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COMPETITION COMMISSION OF INDIA

Case No. 46 of 2020

In Re:

Shri Piyush
1211, 12th Floor, Vijaya
Barakhamba, Delhi - 110001

Informant

And

1. Unipro Techno Infrastructure Private Limited
SCO 36, 7C, Madhya Marg
Chandigarh - 160019
Opposite Party No. 1
2. Lahoty Buildcon Limited
Karnany Circle, Dewal Road
Jorhat, Assam-785001.
Opposite Party No. 2
3. Bhoorathnom Construction Company Private Limited
7-3-720, Rashtrapathi Road,
Secunderabad, Andhra Pradesh- 500003
Opposite Party No. 3
4. Vishnu Prakash R Punglia Limited
Flat No. 605, 6th Floor, B Wing,
Kingston Classic
Chincholi Bandar Road
Malad (WEST), Mumbai- 400064
Opposite Party No. 4
5. Dara Engineering & Infrastructures Pvt. Ltd.
201-8, G/F Basant Nagar
South West Delhi, Delhi - 110057
Opposite Party No. 5
6. Agarwal Jagdish Construction Company Private Limited
184, Main Street Nasriabad
Ajmer- 30560, Rajasthan
Opposite Party No. 6
7. GA Infra Private Limited
402, Man Upasana Tower
Sardar Patel Marg, C-Scheme
Jaipur, Rajasthan – 302001
Opposite Party No. 7



8. **Devendra Construction Company**
41-B, Umed Bhawan Road Near
Suncity Art Emporium
Jodhpur, Rajasthan - 342001

Opposite Party No. 8

9. **SB Enterprises**
49-C, New Jatawa,
Near Mumal School, Maderna Colony
Jodhpur, Rajasthan - 342001

Opposite Party No. 9

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by Shri Piyush ('**Informant**') under Section 19(1)(a) of the Competition Act, 2002 ('**Act**') against Unipro Techno Infrastructure Private Limited ('**OP-1**'), Lahoty Buildcon Limited ('**OP-2**'), Bhoorathnom Construction Company Private Limited ('**OP-3**'), Vishnu Prakash R Punglia Limited ('**OP-4**'), Dara Engineering & Infrastructures Pvt. Ltd. ('**OP-5**'), Agarwal Jagdish Construction Company Private Limited ('**OP-6**'), GA Infra Private Limited ('**OP-7**'), Devendra Construction Company ('**OP-8**') and SB Enterprises ('**OP-9**') (OP-1 to OP-9 collectively referred to as the **OPs**) alleging violation of the provisions of Section 3 of the Act.
2. The Informant in the present case has alleged cartelisation by the OPs in certain tenders invited by the Public Health Engineering Department, Rajasthan ('**PHED Rajasthan**'/'**Department**') under Atal Mission for



Rejuvenation and Urban Transformation (AMRUT). It is stated in the Information that the PHED Rajasthan had invited several packets of tenders for 29 Districts of Rajasthan. The details of projects undertaken in these 29 districts are provided as follows:

- i. In 5 Districts - Rajasthan Urban Infrastructure Development Project Phase-III Projects;
 - ii. In Ajmer and Udaipur - Smart City Projects;
 - iii. In Kishangarh - Jal Apporti Yojana Project and
 - iv. In 21 Districts - AMRUT Mission drinking water project reorganisation/ reinforcement Projects.
3. The Informant has alleged that out of the 21 districts under AMRUT Mission, the tenders invited by the PHED Rajasthan in 11 districts were rigged by a cartel of 9 firms/ companies *i.e.* the OPs. It is alleged that at the initial instance, the OPs deliberately failed to participate in the tenders and also pressurized other willing firms/ companies, who were not part of the alleged cartel, not to participate in the AMRUT tenders invited by the PHED Rajasthan specifically for 11 districts with the aim to artificially inflate the estimated cost of the Department. It is alleged that the conduct adopted by these firms led to an estimated loss of Rs. 150 crores to the exchequer. The AMRUT Mission tenders worth 750 crores were assigned to these firms/ companies.
4. The Informant has further alleged that the cartel/ bid rigging was led by 6 companies/ firms *viz.* OP-1, OP-2, OP-4, OP-5, OP-8 and OP-9. It is alleged that these companies used their local political pressure/ dominance to pressurize other willing firms to abstain from participating in the AMRUT tenders for 11 districts, which led to lack of participation in AMRUT tenders by the OPs and other willing firms/ companies. As a result, the Department had to invite the tenders almost 2-4 times for districts such as Dholpur, Hindaun City with almost nil participation.



