technologies Pvt. Ltd.**<br>Flat No. 2, 2nd Floor, Plot No. 70-A/31,<br>Guru Nanak Pura, Laxmi Nagar, Delhi – 110 092. | **Opposite Party No. 1** |
| 2. **KLN Engineering Pvt. Ltd.**<br>1-60/103 on Plot No. 203, Block B, Kavuri Hills,<br>Guttala Bequmpet, Ranga Reddy District, Madhapur,<br>Hyderabad, Shaikpet, Telangana – 500 081. | **Opposite Party No. 2** |
| 3. **Ministry of Micro, Small and Medium Enterprises**<br>Through its Secretary,<br>Udyog Bhawan, Rafi Marg, New Delhi – 110 001. | **Opposite Party No. 3** |
| 4. **The National Small Industries Corporation Ltd.**<br>Through its Chairman and Managing Director<br>NSIC Bhawan, Okhla Industrial Estate, New Delhi – 110 020 | **Opposite Party No. 4** |
| 5. **Government e Marketplace**<br>Through its Chief Executive Officer<br>Jeevan Tara Building, #5 Sansad Marg,<br>Near Patel Chowk, New Delhi – 110 001. | **Opposite Party No. 5** |

**CORAM**

**Ms. Ravneet Kaur**
**Chairperson**

**Mr. Anil Agrawal**
**Member**

**Ms. Sweta Kakkad**
**Member**

**Mr. Deepak Anurag**
**Member**

**ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002**

1. The Information in the present matter has been filed by Shri Kuldeepsinh Mahendrasinh Jadeja (‘**Informant**’) under Section 19(1)(a) of the Competition Act,

2002 (the '**Act**') alleging contravention of the provisions of Section 3(3) of the Act by Pragyawan Technologies Pvt. Ltd. ('**OP-1**') and KLN Engineering Pvt. Ltd. ('**OP-2**'), (collectively '**the OPs**'), in the tenders published by the National Small Industries Corporation Ltd. ('**OP-4**'), the Nodal Agency of the Ministry of Micro Small and Medium Enterprises ('**OP-3**'), on the Government e Marketplace ('**OP-5**'), with respect to procurement of Toolkits for workers under the Pradhan Mantri Vishwakarma Yojana.

2. The Informant has stated that on 17.09.2023, the Hon'ble Prime Minister of India launched the Pradhan Mantri Vishwakarma Yojana, a Central Sector Scheme to provide end-to-end support to artisans and craftspeople who work with their hands and tools. The Scheme covers artisans and craftspeople engaged in 18 trades, *viz*. Carpenter *(Suthar/ Badhai),* Boat Maker, Armourer, Blacksmith (*Lohar*), Hammer and Tool Kit Maker, Locksmith, Goldsmith *(Sonar),* Potter *(Kumhaar),* Sculptor *(Moorlikar*)/ Stone Carver/ Stone Breaker, Cobbler *(Charmkar)/* Shoesmith/ Footwear Artisan, Mason *(Rajmistri),* Basket/ Mat/ Broom Maker/ Coir Weaver, Doll & Toy Maker *(Traditional),* Barber *(Naai),* Garland Maker *(Malakaar),* Washerman *(Dhobi),* Tailor (Darzi) and Fishing Net Maker. In order to give effect to the Scheme, Toolkits for each of these 18 crafts were required to be procured.

3. Therefore, on 27.04.2024, OP-4 issued a Notice Inviting Proposal ('**NIP**') on behalf of OP-3, inviting online proposals on the Central Public Procurement Portal ('**CPPP**') from eligible bidders under "*single-stage* 2 *packet bidding system*", for selection of vendors for supply of Toolkits under the Pradhan Mantri Vishwakarma Yojana. As per the NIP, 18 Request for Proposals ('**RFP**'), all dated 27.04.2024, were published on the website of OP-4 and CPPP.

