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COMPETITION COMMISSION OF INDIA

Case No. 36 of 2020

In Re:

XYZ

...Informant

And

**1. Lakeforest Wines Private Limited**

...Opposite Party No. 1

E-186, Basement, Greater Kailash -1

New Delhi – 110048.

**2. Ashir Marketing (India) Private Limited**

...Opposite Party No. 2

E-186, Basement, Greater Kailash -1

New Delhi – 110048.

**3. Sarja Associates Private Limited**

...Opposite Party No. 3

E-186, Basement, Greater Kailash -1

New Delhi – 110048.

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 XYZ (**Informant**) under Section 19(1)(a) of the Competition Act, 2002 (**Act**) against Lakeforest Wines Private Limited (**OP-1**), Ashir Marketing (India) Private Limited (**OP-2**), Sarja Associates Private Limited (**OP-3**) (OP-1, OP-2 and OP-3 collectively referred to as the '**OPs**'), alleging contravention of the provisions of Section 3 of the Act.
2. OP-1 is a company incorporated on 02.08.2005 in New Delhi, having its registered office at E-186, Basement, Greater Kailash -1, New Delhi. Mr. Rajan Gandhi and Mr. Surender are the directors of the OP-1 having been appointed on 10.03.2018 and 12.03.2019 respectively and Mr. Neeraj Sachdeva is the majority shareholder in OP-1.
3. OP-2 is a company incorporated on 10.01.1995 in New Delhi, having its registered office at E-186 back room of Ground Floor, Greater Kailash -1, New Delhi. Mrs. Ruchira Sachdeva and Mr. Amar Jeet are the directors of OP-2 having been appointed on 10.03.2018 and 29.10.2019 respectively. Mrs. Ruchira Sachdeva is the wife of Mr. Neeraj Sachdeva, who is the majority shareholder in OP-1 as well as OP-2.
4. OP-3 is a company, incorporated on 26.06.1991 in New Delhi, having its registered office at E-186 back room of Ground Floor, Greater Kailash -1, New Delhi. Mr. Amar Jeet and Mr. Sanjiv Harit are the directors of OP-3 having been appointed on 25.03.2019. The Informant has submitted that prior to becoming the director of OP-3, Mr. Sanjiv Harit, who is a close affiliate of Mr. Neeraj Sachdeva, was also the General Manager of OP-1. Further, Mr. Amar Jeet is a director in OP-3 as well as OP-2.
5. It is alleged that the OPs have cartelised to limit and control the supply of Imported Foreign Liquor (Bottled in Original 'BIO') [hereinafter **IFL**



(BIO)] in the state of Haryana and rigged the tenders for the License for supply of IFL (BIO) in the state of Haryana *i.e.* L-1BF license, floated by the Excise and Taxation Department, Government of Haryana.

6. It is stated in the information that the OPs have been applying for the L-1BF license since 2015-16. OP-1 has been a licensee for the years 2015-16, 2016-17, 2018-19 and 2019-20. OP-2 has been the sole licensee of L-1BF license for the year 2017-18 in Haryana. OP-3 also participated in the bidding for L-1BF license and won the same for the year 2019-2020, along with OP-1. It is alleged that the OPs are participating in the bidding / allotment process in a manner which is not only in violation of the Haryana Excise Policy, 2019-20 (which especially prohibits the participation of related parties in the bidding process) but also the provisions of the Act, especially, Section 3(3)(d).
7. The Informant has submitted that while the OPs posed as separate entities and participated in the tendering process for L-1BF license under the Haryana Excise Policy 2019-20 as distinct and separate entities, the facts show that they all operate from the same office, have same Chartered Accountant (CA) firm as the statutory auditor, have identical Memorandum of Associations, have same e-mail ids and give inordinate credits to each other. Further, all the OPs are controlled by one individual, *i.e.* Mr. Neeraj Sachdeva, who is the majority shareholder in OP-1 and OP-2 and also related to the directors in all the OPs in some capacity or other. It is stated that the OPs engage in rotational bidding by participating in the bidding process in turns each year for the L-1BF license under the Haryana Excise Policy. Such turn by turn bidding for the L-1BF license is being undertaken by the OPs, so that the wholesale vend of IFL (BIO)/IFL remains with Mr. Neeraj Sachdeva only and their concerted action does not raise any red flag to the Haryana Excise Department.