Ultimately, the Department was forced to revise the tender in 11 districts at 20%-30% higher rates than the earlier estimated cost.

5. The Informant has alleged that the aforementioned cartel of the OPs, agreed to justify the higher tender rates with the help of some Engineers from Jaipur and on their refusal to do so, the OPs took recourse to Engineers from Jodhpur and conveyed to the Tender Negotiation & Finance Committee that estimated cost of the AMRUT projects in 11 districts should have been 28-38% above the initial estimated cost of the projects. Thereafter, all the OPs agreed that at the initial instance, they will show their reluctance to accept any counter offer of the Department which was not above 28% of the earlier estimated cost of the tenders. However, at last they will accept the counter offer which was above 20% of the earlier estimated cost of the tenders. Accordingly, as agreed amongst them, the OPs accepted the counter offer of the Negotiation & Finance Committee for PHED Rajasthan that was above 20% of the earlier estimated cost of the tenders. This was stated to be reported in various national newspapers also.

6. The Informant has provided the following details in respect of the tenders/ work orders allotted to the OPs and alleged that such details show that the OPs refused to compete with each other and divided the 11 districts amongst themselves:

Sr. No.	Name of the company/firm	Project ID/ Work order/Allotment date	District	Total Revised Estimated Cost	Increase from the earlier Estimate
1.	Unipro Techno Infrastructure Private Limited	Project ID: RAJ-JAI-006 (vide letter dated 02.02.2018 issued by the Office of Additional Chief Engineer)	Jaipur (Rs. 59.30 crore)	-NA-	20%



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2.	Lahoty Buildcon Limited	NIT No. 06/17 -18, AMRUT UWSS; Project ID: RAJ-DHA-001-003 (<i>vide</i> letter dated 11.12.2017 issued by the Office of Additional Chief Engineer); Project ID: RAJ-CHI-002-006 (<i>vide</i> letter dated 11.12.2017 issued by the Office of Additional Chief Engineer); Project ID: RAJ-NAG-003 (<i>vide</i> letter dated 30.06.2017 issued by the Office of Additional Chief Engineer)	Dholpur (Rs. 47 crores); Chittorgarh (Rs.68.53 crore), Nagaur (Rs. 46.43 Crore) and other works	Total revised cost 245 crore	20%
3.	Bhoorathnom Construction Company Limited Private	Project ID: RAJ-BHA-006 (<i>vide</i> letter dated 11.12.2017 issued by the Office of Additional Chief Engineer)	Bharatpur (Rs. 63.31 crore)	-NA-	20%
4.	Vishnu Prakash R Punglia Limited	Project ID: RAJ-HIN-004 (<i>vide</i> letter dated 11.12.2017 issued by the Office of Additional Chief Engineer)	Hindaun City (Rs. 57.48 crore)	-NA-	20%
5.	Dara Engineering & Infrastructures Pvt. Ltd.	Project ID: RAJ-KOT-001-004 (<i>vide</i> letter dated 06.12.2017 issued by the Office of Additional Chief Engineer)	Kota (Rs. 90.49 crore)	-NA-	20%