4. As per the Informant, while the NIP invited RFPs for as many as 18 tenders, they were not uploaded on OP-5 Portal. The Informant has stated that as per the General Financial Rules, 2017 ('**GFR, 2017**') read with the Manual for Procurement of Works, 2022, it is mandated for all Ministries/ Departments/ PSUs *etc*. that all procurements for goods or services which are available on GeM shall be mandatorily made through GeM. However, despite the above, the NIP issued by OP-4 containing 18 tenders was not uploaded on OP-5, in violation of Rules 149, 159, 160 and 161 of the GFR, 2017.

5. As per the Informant, throughout the month of May 2024, several corrigenda were also issued by OP-4 making changes in respect of the 18 tenders, one of which dated 27.05.2024 introduced 12 amendments in the original NIP, including the follows:

**A. Amendment at S. No. 2** – In the Instructions to Bidders, Para 4.3 regarding Financial Criteria pertaining to Turnover and Net Worth and Annexure IV were revised as under:

> *"4.3* ***Financial Criteria:***
> ***3) Turnover:*** *The minimum average annual financial turnover* of *the bidder from operations for the last* 3 *years should not be less than Rs. 56,25,00,000 (Rupees Fifty Six Crore Twenty Five Lakhs only)* as *per the audited annual report duly authenticated by* a *Chartered Accountant along with* a *Certificate from the Chartered Accountant including membership number and UDIN* as *per format enclosed at* **Annexure-IV** *shall be uploaded with proposal. The bidders have the options to submit either:-*
> *3 years audited financial figures* of *FY 2020-21, 2021-22 and 2022-23*
> OR
> *Audited figures* of *FY 2021-22, 2022-23 figures* of *2023-24*In case the bidder submits the unaudited provisional figures of FY 2023-24 for Annual Turnover and Net Worth, the same is required to be submitted with certification from the Statutory Auditor of the bidder with membership number and UDIN along with complete details.*"

**B. Amendment at S. No. 6** – A new condition to Para 4.5 of T&C was introduced *viz.:*

> "*Sub-para* 4.5*(e) is introduced*
> *Para 4.5(e)*
> *Preference would be given to the original manufacturer of tools/ items. The Bidder or its OEM(s) must have sufficient production capacity and past experience* as *per RFP.*"

6. Thereafter, as per the Informant, on 01.08.2024, OP-4 cancelled 10 out of 18 RFPs issued. Reason for cancelling these RFPs was claimed as "*None* of *the bidders qualified during technical evaluation*". However, as per the Informant, on 03.08.2024, the RFP for 'Washing Machines for Dhobis', which was cancelled on 01.08.2024, was relaunched through OP-5.

7. The Informant has alleged that in this RFP, however, in utter disregard to the corrigendum dated 27.05.2024, which was applicable to the then existing RFP for

‘Washermen’ *vide* which the minimum average annual turnover for a prospective bidder was INR 56,25,00,000/-, was reduced to INR 33,75,00,000/- *i.e.* by almost 40%.

8. The Informant has suggested that for the purposes of the present Information, the relevant product market shall comprise the respective market of each of those 18 Toolkits under the Vishwakarma Scheme for which the RFPs were invited *vide* NIP dated 27.04.2024. Further, as per the Informant, mere cancellation of 10 out of the 18 RFPs shall not change the factum of commission of anti-competitive acts, especially bid-rigging, by the concerned OPs. The Informant has stated that insofar as the relevant geographic market is concerned, since RFPs were invited from all over India, and the Toolkits were also to be supplied across India, the relevant geographic market shall constitute whole of the country as the RFPs were called from there where the manufacturers/ suppliers of Toolkits would reside and form competitors of OP-1 and OP-2.

9. The Informant has averred that in almost all the 18 tenders, OP-1 as well as OP-2 have submitted their RFPs; however, in all 18 (including the cancelled ones), OP-2 was disqualified at the technical stage for identical reason *viz.* “*Udyam Certificate not admissible being in medium category*”. Further, in almost all places out of the 8 non-cancelled tenders, OP-1 has emerged as L1 whereas OP-2 has consistently emerged as a mere contestant in the bidding process, never proceeding to win the bid. As per the Informant, this clearly indicates that OP-1 and OP-2 were acting collusively and OP-2 was giving a supporting bid in all these RFPs.