8. Further, it is stated in the information that although under the Haryana Excise Policy 2019-20 any horizontal agreements between L-1BF licensees who are wholesale licensees at the same stage of supply is prohibited; OP-1 and OP-3, the only two L-1BF licensees in the state of Haryana for the year 2019-20, are engaged in such transactions with each other.
9. OP-3, an L-1BF licensee, has purchased maximum stocks from OP-1, which is another L-1BF licensee for the year 2019-20, rather than the IFL (BIO) suppliers. Apart from this, the OPs have carried out numerous transactions amongst each other, which *inter alia* includes the supply of stocks to each other, transfer of funds amongst each other, *etc.*, in spite of being competitors and that too without any payments. It is alleged that such transactions further the fact that OP-1 and OP-3 are engaged in anti-competitive practices to control and restrict the wholesale vend of IFL (BIO) in the state of Haryana and there is an express arrangement / understanding between them to that effect.
10. It is alleged that OP-1 and OP-3 are in collusion under the leadership of Mr. Neeraj Sachdeva, who is closely related to both these L-1BF licensees and is controlling and limiting the wholesale vend of IFL (BIO) in the state of Haryana in contravention of the provisions of the Act. In addition, it is stated that the transactions between OP-2 and OP-3 and transfer of funds between OP-1 and OP-2 reaffirm the fact that not only OP-1 and OP-3 but all the OPs are very closely related to each other and frequently transact amongst themselves under an express agreement or understanding between them.
11. Further, the Informant has stated that the manner in which the OPs engage in transactions with their purchaser Mr. Dharmendra, the L-1 licensee under the Haryana Excise Policy 2019-20 and a known associate of Mr. Neeraj Sachdeva, shows the existence of an agreement/ understanding between the OPs and Mr. Dharmendra also to limit and control the supply of IMFL. Under the Haryana Excise Policy 2019-20, OP-1 and OP-3, being the L-1BF



licensee can supply their stock to the other licensees in the state of Haryana, such as the L-1 licensees. In return, the L-1 licensees pay the L-1BF licensees for the sale of stocks made to them. However, OP-1 and OP-3 are not only giving inordinate credit but also making payments into the account of Mr. Dharmendra, the L-1 licensee.

12. It is alleged that such transactions are being made because Mr. Dharmendra is the face of all the transactions being undertaken by Mr. Neeraj Sachdeva through the OPs. It is in the name of Mr. Dharmendra that Mr. Sachdeva procures and supplies stocks from the OPs to the L-2 licensees in the state of Haryana. Mr. Dharmendra being an L-1 licensee procures the supply from the L-1BF licensees in the state of Haryana, *i.e.* OP-1 and OP-3. This procurement is done by Mr. Dharmendra without making any payment to the licensees, *i.e.* OP-1 and OP-3. Further, as per the provisions of the Excise Policy 2019-20, Mr. Dharmendra further sells the liquor so procured to the retail L-2 licensees. It is alleged that such agreement/understanding between the OPs, Mr. Dharmendra and Mr. Neeraj Sachdeva, gives Mr. Sachdeva the exclusive control over the wholesale vend of IMFL and IFL (BIO) in the state of Haryana, which is disrupting free and fair competition in the market.

13. Based on the above, the Informant has submitted that the clandestine manner in which the OPs, Mr. Neeraj Sachdeva and Mr. Dharmendra have transacted goes on to show that the OPs are engaged in collusive and concerted anti-competitive practices, which affect the supply and control of IFL (BIO) and IMFL in the state of Haryana. Further, the interplay between the OPs, Mr. Dharmendra and Mr. Neeraj Sachdeva, shows that Mr. Neeraj Sachdeva is related to all the OPs and is spearheading the entire operation to cartelize the wholesale vend of IFL (BIO)/ IFL in the state of Haryana in contravention of the provisions of Section 3(3)(b) and Section 3(3)(d) of the Act.