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6.	Agarwal Jagdish Construction Company Limited	Project ID: RAJ-BEA-001-005 (<i>vide</i> letter dated 30.06.2017 issued by the Office of Additional Chief Engineer)	Beawar (Rs. 16 crore)	-NA-	20%
7.	GA Infra Private Limited	Project ID: RAJ-BIK-003 (<i>vide</i> letter dated 02.02.2018 issued by the Office of Additional Chief Engineer)	Bikaner (Rs. 36.85 crore)	-NA-	20%
8.	Devendra Construction Company, Jodhpur	Project ID: RAJ-GAN-003-006 (<i>vide</i> letter dated 11.12.2017 issued by the Office of Additional Chief Engineer) Project ID: RAJ-SAW-002 (<i>vide</i> letter dated 11.12.2017 issued by the Office of Additional Chief Engineer)	Gangapur city (Rs. 77.79 crore), Sawai Madhopur (Rs. 52.90 crore)	-NA-	20%
9.	S.B.Enterprises, Jodhpur	Project ID: RAJ-HIN-004 (<i>vide</i> letter dated 11.12.2017 issued by the Office of Additional Chief Engineer)	Outskirts of Hindaun City (Rs. 24.32 crore)	-NA-	20%

7. Apart from the above, the Informant has alleged that the explanation provided by the OPs to seek higher rates was same 'word to word' even when the conditions for carrying out water pipeline work in different districts of Rajasthan were different in terms of underlying rocks/ sand/ population density *etc.* and entailed different cost for firms/ companies, thus, showing formation of the cartel. The Informant has, however, stated that copies of such explanations are not available with it.



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8. Besides pointing out alleged cartelisation, the Informant has also summarized other allegations gathered from various local newspaper sources against the OPs, which are as follows:
- i. Most of the OPs are laying down the pipelines at the depth of just 1- 1.5 feet, whereas, the official handbook/ official rules/ work manual of PHED, Rajasthan suggest that pipelines are to be laid at the depth of 90 cm or 2.95 feet. For example, OP-1 was not laying down the pipelines at proper depth as required by the work manual/ rules in respect of the work order for Jaipur District (Rajasthan) under AMRUT Mission.
 - ii. Almost all the OPs have refused to abide by the timeline for implementation of the projects. For example, OP-1, with respect to for 'Work Order for execution of the Work of re-organisation of Urban Water supply Scheme for Jaipur with 07 years operation and maintenance including 01 year of defect liability (allotted *vide* letter dated 02.02.2018), had completed just 40% of the work under AMRUT mission till February 2020, whereas, the scheduled date for completion of the work was in February 2020. Despite, such state of affairs, OP-1 was allotted the work order at 17% above the earlier estimated cost due to the aforementioned cartelisation.
 - iii. OP-2, who was, *vide* letter dated 30.06.2017, allotted the work order/ tender for laying down 240 km of drinking water pipeline in Nagaur District alongwith 7 years operation and maintenance (under AMRUT mission), was to complete the work by 09.07.2019; however, by 31.01.2019, it had laid down only 116 km length of drinking water pipeline that too not at the proper depth of 2.95 feet and PHED only imposed a meagre penalty of Rs. 1.47 lakh.
 - iv. OP-4 has also been accused of getting a PHED contract in 2014 on basis of forged fake documents. Similarly, OP-5 was also involved



in controversy in 2017, when by using its local connection it urged a former politician to write a letter dated 07.02.2017 to former Rajasthan Minister Mr. Surendra Goyal for getting the PHED tender for Dara-Ramky Joint Venture.

9. In view of above, the Informant has *inter alia* prayed the Commission to (i) declare the above practice of the OPs as anti-competitive in violation of the provisions of Sections 3 of the Act; (ii) pass a cease and desist order against the OPs, directing them to discontinue and not to enter such arrangements in future; (iii) pass an order under Section 26(1) of the Act directing investigation in the matter; (iv) impose such penalty alongwith direction to blacklisting of the said companies/ firms of the OPs under the Act, as the Commission deems fit and proper; and (v) pass such further order and issue such directions to the OPs as the Commission may deem fit in the facts and circumstances of the present case.
10. The Commission has perused the Information and notes that the Informant, who is stated to be an advocate, has alleged cartelization amongst the OPs who were bidders for various projects taken up under AMRUT Mission in Rajasthan.
11. With respect to AMRUT Mission, it is noted from information available in public domain that this is a Centrally Sponsored Scheme under Ministry of Urban Development, Government of India (MoUD, GoI) launched on 25.06.2015 for 5 years *i.e.* from 2015-16 to 2019-20. The AMRUT mission primarily aims to support 500 cities having a population greater than one lakh.
12. AMRUT Mission seeks to address the issue of urban development in a coordinated and planned manner with the involvement of the State Government for better planning and implementation of projects. It aims