10. Further, the Informant has stated that for the RFPs for Toolkits for Hammer, Boat Maker, Sculptor, Blacksmith and Fishing Net Maker, OP-1 has alone qualified as the technical bidder, while OP-2 alone is the common bidder to have been disqualified. Furthermore, for RFPs for Locksmith, Armourer, and Boat Maker, OP-1 has qualified along with 2 other bidders, while OP-2 again has been disqualified. As such, the Informant has alleged that OP-1’s qualification in as many as 5 RFPs on the basis of a single-technically qualified bid and in other 3 bids as well, is not by virtue of fair play and but perhaps by dubious means wherein, it was supported by OP-2 as well as some unknown insiders from OP-3 and OP-4.

11. Moreover, the Informant has also alleged that from the corrigendum dated 27.05.2024, it is also evident that bid conditions were subsequently changed specifically to ensure an undue benefit to OP-1 because it has won bids for almost 6 bids out of the 8 alive bids, without having any expertise for the same. The new condition to Para 4.5 of T&C introduced *vide* corrigendum dated 27.05.2024 stating "*Preference would be given to the original manufacturer* of *tools/items. The Bidder or its OEM(s) must have sufficient production capacity and past experience* as *per RFP*" seems to have been conveniently ignored to favour the bids of OP-1. OP-1, on its website, https:/lpragyawan.com, claims its areas of business to be:

   a. High Density Polyethylene Telecom Duct (HOPE Duct)
   b. Engineering, Procurement Construction & Management
   c. Edutech
   d. Digitisation
   e. Training & Capacity Building
   f. Solar
   g. Project Management Consulting
   h. Telecom & Wireless
   i. Security & Surveillance
   j. Information Education & Communication

12. To quote its representation on its own website, "*Pragyawan Technologies Private Limited is a diversified business group in various sectors like EPC, Edu Tech Solution, Digitisation, Security & Surveillance, Project Management, Telecom, Information Technology and Skill Development Training, Pragyawan provides complete end to end solutions on SITC (Supply & Installation Technology Communication) basis.*" Thus, as per the Informant, evidently, none of the business in which OP-1's official website claims it operates in are even remotely close to those for which NIP dated 27.04.2024 invited the RFPs. Even as per its Memorandum of Association and Articles of Association uploaded on the MCA Official Website, OP-1 does not manufacture even a single of the items for which the Toolkits were advertised *vide* the NIP of 27.04.2024.

13. Also, according to the Informant, OP-1 does not meet the average annual turnover criteria for last 3 Financial Years, for 06 out of the 08 remaining RFPs in which it has technically qualified. This also clearly shows that OP-1 is getting favoured by someone

from inside either at OP-3 or OP-4 but whatever may be the case, the same is in clear contravention of the provisions of the Act and amounts to '*bid rigging*' being a patently anti-competitive behaviour.

14. As per the Informant, even re-introduced bid dated 03.08.2024 at OP-5 for 'Washing Machines' also seems materially vitiated where, despite the corrigendum dated 27.05.2024 where the minimum average turnover for previous 3 FYs was fixed at INR 52,65,00,000/-, the RFP now released on OP-5 dated 03.08.2024 reduced the turnover requirement to INR 33,75,00,000/-. OP-1's annual financial turnover for the previous 3 years was approx. INR 31.49 crores, when OP-5 re-introduced bid dated 03.08.2024 for 'Washing Machines' reducing the minimum average financial turnover to INR 33.75 crores, which also seems to have been done at the behest of OP-1 and the alleged cartel only, so as to extend benefit to OP-1.