14. In view of the foregoing, the Informant has prayed that the Commission (i) pass an order under Section 26 (1) of the Act to inquire into the practices of



the OPs which are in violation of Sections 3(1) & 3(3) of the Act; (ii) initiate proceedings under Section 48 of the Act against the OPs, the erstwhile and present directors of the OPs and Mr. Neeraj Sachdeva; (iii) declare that the conduct of the OPs is in contravention of the provisions of the Act; (iv) order the OPs to cease and desist from such anti-competitive practices; (v) order the OPs to disclose their bank account details and their sources of funding for procuring the liquor license in the state of Haryana; (vi) impose appropriate penalties on the OPs so as to have deterrent effect and ensure fair competition in the trade of wholesale vend of liquor licenses; (vii) order the OPs to pay the legal costs incurred by the Informant and (v) pass such orders as the Commission may deem fit to ensure free and fair competition for the benefit of the consumers and competitors in the market.

15. The Commission considered the matter in its ordinary meeting held on 06.10.2020 and 15.10.2020 and decided to pass an appropriate order in the matter in due course.
16. Upon perusal of the information, it is noted that the allegations against the OPs relate to contravention of the provisions of Section 3(3)(b) and 3(3)(d) read with Section 3(1) of the Act. The Informant has alleged that the OPs have rigged the tenders floated by the Haryana Excise and Taxation Department for the license for supply of IFL (BIO) in the State of Haryana, by way of rotational bidding and are also limiting and controlling the supply of IFL (BIO) in the state of Haryana.
17. A careful scrutiny of the material placed on record by the Informant shows that the sole basis upon which the allegation of bid rigging through bid rotation is founded is the grant of L-1BF licence to one or the other OP during the years 2015-16 to 2019-20, which are allegedly related to each other by way of common address, common shareholder *etc.* and are having *inter se* financial transactions amongst each other and with Mr. Dharmendra.



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18. By way of evidence, the Informant has submitted copies of documents such as company master data of the OPs available on the website of Ministry of Corporate Affairs, their shareholding information and Memorandum of Association *etc.* to show that the OPs are related parties. Further, the excerpts of sales tax returns and bank account statements of the OPs have been provided to substantiate *inter se* financial transactions between the OPs, who are competitors of each other, and transactions of OPs with their common purchaser Mr. Dharmendra. However, no details or documents relating to the tenders floated by the Haryana Excise and Taxation department for L-1BF licenses which are alleged to have been rigged by way of bid rotation have been furnished by the Informant. Also, there is no other evidence that indicates meeting of minds or collusive behaviour by the OPs.
19. The evidence which has been furnished only shows that the OPs may be related parties, who participated in the bidding / allotment process for the L-1BF license in a manner which is in violation of the Haryana Excise Policy, 2019-20, particularly Clause 9.5.1.2 of the said Policy. However, it is pertinent to mention here that mere contravention of the Policy does not imply contravention of the provisions of Section 3 (3) (d) of the Act, unless there is material to substantiate the allegations of bid rigging by way of collusion amongst OPs.
20. In this connection, it is pertinent to point out certain past decisions of the Commission where such facts have been found insufficient to *prima facie* establish contravention of the provisions of Section 3 of the Act. The Commission in, *In Re: Ved Prakash Tripathi v Director General Armed Forces Medical Services & Ors.* (Case No. 10 of 2020), had held that:  
“...mere commonality of directors or ownership of participating firms, in itself, is not sufficient to record any *prima facie* conclusion about bid rigging in the absence of any material indicating collusion amongst such bidders while participating in the impugned tender.... Similarly, the circumstance that OP-9 and OP-10 are located in the same area, in itself,



*is of no consequence in the absence of other material establishing concerted behaviour.” Further, in In Re: Reprographics India v. Hitachi Systems Micro Clinic Pvt. Ltd. & Ors. (Case No. 41 of 2018), the Commission held that: “...merely having common business linkages between the OPs as projected by the Informant, cannot be the basis to suggest collusion in the bidding process. Moreover, there is no material on record to suggest that the OPs were engaged in Bid Rotation etc. Therefore, the allegation of supportive bid does not find favour with the Commission...”.*

21. Thus, in view of the forgoing, the Commission is of the opinion that the facts and evidence available on record in the instant case are not sufficient to establish even a *prima facie* case of contravention of the provisions of Sections 3 of the Act against the OPs. The matter is, thus, ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.

22. The Secretary is directed to communicate to the Informant accordingly.

Sd/-

(Ashok Kumar Gupta)

Chairperson

Sd/-

(Sangeeta Verma)

Member

Sd/-

(Bhagwant Singh Bishnoi)

Member

**New Delhi**

**Date: 17/11/2020**