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to provide basic services to households and build amenities in cities, with a special emphasis on improving the quality of life for the poor and the disadvantaged. The thrust areas under AMRUT mission are ensuring water supply, sewerage and septage management, storm water drainage, urban transport and availability of green and open spaces, reform management and support and capacity building for Urban Local Bodies (ULBs). Further, in AMRUT Mission, project-by-project sanction by the MoUD has been replaced by approval of the State Annual Action Plan (SAAP) once a year by the MoUD, based on which funds are released. The States have to give project sanctions and approvals at their end. The ULBs are responsible for implementation of the mission through development of Detailed Project Reports (DPRs) and bid documents for projects in the approved SAAP, procurement of implementation agencies and ensuring timely completion of work. The ULBs are responsible for developing a roadmap for reform implementation and capacity building and building coordination and collaboration among stakeholders for timely completion of projects without escalation of project cost.

13. The Information furnished by the Informant indicates that the allegation of cartelisation in the instant case pertains to the tenders floated for projects under AMRUT Mission in the 'water supply sector' by the State of Rajasthan. The Informant has alleged that out of 21 districts where projects were undertaken under AMRUT mission drinking water project, the tenders invited by the PHED Rajasthan in 11 districts were rigged by the OPs to force the Department to revise the tender in these districts at 20%-30% higher rates than the earlier estimated cost. It is also alleged that the OPs refused to compete with each other and divided the 11 districts amongst themselves.



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14. However, the only material provided by the Informant in support of his allegations are news reports/ articles appearing in various newspapers/ social media. It is noted that the said news reports/ articles are primarily regarding the issue of corruption in PHED/ Water Supply Department in relation to water supply projects under AMRUT Mission in Rajasthan and raise issues such as slowing down of pace of development by contractors due to non-payment, quality of work done by the contractors, project work being given at a rate 20% higher than tender cost to the contractors despite issues related to quality and pace of work *etc.*
15. In addition to the news reports, the Informant has also annexed certain other documents such as document showing details of projects taken up under AMRUT Mission in Rajasthan in sectors such as water supply, sewerage, drainage and green space; letter granting work order to OP-2 on 11.12.2017 and Minutes dated 01.02.2017 of 8th Meeting of State Level Technical Committee under AMRUT Mission held on 27.01.2017. It is, however, observed that these documents do not support the allegations of bid rigging made by the Informant in any manner.
16. Further, the Commission notes that the Informant has provided certain information in a tabular manner which has been excerpted in para 6 of this order to show alleged cartelisation amongst the OPs in dividing the 11 districts amongst themselves besides escalating the costs by 20%. It is however not readily discernible therefrom that such allocation was an outcome of any collusive conduct of the part of the OPs. As regards allegation of uniform escalation in costs by 20% for each district is concerned, it appears to be an outcome of negotiations by way of offers and counter offers with the Department, as is borne out from the averments made in the Information itself. The Informant has not filed any material to support that such increase in costs was a result of any prior



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concert amongst the bidders and the allegations in this regard seem to be based on the surmised deduction of the Informant from the allocations.

17. Based on above, the Commission is of the opinion that there is nothing on record wherefrom Commission can even form a *prima facie* view regarding contravention of the provisions of Section 3 of the Act by the OPs.
18. In view of the foregoing, the Commission is of the opinion that in the instant matter, there exists no *prima facie* case and the matter is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
19. The Secretary is directed to communicate to the Informant, accordingly.



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(Sangeeta Verma)
Member

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(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 29/12/2020