15. The other amendment introduced *vide* the corrigendum dated 27.05.2024 in Para No. 4.3 of Instructions to Bidders ('**ITB**') and Annexure IV therein, also, according to the Informant, *inter alia*, permitted prospective bidders to submit unaudited provisional statements of account based on future income, upon certificate of a Chartered Accountant ('**CA**'). This, as per the Informant, was a clear egregious violation of the Chartered Accountant Act, 1949. The Informant has alleged that this clearly shows that as the average annual financial turnover of OP-1 for FYs 2020-21, 2021-22 and 2022-23 was approx. INR 31.49 crores and while the re-issued RFP of Toolkits for Washermen dated 03.08.2024 reduced the eligibility criteria of average financial turnover for last 3 FYs to INR 33.75 crores, since OP-1 was still unable to qualify, the additional relaxation of submitting unaudited provisional statements of account based on future income, upon certificate of a CA, was also introduced solely to benefit OP-1.

16. Therefore, in light of the above, the Informant has prayed to the Commission to:

(a) Pass an order under Section 26(1) of the Act directing the Director General to investigate the matter;

(b) Direct the Director General to call for the Certificate of concerned CA who has given a certificate to OP-1 with respect to its prospective statements of accounts for participating in the RFPs concerned in the present information; and investigate the same;

(c) Impose maximum penalty on the concerned OPs Nos. 1 to 4 in terms of Section 27 of the Act; and

(d) Pass any other or further order or orders as this Hon'ble Commission may deem fit in the facts and circumstances of the case and appropriate under the Act.

17. Further, *vide* I.A. No. 333 of 2024, the Informant has also sought interim relief as follows:

(a) direct OP-3, OP-4 and OP-5 to not declare the results of the financial evaluation of the 8 remaining RFPs, and keep the results in a sealed cover;

(b) direct OP-3, OP-4 and OP-5 to not declare L1 and L2 in respect of the remaining 8 RFPs which were not cancelled on 01.08.2024; and

(c) pass any other or further order or orders as this Hon'ble Commission may deem fit in the facts of the case.

18. The Commission considered the Information filed by the Informant in its ordinary meeting held on 29.01.2025 and decided to pass an appropriate order in the matter.

19. The Commission notes that in the Information, the following broad allegations seem to have been made by the Informant:

(a) Non-publication of the NIP by OP-3 and OP-4 on OP-5 in violation of the GFR, 2017;

(b) Cartelisation, bid-rigging and collusive bidding by OP-1 and OP-2 in the tenders of OP-4, invited by OP-3. Participation of OP-3 and OP-4 in such collusion, has also been alleged;

(c) Relaxation of eligibility criteria in favour of OP-1, by OP-3 and OP-4; and

(d) OP-1 qualified in certain RFPs invited by OP-3 and OP-4, despite not meeting the eligibility criteria.

20. At the outset, in respect of allegations at Sl. No. (a), (c) and (d) above, the Commission notes that the same, *prima facie*, do not seem to constitute potential violation of any of the provisions of the Act. Therefore, the same are not being further examined in the present order.

21. As far as allegations regarding collusive bidding by OP-1 and OP-2 in the RFPs are concerned, it is noted from the annexures filed with the Information that the status of all 18 RFPs forming part of the NIP, seems to be as follows:

| S. No. | RFP For Selection of Vendor for supply of Toolkits under PM Vishwakarma Scheme[1] | Bidders | Result |
|---|---|---|---|
| 1 | For Washermen | OP-1 and OP-2 | Both bidders technically disqualified so tender cancelled |
| 2 | For Tailor | 5 including OP-2 | All bidders technically disqualified so tender cancelled |
| 3 | For Sculptor | OP-1 and OP-2 | OP-1 recommended for opening of financial bids while OP-2 technically disqualified |
| 4 | For Potter | 6 including OP-1 and OP-2 | All bidders technically disqualified so tender cancelled |
| 5 | For Mason[2] | 4 including OP-2 | 2 bidders recommended for opening of financial bids while other 2 (including OP-2) technically disqualified |
| 6 | For Garland Maker | 3 including OP-1 and OP-2 | All bidders technically disqualified so tender cancelled |
| | | 17 including OP-1 | 6 bidders (including OP-1) recommended for opening of financial bids while 11 others technically disqualified<br>OP-1 declared L6 |

[1] Last date for bidding was 30.05.2024.
[2] Due to change in NIT conditions/ specifications, tender cancelled for refloating of revised RFP.

| S. No. | RFP For Selection of Vendor for supply of Toolkits under PM Vishwakarma Scheme[1] | Bidders | Result |
|---|---|---|---|
| 7 | For Locksmith | 12 including OP-1 and OP-2 | 3 bidders (including OP-1) recommended for opening of financial bids while 9 others (including OP-2) technically disqualified<br>OP-1 declared L2 |
| 8 | For Hammer | 6 including OP-1 and OP-2 | Only OP-1 recommended for opening of financial bids while others (including OP-2) technically disqualified |
| 9 | For Goldsmith | 4 including OP-1 and OP-2 | All bidders technically disqualified so tender cancelled |
| 10 | For Fishing Net Maker | 3 including OP-1 and OP-2 | Only OP-1 recommended for opening of financial bids while other 2 technically disqualified |
| 11 | For Doll and Toy Maker | 2 including OP-2 | Both bidders technically disqualified so tender cancelled |
| | | 14 including OP-1 and OP-2 | 4 bidders recommended for opening of financial bids while 10 others (including OP-1 and OP-2) technically disqualified |
| 12 | For Cobbler | 3 including OP-2 | All bidders technically disqualified so tender cancelled |
| 13 | For Carpenter | 5 including OP-1 and OP-2 | Only 1 bidder recommended for opening of financial bids while |

| S. No. | RFP For Selection of Vendor for supply of Toolkits under PM Vishwakarma Scheme[1] | Bidders | Result |
|---|---|---|---|
| | | | other 4 others (including OP-1 and OP-2) technically disqualified |
| 14 | For Boat Maker | 9 including OP-1 and OP-2 | 3 bidders (including OP-1) recommended for opening of financial bids while 6 others (including OP-2) technically disqualified |
| 15 | For Blacksmith | OP-1 and OP-2 | OP-1 recommended for opening of financial bids while OP-2 technically disqualified |
| 16 | For Barber | 4 including OP-1 and OP-2 | All bidders technically disqualified so tender cancelled |
| 17 | For Armourer | 10 including OP-1 and OP-2 | 3 bidders (including OP-1) recommended for opening of financial bids while 7 others (including OP-2) technically disqualified |
| 18 | For Basket Maker | 11 including OP-1 | 4 bidders (including OP-1) recommended for opening of financial bids while 7 others technically disqualified<br>OP-1 declared L3 |

22. From the above table, which has been prepared basis the documents annexed with the Information, there is no doubt that OP-1 has been declared technically qualified in multiple RFPs, while OP-2 has been technically disqualified in all of them. However, OP-1 does not seem to be the L1 bidder in the any of the RFPs forming part of the NIP

whose results of financial evaluation have been declared, as has been alleged by the Informant.

23. Further, from the above table, no pattern of collusion between OP-1 and OP-2 can be seen. Also, from the information available in the public domain, it is noted that OP-1 is a private limited company with registered addresses in Delhi and Noida whereas OP-2 is a private limited company with registered address in Telangana. They seem to have no common directors and/ or key personnel.

24. As such, in light of no evidence of any relationship between the two companies, or any evidence of collusion between them, having been found in the Information or the Annexures filed therewith, the Commission is of the considered opinion that no *prima facie* case of contravention of the provisions of Section 3 of the Act can be made out against the OPs in the present matter. Hence, the matter is directed to be closed in terms of the provisions contained in Section 26(2) of the Act. I.A. No. 333 of 2024 also stands disposed of, accordingly.

25. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
**(Ravneet Kaur)**
**Chairperson**

Sd/-
**(Anil Agrawal)**
**Member**

Sd/-
**(Sweta Kakkad)**
**Member**

Sd/-
**(Deepak Anurag)**
**Member**

**New Delhi**
**Date: 03.03.2025**